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Competition in Legal Services Under the War on Poverty

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NOTES

Competition in Legal Services Under the War on Poverty

Equal justice for every man is one of the great ideals of our society. This is the end for which our entire legal system exists. It is central to that system that justice should not be withheld or denied because of an individual's race, his religion, his beliefs or his station in society. We also accept as fundamental that the law should be the same for the rich and for the poor.¹

Lawyers must bear the responsibility for permitting the growth and continuance of two systems of law—one for the rich, one for the poor. Without a lawyer of what use is the administrative review procedure set up under various welfare programs? Without a lawyer of what use is the right to a partial refund for the payments made on a repossessed car?

What is the price tag of equal justice under law? Has simple justice a price which we as a profession must exact?²

The creation of the legal services programs of the war on poverty has focused attention on the deficiencies in the legal treatment of the poor.³ Despite general agreement that the poor need legal services,⁴ however, there has been a continuous debate over the control of the legal programs and the proper role of the poor in administering them.⁵ Behind the dispute over control is a difference of opinion about the goals of the legal services programs. Because these programs were established to help fulfill the policy of the Economic Opportunity Act of 1964 "to eliminate the paradox of poverty in the midst of plenty,"⁶ the goals and means of the war on poverty should be a primary consideration in evaluating the programs.

I. THE WAR ON POVERTY

The Economic Opportunity Act is made up of seven titles, which together attempt to mobilize the human and financial resources of the United

1. Powell, *The Response of the Bar*, 51 A.B.A.J. 751 (1965).

2. Address by Senator Robert F. Kennedy, Law Day at University of Chicago Law School, May 1, 1964, quoted in Cahn & Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317, 1336 n.27 (1964).

3. See, e.g., P. WALD, *LAW AND POVERTY: 1965* (1965); CONFERENCE PROCEEDINGS: THE EXTENSION OF LEGAL SERVICES TO THE POOR (Stats. ed. 1964); *Symposium on Legal Services to the Poor*, 41 CAL. ST. B.J. 215 (1966).

4. See, e.g., E. CHEATHAM, *A LAWYER WHEN NEEDED* 39-58 (1963); WALD, *op. cit. supra* note 3, at 6-67; Carlin & Howard, *Legal Representation and Class Justice*, 12 U.C.L.A.L. REV. 381 (1965). But see Freeman, *How Great Are the Needs?*, 41 CAL. ST. B.J. 232 (1966).

5. Compare Baumbach, *Shall the Poor Choose Their Own Counsel?*, 41 CAL. ST. B.J. 275 (1966), with Matthews, *Armageddon in San Francisco*, 41 CAL. ST. B.J. 284 (1966).

6. § 2, 42 U.S.C. § 2701 (1964).

States to combat poverty.⁷ Some of the programs are experimental—such as Project Head Start for preschool education and the Job Corps for high school dropouts. Much of the war on poverty program, however, is a device to concentrate the forces presently fighting poverty into one new agency—the Office of Economic Opportunity (OEO)—in order to coordinate the effort and especially to reemphasize the need for dealing with the problems of the poor. A vigorous new agency with a mandate to end poverty can supposedly spur old-line organizations to greater efforts by forcing them to reaffirm their obligations and to revamp their methods in order to improve their services to the poor. Hence, cooperation and funding through existing organizations is not an end in itself, but was conceived as a means to achieve the goals of the war on poverty.

A. *Community Action: Stimulation and Coordination*

The heart of the effort to combat poverty is the community action programs in title II of the act. The purpose is “to provide stimulation and incentive for urban and rural communities to mobilize their resources to combat poverty”⁸ Programs may be set up under this title for remedial reading, literacy courses, employment counseling, homemaker services, or any other program which will “combat poverty.”⁹ Legal services are considered part of the effort to combat poverty.¹⁰

Community action programs are initiated on the local level and are directed to attack the particular problems of that community. “The long-range objective of every community action program is to effect a permanent increase in the capacity of individuals, groups, and communities afflicted by poverty to deal effectively with their own problems so that they need no further assistance.”¹¹ Community action, like the war on poverty as a whole, emphasizes the concept of coordinating and funding through existing organizations—welfare agencies, school districts, recreation departments, civic organizations—to provide better, more vigorous services in the future. The community action ideal is to create a city which, “with the prodding of federal funds, unifies its welfare programs and ‘enters into a binding agreement to pull itself up by its own bootstraps.’”¹²

7. Title I, 42 U.S.C. §§ 2711–61 (1964), *as amended*, (Supp. I, 1965), provides for the Job Corps and other youth programs; title II, 42 U.S.C. 2781–2831 (1964), *as amended*, (Supp. I, 1965), is the community action provision; title III, 42 U.S.C. §§ 2841–81 (1964), *as amended*, (Supp. I, 1965), covers special rural programs; title IV, 42 U.S.C. §§ 2901–07 (1964), provides small-business incentives; title V, 42 U.S.C. §§ 2921–23 (1964), *as amended*, (Supp. I, 1965), authorizes payments for experimental job training for adults; title VI, 42 U.S.C. §§ 2941–67 (1964), *as amended*, (Supp. I, 1965), governs the administration and coordination of the act; title VII, 42 U.S.C. § 2981 (1964), governs the effect of antipoverty payments on a person’s rights to social security benefits.

8. § 201, 42 U.S.C. § 2781 (1964).

9. I OFFICE OF ECONOMIC OPPORTUNITY, COMMUNITY ACTION PROGRAM GUIDE 23–28 (1965).

10. I *id.* at 27.

11. I *id.* at 7.

12. Comment, *Participation of the Poor: Section 202(a)(3) Organizations Under the Economic Opportunity Act of 1964*, 75 YALE L.J. 599, 603 (1966) (quoting Sargent Shriver, Director of the

B. *Community Action: Maximum Feasible Participation*

Community action programs were created with the congressional mandate to include the "maximum feasible participation" of the poor.¹³ This mandate marks a dramatic step away from the traditional charitable approach to poverty, which many have condemned as a failure.¹⁴ The intention that the poor are to be involved to the maximum feasible extent suggests a concept of helping the poor to help themselves, rather than merely doling out services to them. The poor are to join in the "planning, policy-making, and operation of the program."¹⁵ The theory is that "[b]y maximizing active participation of the poor, we 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 masters of their own destiny."¹⁶

Maximum participation has the further advantage of allowing and encouraging the poor to make their collective desires felt through their representatives on local community action boards. Community action boards are the policy-making bodies that, subject to approval of OEO, formulate and administer local community action projects. Since the community action boards are composed of representatives of local government and civic organizations as well as representatives of the poor, an endeavor must be made to set up the community action boards to ensure that they will be responsive to the needs and desires of the poor. For example, E. Clinton Bamberger, Jr., former director of the legal services program of OEO, suggested that the policy-making boards of the legal services program should be "obliged to hear and act upon [the] suggestions"¹⁷ of the representatives of the poor. In effect, the act promises the poor a means of lobbying for what they believe to be in their best interest. Since the democratic process relies frequently on articulation of grievances and on special-interest groups and since the Congress has expressed the policy that the poor should be aided in expressing their point of view, extensive participation by the poor in the administration of the community action programs seems to be a natural and necessary part of the war on poverty.¹⁸

Office of Economic Opportunity). The unified program is needed to "curb the trend toward separatism" by creating "umbrella agencies" which "impose cooperation and encourage experimentation among conservative social service functionaries." *Id.* at 602-03.

13. 42 U.S.C. § 2782(a) (3) (Supp. I, 1965).

14. *See, e.g.*, Baumbach, *supra* note 5, at 276; Address by E. Clinton Bamberger, Jr., Former Director of Legal Services, Office of Economic Opportunity, to Lubbock County, Texas, Bar Ass'n, Feb. 4, 1966. Mr. Bamberger asserted that "simple charity may do more harm than good to its recipients."

15. 1 OFFICE OF ECONOMIC OPPORTUNITY, *op. cit. supra* note 9, at 7.

16. Bamberger, *op. cit. supra* note 14.

17. *Ibid.*

18. A recent amendment to the Economic Opportunity Act reaffirmed the concept of maximum representation of the poor by requiring that one-third of a community action board be representatives of the poor. Act of Nov. 8, 1966, Pub. L. 89-794, § 203, 80 Stat. 1457. If this minimum does not become a maximum as well, the poor may become more involved in their own destinies.

C. *Community Action: Conflict*

There has been, however, a continuing controversy about the exact meaning of "maximum feasible participation" of the poor.¹⁹ Such participation may pose a threat to those in positions of political power. If the poor control the policy decisions of a program affecting them, they may well choose to challenge the existing political power structure. Many city officials have exerted political pressure to avoid having control of the community action programs put into the hands of the poor.²⁰ They interpret "maximum participation" to mean merely that the poor share in the administration of lower echelon activities such as neighborhood day-care and employment centers.²¹ Such an interpretation removes from the community action programs the revolutionary concept which makes the war on poverty more than an enlarged welfare program.

The opposition to substantial control by the poor goes beyond city officials to many groups whose position or actions might be challenged by an articulate and powerful group of the poor. The existing organizations through which OEO had planned to channel its funds might well be attacked by the poor.²² It appears that OEO has had to bow to political pressure in many of its community action programs and largely eliminate extensive participation of the poor.²³ But when a conflict occurs, the goals of the war on poverty as a whole should take precedence over the pledge of working through existing organizations; cooperation was conceived as merely a means of stimulating the war on poverty effort and should therefore be discarded if it stifles that effort. OEO should explicitly demand a certain minimum adherence to the goals of the war on poverty before funding projects.

II. LEGAL SERVICES PROGRAMS

The legal services programs, which are part of community action, also have dual policies of cooperation and maximum participation. The role of lawyers in the war on poverty should be clarified to evaluate the legal services programs and to determine whether those dual policies can accommodate each other.

19. See Carter, *Sargent Shriver and the Role of the Poor*, *The Reporter* (San Francisco), May 5, 1966, at 17. The three most common interpretations are: (1) involvement of the poor in social service activities; (2) a literal interpretation, according to which a neighborhood representative serves on the community action boards; (3) active political organizations of the poor. Comment, 75 *YALE L.J.* 599-602 (1966).

20. See Comment, 75 *YALE L.J.* 599, 610-11 (1966).

21. *Id.* at 599-600, 610-11.

22. For example, welfare departments have been cited as agencies which should be more responsive to the wishes of the poor. See Cahn & Cahn, *supra* note 2, at 1341-44; Wickenden, *The Indigent and Welfare Administration*, in CONFERENCE PROCEEDINGS: THE EXTENSION OF LEGAL SERVICES TO THE POOR 41 (Stats ed. 1964).

23. See Carter, *supra* note 19, at 17.

A. *The Need for Legal Services*

The poor have lacked the aid of lawyers in the past, and this has contributed to and aggravated their poverty.²⁴ Lawyers have been unavailable to the poor in the normal lawyer-client context to meet immediate personal legal crises. Examples are rife of poor people who have been victims of illegal credit practices.²⁵ Without a lawyer a poor person remains ignorant of his right to restrict the circumstances in which his wages may be attached and his job jeopardized. A lawyer might well save a poor person from having an unlawful contract enforced against him. A lawyer can put a poor person through bankruptcy if his financial situation calls for a fresh start. Individual legal services can thus help to alleviate some of the most degrading and frustrating aspects of poverty.

However, lawyers can provide broader aid to the poor, aid which should have even greater influence than individual services on the improvement of the position of the poor in the long run. For example, a poor person with a credit problem may be given a temporary reprieve by a legal defense or bankruptcy, but the heart of his problem is that his reputation as a bad credit risk has forced him to do business with unscrupulous dealers. A group of poor people could form a credit union, however, to offer the poor man fair credit terms.²⁶ And legal help is required to establish a credit union. "Maximum participation of the poor" in this context is very important in that a lawyer must be apprised of the interests of the poor as a group. The request made to a lawyer may be no more articulate than, "We are getting unfair treatment on credit. What can we do?" A lawyer can translate such a complaint into action.

Lawyers may also assume the role of advocates of the group interests of the poor by acting as lobbyists for legislation favorable to those interests or by pursuing test cases to challenge old laws and practices or to develop new legal theories benefiting the poor. A lawyer may be able to help the poor force a city administration to enforce long-ignored housing codes or to provide school facilities equal to those of wealthier neighborhoods.²⁷

24. See Bamberger, *op. cit. supra* note 14.

25. See, e.g., Caplovitz, *Consumer Problems*, in CONFERENCE PROCEEDINGS: THE EXTENSION OF LEGAL SERVICES TO THE POOR 61 (Stats ed. 1964); Dunham, *Consumer Credit Problems of the Poor—Legal Assistance as an Aid in Law Reform*, in CONFERENCE PROCEEDINGS: NATIONAL CONFERENCE ON LAW AND POVERTY 9 (Wolf ed. 1965).

26. See King, *Credit Unions and Financial Counseling*, in CONFERENCE PROCEEDINGS: CONSUMER ACTION AND THE WAR ON POVERTY 15 (1965).

27. The breadth of service which lawyers can provide for the poor is discussed in Cahn & Cahn, *supra* note 2, at 1334-52. Areas of the law, in addition to consumer credit, where poor people may encounter hostile laws include landlord-tenant, family law, and welfare administration. See generally WALD, *op. cit. supra* note 3, at 6-41; CONFERENCE PROCEEDINGS: NATIONAL CONFERENCE ON LAW AND POVERTY 1-66 (Wolf ed. 1965); CONFERENCE PROCEEDINGS: CONSUMER ACTION AND THE WAR ON POVERTY (1965); CONFERENCE PROCEEDINGS: THE EXTENSION OF LEGAL SERVICES TO THE POOR 17-69 (Stats ed. 1964).

B. *Legal Services in the Context of the War on Poverty*

Because improvement of the position of all the poor is the ultimate objective of the war on poverty, a program like legal services which has the ability to deal with the broader interests of the poor should be designed to do so. The OEO legal service guidelines indicate an appreciation of the breadth of needed legal services. They call for civil legal work, education, preventive law, and advocacy of appropriate reforms in statutes, regulations, and administrative practices.²⁸ The focus is both on the individual with a specific legal problem and on the poor as a group which needs effective advocates for its collective interests. E. Clinton Bamberger, Jr., explicitly stated the goals of the legal program in an address to the National Conference of Bar Presidents:

We cannot be content with the creation of systems of rendering free legal assistance to all the people who need but cannot afford a lawyer's advice. This program must contribute to the success of the War on Poverty. Our responsibility is to marshal the forces of law and strength of lawyers to combat the causes and effect of poverty. Lawyers must uncover the legal causes of poverty, remodel the systems which generate the cycle of poverty and design new social, legal and political tools and vehicles to move poor people from deprivation, depression, and despair to opportunity, hope and ambition.²⁹

C. *Bar Monopoly on Legal Services*

Most of the legal services programs funded thus far fail to fulfill the broad goals of the war on poverty. Few programs have progressed beyond providing individual legal services.³⁰ Inadequate funding makes it impossible to provide the full span of legal services,³¹ but there is no reason that individual services should be given exclusive priority. The failure of the present programs to emphasize the interests of the poor as a group may stem from the OEO policy of cooperating with the existing groups serving the poor, since the interests of the group which controls the program may determine priorities.

The legal aid societies have for many years been the primary organizations offering legal services to the poor.³² The local bar associations support them with both financial aid and volunteer help;³³ the legal aid society and

28. See 1 OFFICE OF ECONOMIC OPPORTUNITY, *op. cit. supra* note 9, at 27.

29. Address to the National Conference of Bar Presidents, Feb. 19, 1966.

30. The various descriptions of funded programs published by local OEO legal services offices are available on request from Director of Legal Services Program, Office of Economic Opportunity, Washington, D.C. Even in Oakland, California, where there is a good legal services program, the offices have been so swamped that little effort to educate the poor or to help the poor as a class has been possible. Telephone Interview With Simon Rosenthal, San Mateo County, Cal., Legal Services Project, Nov. 16, 1966 (formerly in the OEO Oakland program).

31. See Am. B. News, July 15, 1966. Many of the projects funded thus far have no more than skeleton budgets. Interview With Simon Rosenthal, *supra* note 30.

32. Voorhees, *Legal Aid—Current Needs, New Directions*, in CONFERENCE PROCEEDINGS: NATIONAL CONFERENCE ON LAW AND POVERTY 67 (Wolf ed. 1965).

33. *Ibid.*

the local bar association are usually partners in providing services for the poor. At the start of the legal services program, OEO made the tentative determination that no programs would be funded which were not approved by the dominant local bar association.³⁴ This veto power allowed local bar associations to control legal services programs.³⁵

Is granting a bar monopoly consistent with the goals of the war on poverty? The bar associations are generally sympathetic to the goal of individual legal services for the poor, with some exceptions. For example, many bar association members have argued that divorces should not be granted on a gratuitous basis,³⁶ and bankruptcies, along with domestic relations cases, have often been omitted from the kinds of cases legal aid societies would handle;³⁷ nonetheless, the approach of the bar to the problems of the poor does not necessarily conflict with the principle of free individual legal services for the poor.

However, the structure of the bar associations and the attitudes of those who control them may make them unsympathetic to the broader purposes of the legal services programs. In California, for example, control of the state bar is largely in the hands of the board of governors of that body. Since participation on the board is a time-consuming responsibility, generally only members of large firms can afford to participate.³⁸ Bar associations on the city level tend to follow the same pattern, though on a smaller scale.³⁹ One would assume that members of larger firms tend to be removed from the problems of the poor.

The California bar's reaction to the question of permitting group legal services may indicate the bar's reaction to OEO projects which provide broader services. The California bar conceded the need for increased legal services; however, it shelved the proposal which recommended changes in

34. Interview With James Goodwin, Former OEO Official, at Stanford, Cal., May 6, 1966.

35. Almost all of the 160 legal services projects funded in the first year of the legal services program had bar approval; legal aid societies were often the sponsors of the funded projects. OFFICE OF ECONOMIC OPPORTUNITY, REPORT OF THE LEGAL SERVICES PROGRAM TO THE AMERICAN BAR ASSOCIATION I (1966); Shriver, *National Policy*, 41 CAL. ST. B.J. 219, 223 (1966).

36. "People may say that poverty prevents the poor from having the same rights to get a divorce as a person with money. Yet we must remember that obtaining a divorce is not a right, but a privilege. For most legal aid clients a separation is just as useful and practical as a divorce." Frankel, *Experiments in Serving the Indigent*, in CONFERENCE PROCEEDINGS: NATIONAL CONFERENCE ON LAW AND POVERTY 69, 72 (Wolf ed. 1965) (quoting a chief attorney in an eastern legal aid office).

37. For example, the Oakland Legal Aid Society did not handle either of these types of cases before its funding by OEO.

38. In the last ten years the president of the board of governors has always been from a firm with a business-oriented practice. A profile from the *Martindale-Hubbell Law Directory* for the ten-year period would show that the president has been from about a twenty-five-man firm with a civil practice in all state and federal courts. Specialties have almost always included corporate practice along with work in the fields of insurance, probate, oil and gas, real property, or such. The present board of governors is made up of seventeen lawyers who also fit the general pattern which has typified the president of the board. Among the officers, the average firm size is near twenty-three; the firms of the officers all specialize in corporate and other business practice.

39. The San Francisco Bar Association, for example, has on its board ten members of large firms and five from small firms in the five-to-ten-member range. Almost all the lawyers specialize in corporate, probate, personal injury, or commercial law.

the *California Rules of Professional Conduct* to allow limited use of group legal services programs as a method of providing more services.⁴⁰ The bar, even after admitting the need, did not explain why legalizing group legal services was an unsound method for expanding legal services.⁴¹ This attitude is an obstacle in the road to any significant innovations in the field of legal services for the poor.

Some sense of the difficulty OEO has had in achieving the goals of the war on poverty because of its decision to work through the bar can be further seen in the bar's initial reaction to the legal services program. When the idea of adding an extensive legal services program to the community action program was first suggested, bar associations across the country resisted it.⁴² A great deal of fear was generated about "socialized law" and about the loss of the bar's independence which supposedly would follow any intrusion of the federal government into the field of law.⁴³ There was also considerable speculation that some lawyers might lose clients.⁴⁴

After much persuasion and political pressure, however, the American Bar Association agreed to cooperate with OEO. On February 8, 1965, the House of Delegates of the ABA passed a resolution which pledged cooperation with OEO in the "development and implementation of programs for expanding availability of legal services to indigents," but limited the services to "programs [that] utilize to the maximum extent deemed feasible the experience and facilities of the organized Bar such as Legal Aid."⁴⁵ The resolution explicitly recognized that the bar had tried in the past to extend legal services to lower-income groups; it further indicated concern about the unfilled need for legal services and noted "an urgent duty to extend and improve existing services."⁴⁶ Before pledging to work with OEO, the resolution cautioned: "Freedom and justice have flourished only where the practice of law is a profession and where legal services are performed by trained and independent lawyers."⁴⁷

The resolution can be considered a step toward bar cooperation with the

40. See Board of Governors of the State Bar of California, Board Resolution re Group Legal Services, May 22, 1965. In marked contrast to the attitude of the board of governors is the attitude expressed by Justice Traynor in *Hildebrand v. State Bar*, 36 Cal. 2d 504, 522, 225 P.2d 508, 519 (1950) (dissenting opinion). "Given the primary duty of the legal profession to serve the public, the rules it establishes to govern its professional ethics must be directed at the performance of that duty. Canons of ethics that would operate to deny . . . [individuals] the effective legal assistance they need can be justified only if such a denial is necessary to suppress professional conduct that in other cases would be injurious to the effective discharge of the profession's duties to the public."

41. See Board of Governors of the State Bar of California, Board Resolution re Group Legal Services, May 22, 1965.

42. Interview With Charles Baumbach in San Francisco, May 7, 1966 (lawyer who helped draft the San Francisco legal services project approved by OEO).

43. See N.Y. Times, May 16, 1966, § 1, at 13, col. 1.

44. See Address by Jerome Carlin, National Lawyers Guild Convention, Nov. 12, 1965, in 24 GUILD PRACTITIONER 132 (1965).

45. 51 A.B.A.J. 551 (1965).

46. *Ibid.*

47. *Ibid.*

war on poverty, but it is not by any means without conditions, explicit and implicit. For example, the bar and its associations must be used to the maximum feasible extent. In addition, the resolution leaves uncertain whether the bar will back programs seeking to promote the interests of the poor as a group. The bar's statements have emphasized only the availability of funds from the Government, and not at all the goals of the program. The local bars seem more interested in obtaining the OEO funds before other groups do than in furthering the aims of the war on poverty.⁴⁸

In apparent recognition of the shortcomings of bar-supported proposals, OEO has begun to emphasize that any group may apply for funds and that the best program will be accepted, regardless of bar approval.⁴⁹ This alternative to programs sanctioned by the bar will prod the bar into supporting more far-reaching proposals only if some of the projects not supported by the bar are funded. Otherwise the local legal services programs will remain under the control of the local bar associations. Since bar-supported proposals have generally not provided for broad legal services for the poor, OEO should fulfill its pledge and thereby end the bar monopoly.

III. EMERGENCE OF COMPETITION: SAN FRANCISCO

A major test of OEO's policy priorities occurred recently in San Francisco. A controversy arose after two applications for funding of legal services projects were submitted to OEO, one with and one without approval of the bar groups.⁵⁰ The extent of the controversy indicates one of the reasons for OEO's policy of obtaining bar approval. The differences between the ways in which the two groups approached the problems of the poor and between the projects which they envisaged provide additional insight into the relative merits of various groups seeking to be funded.

The San Francisco bar groups realized in 1965 that OEO money was available and that it could be used to help expand legal aid facilities. However, the proposal submitted to OEO jointly by the San Francisco lawyers' associations and the San Francisco Legal Aid Society was not at all extensive or imaginative.⁵¹ The proposal was not based on any consultation with the poor. It essentially retained the philosophy that the sole purpose of a legal aid program is to provide individual legal services, and it merely pro-

48. See Cal. St. B. Rep., Feb. 1966, at 1. The ABA has recently passed a resolution calling for doubling of funds but still did not indicate that it would back programs incorporating a broad concept of legal services. See Am. B. News, July 15, 1966.

49. See Bamberger, *Basic Principles*, 41 CAL. ST. B.J. 224, 227 (1966).

50. The San Francisco Lawyers' Club and the Bar Association of San Francisco submitted the one proposal along with the San Francisco Legal Aid Society. The two lawyers' groups include well over 92% of all San Francisco attorneys. See Matthews, *supra* note 5.

51. Thomas Rothwell of the San Francisco Legal Aid Society asserts that OEO originally told the bar to submit only a small proposal. When the bar followed this suggestion, OEO turned down the proposal because it was not "large enough." Telephone Interview, April 20, 1966.

posed to extend existing services somewhat. The proposal seemed to do exactly what the state bar was urging the local bars to do—submit a proposal in order to retain control of the direction of the OEO legal services programs. In most areas of the country the bar's proposal would probably have been considered an adequate extension of services.

However, San Francisco is unique in that a majority of its community action board are poor people.⁵² This is important since legal services proposals are submitted to the local community action board for suggestions, approval, or rejection.⁵³ The board's decision is not binding on OEO, which makes the final decision on funding; however, an expression of opinion by a board cannot easily be overlooked by OEO. When the proposal supported by the bar was submitted to the board, it was rejected as inadequate,⁵⁴ and the board suggested that the proposal be rewritten.

While the bar groups and the legal aid society revised their proposal, another proposal was drafted by a small group of San Francisco lawyers led by Charles Baumbach. This group drafted the rival proposal because they believed that the bar had not adequately considered the interests of the poor.⁵⁵ The group held extensive negotiations with the community action board, and the final proposal reflected the desires of the poor. The proposal called for advocacy of the "individual and collective causes" of the poor.⁵⁶ Legal services would not be limited under the proposal to traditional services for individual clients; legal education and advocacy of changes in existing inequitable laws would receive equal priority. The proposal stated that its lawyers would provide a "loud, clear, informed voice to those persons whose education, background, or economic condition left them silent."⁵⁷ The proposal also provided for majority control of the governing board by representatives of the poor; it assumed that the lawyers in the program would be legal counsel for the poor and would respond to their collective needs.⁵⁸

52. Lemuel H. Matthews, former president of the San Francisco Bar Association, considers this a "questionable distinction" and not at all a part of the war on poverty. Matthews, *supra* note 5, at 284. Charles Baumbach sees the arrangement as the only one consistent with the aims of the war on poverty. Baumbach, *supra* note 5, at 277.

53. See OFFICE OF ECONOMIC OPPORTUNITY, GUIDELINES FOR LEGAL SERVICES PROGRAMS 6-7 (1966).

54. "Rudely rejected; in fact, they didn't even look at it." Interview With Lemuel H. Matthews, Former President, San Francisco Bar Association, in San Francisco, May 7, 1966.

55. Interview With Charles Baumbach, *supra* note 42. It is rumored that OEO in Washington helped to encourage the proposal in order to spur the bar into greater action, imagination, and commitment. Interview With James Goodwin, *supra* note 34. Lemuel H. Matthews, former president of the Bar Association of San Francisco, saw a "devious plot" in the second proposal. He reports that members of the "other group" came to the bar's meetings and stalled the bar's second proposal until the other group could go to the poor people and convince them to support the nonbar proposal. Interview With Lemuel H. Matthews, *supra* note 54.

56. See San Francisco Neighborhood Legal Assistance Foundation, Opening Statement of Application for Community Action Program, 1966.

57. *Ibid.*

58. "The Governing Board will substantially represent the poor people through their Target Area Boards and is in the position of a client retaining a law firm." San Francisco Neighborhood Legal Assistance Foundation, Scope and Context of Application for Community Action Program, 1966.

The revised proposal of the bar groups contrasts with the rival proposal in several respects. The bar proposal emphasized mainly an extension of individual legal services. The sole provisions for services on behalf of the broader collective interests of the poor were programs for education and a stipulation that each lawyer write two articles per year on problems of the poor.⁵⁹ The issue which caused the most conflict between the bar and nonbar groups was the question of participation of the poor in the program. The bar proposal provided that one-third of the governing board would be composed of representatives of the poor.⁶⁰

When the two proposals were considered by the community action board, the nonbar proposal was approved unanimously, while the bar proposal was rejected unanimously.⁶¹ The representatives of the poor had expressed their choice. Both proposals were then sent to OEO for final consideration. The bar groups put strong pressure on OEO not to break precedent and reject the bar proposal. Thus, OEO faced the dilemma caused by its dual policies of cooperation with the organized bar and maximum participation of the poor. OEO had committed itself to cooperating with existing organizations, in this case the legal aid society and the bar associations. But the aims of the war on poverty called for approval of the nonbar proposal if the idea that the poor should be encouraged to do things for themselves was not to become an empty slogan.

At OEO headquarters it was first suggested that both proposals be funded by OEO.⁶² However, the local community action board was against any acceptance of the bar-supported proposal. On the other hand, the bar association put strong pressure on OEO not to take control out of its hands. OEO finally decided that both proposals could not be funded without going against the wishes of the poor. The next approach was therefore to modify the nonbar proposal to place more bar association members on the governing board. The bar first wanted majority control by its members,⁶³ but later assented to a plan calling for a majority made up of lawyers.⁶⁴ The plan finally approved called for a majority to be elected by the poor with the stipulation that a majority of the board be lawyers.

The modified version which is now beginning operation seems to represent the ideal toward which legal services under the war on poverty should strive, although it violates the policy of funding only bar-approved

59. Legal Aid Society of San Francisco, Bar Association of San Francisco, & Lawyers' Club of San Francisco, Application for Neighborhood Legal Services Conduct and Administration Grant, Dec. 1965.

60. *Ibid.*

61. See Matthews, *Armageddon in San Francisco*, 41 CAL. ST. B.J. 284 (1966).

62. Interview With Art Somora of the San Francisco Economic Opportunity Council, in San Francisco, April 29, 1966.

63. See *The Recorder* (San Francisco), Feb. 3, 1966, at 1.

64. See San Francisco Neighborhood Legal Assistance Foundation, Explanation of Application for Community Action Program, 1966.

projects. The proposal was drafted after consultations with the poor, and it incorporated provisions desired by the poor. It gives full vent to the "maximum feasible participation" concept in both the development and management of the program. Majority representation of the poor on the board should ensure communication of the problems and desires of the poor and provide substantial pressure not to ignore those desires. The San Francisco program will demonstrate whether a legal services project can promote the interests of the poor as a group as well as provide effective individual legal services. It will also test the theories behind maximum participation of the poor and the bar's attitude toward an aggressive legal services program.

The bar has already announced that it has two primary reservations regarding majority control of the legal services program by representatives of the poor. First, the bar fears misuse of Government funds.⁶⁵ Considering the enormous amount of funds which the legal services board can direct, there is a possibility that its members will be tempted to direct usage of the funds to advance the goals of their own political groups.⁶⁶ But the bar forgets that those in control of the board are supposed to be representatives of the local poor, and what the bar might consider misuse of funds might well follow the desires of the poor. Moreover, there are interested parties who will be watching what the poor on the board do with the money under their control. The legal services project must account to OEO for all funds, and OEO may cut off the funds if it detects any misuse. In addition, the bar association will undoubtedly keep a close eye on the actions of the poor, and it can quickly bring pressure to bear if any abuses are found. The problem of misuse is thus probably overstated and must be weighed against the advantages of participation and control by the poor.

The second major fear of the bar is that control by the poor may endanger the professional independence of lawyers participating in the program. The theory is that a lawyer will not merely be serving his client but also the legal services board. For example, a lawyer could not easily bring a suit against the local community action board to challenge a board election on behalf of a losing candidate, since the same board would have control over his employment contract. Such a refusal to represent a client would probably be detected very quickly, however, since the bar continues to scrutinize the activities of all lawyers in the program.⁶⁷ The bar has further

65. See Matthews, *supra* note 61.

66. The proposal calls for over \$600,000 of federal funds. See San Francisco Neighborhood Legal Assistance Foundation, *Explanation of Community Action Program, 1966*. Lemuel H. Matthews implied several times in an interview that some of the leaders of the poor and those interested in them has "ulterior" motives connected with revolutionary changes. Interview With Lemuel H. Matthews, *supra* note 54.

67. The proposal recognizes that the lawyers' activities will be scrutinized. Complaints based on evaluation of the merits of a case or the legal strategy to be followed will be referred to the state bar association. See San Francisco Neighborhood Legal Assistance Foundation, *Appendix to Application for Community Action Program, 1966*.

alleged that the use of "test cases" may impair the interests of a particular client.⁶⁸ The poor-controlled governing board might direct lawyers to push certain kinds of cases to help the poor's interests as a whole. However, if a particular client wants to stop at a certain stage of litigation or to take a different approach to the case, the *Canons of Ethics* guarantee his right to do so.⁶⁹ Constant observation and pressure from the organized bar will ensure the independence of the attorney-client relationship and thus minimize the possibility that the interests of the particular client will be sacrificed for the common good as seen by the governing board.⁷⁰ In addition, the San Francisco program as adopted provides that complaints about a lawyer's handling of a case be referred to the California State Bar Association.⁷¹ Furthermore, the governing board does not have the power to interfere with the discretion of the attorneys. It makes only general policy; for example, it might specify categorical priorities for cases to be taken if funds become limited.⁷²

CONCLUSION

Although the bar has expressed fears concerning the project in San Francisco, it has indicated that it will cooperate with the program. The legal aid society is presently applying for a supplemental grant under the nonbar project to expand its own operations.⁷³ Considering that the bar predicted the demise of the legal aid society if its proposal was not funded,⁷⁴ this attitude marks a step toward cooperation. If the fears of the bar groups are not realized and if the bar chooses to cooperate with the funded proposal, the resulting situation may be a turning point for OEO. The chances of any substantial harm resulting from the San Francisco program are probably not great, considering all the checks which have been included. The great need for legal services for the poor and the need to determine the feasibility of control by representatives of the poor make the funding of this proposal a major testing ground.

68. Telephone Interview With Thomas Rothwell, *supra* note 51.

69. The proposal states that all "rules and canons of the legal profession will be followed." San Francisco Neighborhood Legal Assistance Foundation, Appendix to Application for Community Action Program, 1966. The Business and Professions Code in California provides: ". . . wilfully and without authority appearing as attorney for a party to an action or proceeding constitutes a cause for disbarment or suspension." CAL. BUS. & PROF. CODE § 6104 (West 1962).

70. *But see In re Community Action for Legal Services, Inc.*, 35 U.S.L. WEEK 2270 (N.Y. App. Div., Nov. 15, 1966), in which a court refused to authorize a corporation which was to provide legal services. The ground for objection was that the lawyers in the program would be ultimately subject to lay control. The court held that the corporation "must be directly controlled and supervised by lawyers summarily responsible to the court for the maintenance of professional standards." The members of the community must limit themselves to "broad questions of policy."

71. See San Francisco Neighborhood Legal Assistance Foundation, Appendix to Application for Community Action Program, 1966.

72. See *ibid.*

73. Interview With Edgar H. Scholl, Public Relations Director for the Bar Association of San Francisco, in Palo Alto, Cal., Sept. 29, 1966.

74. See Matthews, *supra* note 61, at 286.

The primary significance of the San Francisco experience may be its demonstration that the bar does not have a monopoly on the approval of legal services programs. After the San Francisco experience, a bar association would be unwise to apply for OEO funds without consulting with the poor and trying to meet their desires. The San Francisco experience should also give encouragement to those who would like to develop programs in line with the philosophy of the war on poverty, for they are no longer faced with the requirement of bar association approval.

The reactions of the ABA and the San Francisco bar groups indicate the flexibility of these organizations; both went from initial opposition to legal services programs under OEO to cooperation. The process of educating the bar to the needs of the poor and the philosophy of the war on poverty should be continued. The needs of the poor are greater than any presently available services can satisfy,⁷⁵ and all avenues of aid should therefore be utilized. It is hoped that what has occurred in San Francisco will help develop a creative competition which will be a continuing part of the effort to aid the poor.

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75. See Westwood, *Legal Aid's Economic Opportunity*, 52 A.B.A.J. 127 (1966).