A Progress Report from the Legal Services Corporation

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The Legal Services Corporation is now a year old and is moving to expand its assistance into unserved areas of the country and to experiment with alternative forms of furnishing legal services. But the job will never be done completely without the assistance of private lawyers everywhere in the United States.

LAST FALL Roger Cramton, chairman of the board of directors of the Legal Services Corporation, reported in these pages on the formation of the corporation and the steps involved in establishing it as an ongoing enterprise (61 A.B.A.J. 1339 (1975)). His main focus was on the problems facing the corporation in the first phases of its operations. Now, a full year after the corporation began its activities, it is time for a progress report.

This report will stress two firm convictions based on the experience of the last year. First, it is realistic to expect that all poor persons in America will be provided with minimum legal assistance within the foreseeable future. Second, that goal can be achieved only with the active support and involvement of private lawyers throughout the nation.

I do not mean that the goal is a modest one or that it will be easy to attain. Quite the contrary is true. Approximately twenty-nine million poor persons live in the United States and its territories. Their incomes are below subsistence levels. Although the figures vary from area to area, an annual income of $2,500 for an individual, or $5,000 for a family of four, is a rough measure. At those levels, economic survival is more than a major issue; it is often the only issue. Of those twenty-nine million poor persons, all but a small fraction have no access to assistance when they face a legal problem. For all but that small fraction, the legal system is beyond reach.

In the main the legal problems of poor people are relatively routine matters involving housing law, consumer law, family law, and administrative benefits. But to the individuals involved, these often assume crisis proportions. For most people, a defective car can be a substantial irritant; for a poor person it may well mean unemployment. A poor person’s problem with a landlord may mean no housing at all. The denial of social security benefits payments can be ruinous.

Legal aid lawyers now are able to handle only about one million of these problems each year—something less than 15 per cent of the real need as conservatively determined. And the problem has worsened in recent years—not because the percentage of poor people has increased but because law and the legal system now pervade the lives of the poor more than ever before. Many with whom I have talked have the misimpression that what I have called “legal pollution” is the particular province of the rich. At the least, they seem to suggest, the richer one is, the more serious are one’s legal problems.

But precisely the reverse is true. Inability to utilize the legal system can be, and often is, disastrous for the poor in ways that are inapplicable to others. The thin margins on which the poor live make law a crucial instrument of survival. Yet few of the poor have access to that instrument. The mandate of the Legal Services Corporation Act is to provide access to all poor persons.

Why am I so confident we can meet that mandate? The first and most important reason is the quality and commitment of those who work in legal services for the poor. The corporation now provides financial support, with funds from Congress, for about three hundred projects in some six hundred offices around the country. For the five years before the corporation was created, federal financing for legal services was frozen while some federal officials sought to terminate the legal services program completely. The result was a battle for survival, during which it became clear that a separate organization, not part of the executive branch, was essential if federal support for legal assistance were to continue. The partisan political pressures otherwise would be too intense.

The passage of the Legal Services Corporation Act of 1974 was a victory for the American Bar Association, the National Bar Association, the National Legal Aid and Defender Association, and other organizations that struggled hard on behalf of legal services. But even more, it was a victory for the women and men who were devoting their full time and legal talents to serving the poor in projects throughout the country.

I have visited many of those projects and am enormously impressed by the lawyers, paralegals, and others who work in legal services for the poor. The hours are long, the pay is paltry, and the frustrations are great. Many lawyers must handle three, four, or even five
hundred matters a year. But they represent their clients competently, vigorously, and with complete dedication. They are the pride of our profession.

A second reason for my optimism is that public funding of legal services for the poor is accepted throughout the country as essential. This was not true a decade ago. I have met with bar organizations and other groups in many states over the past six months, and I have been enormously impressed by the degree to which most support legal services for the poor and the work of the corporation. They see in the new organization a commitment to four important principles:

- Partisan political considerations have no place in a program designed to ensure high-quality legal assistance to the poor—and the act precludes those considerations.
- The creative energies of a corporate organization can be brought to bear on the most serious problem facing our legal system—the problem that most poor people have no access to the system.
- The corporation is not part of the executive branch but rather is responsible directly to Congress for both support and criticism.
- Nothing in the realm of legal assistance for the poor should be taken for granted except the importance of legal assistance itself. Every program is to be evaluated fully and carefully. Every effort is to be made to find ways to provide quality legal services on the most efficient basis.

Tangible evidence of broad support for the new enterprise came this summer when the Congress approved a budget of $125 million for the corporation in fiscal year 1977—an increase of almost $33 million over the previous year. That increase was approved despite a recommendation by President Ford that the corporation’s appropriation be cut to $80 million. We shall not know until the fall whether the budget adjustment process will alter the congressionally approved figure. But we are optimistic that for the first time in seven years legal assistance for the poor can be expanded into some of the areas of the country that now have no service at all.

Our four-year minimum goal is to provide the equivalent of two lawyers per 10,000 poor persons. That doesn’t sound like very much, and it isn’t—particularly in comparison to the 11.2 lawyers per 10,000 among the population generally. I stress the word equivalent because paralegals and other means must be utilized if we are going to provide even minimally adequate services in the near future. Our long-term goal is the equivalent of four lawyers per 10,000 poor persons.

We also have set planning priorities for establishing new programs. In essence, priority will be given to regions that have the least coverage and, within regions, to states that are the least well served. Priority also will be given to new programs that can establish the most efficient kinds of units for providing quality service to the largest numbers of poor people.

The third reason for my optimism is that, given adequate funding, we know that we can do the job. There are no significant conceptual or technical breakthroughs that must be made. Unlike many programs begun over the past decade, legal services for the poor are widely recognized as cost effective. As Justin Stanley, president of the American Bar Association, recently said regarding the allocation of scarce resources to worthwhile federal programs, “Congress must ultimately favor those programs which have the broadest impact and significance for our citizens. We believe that, based on these criteria, the legal services program deserves a very high priority. By making the legal system work for the indigent, we are enabling them to resolve, through conventional legal means, problems which might otherwise require public assistance or intervention.” Lawrence E. Walsh, former Association president, put the matter succinctly: “The Legal Services Corporation is a remarkable bargain.”

**Optimism Won’t Solve the Problems**

My optimistic assessment for the future of the corporation and its work does not mean, of course, that it does not face substantial problems, even apart from the need for increased funding. We already are well along in grappling with some of those problems; others remain. A brief review of a few key issues we faced over the past year may give some sense of the range of our concerns.

Most of the matters brought to legal aid offices do not establish important precedents or change the law, and many of those that do can be handled within the programs themselves. For some complex issues, however, it is not possible for an individual legal aid lawyer—faced with hundreds of cases each year—to respond adequately without specialized research help. A number of federally funded support centers were established around the country to provide that help. Some persons argued to the board of directors, however, that the Legal Services Corporation Act precludes continued funding of the support centers. The critical portion of the act is Section 1006(a), which provides in part that the corporation has the power:

(1)(A) to provide financial assistance to qualified programs furnishing legal assistance to eligible clients, and to make grants to and contracts . . . for the purpose of providing legal assistance to eligible clients under this title, and

(B) to make such other grants and contracts as are
necessary to carry out the purposes and provisions of this title; . . .

(3) to undertake directly and not by grant or contract, the following activities relating to the delivery of legal assistance-

(A) research,
(B) training and technical assistance, and
(C) to serve as a clearinghouse for information. (Emphasis added.)

The argument was made that the italicized language required the corporation to assume the functions of the support centers, if their important services were to be provided at all.

This argument obviously had substantial implications for the structure of the legal services program. The corporation's board of directors wisely commissioned an extensive factual analysis of the activities of the various support centers as a first step in considering the matter. On the basis of that study, the corporation staff carefully analyzed the relevant provisions of the act and its legislative history and made recommendations to the board.

In essence, the statutory interpretation we urged was this: Section 1006(a)(1) divides the activities to be funded by the corporation into two categories. The main category is defined in Part (A)—“providing legal assistance to eligible clients.” The activities included in this category are those normally carried on by lawyers, consistent with professional responsibilities, in representing their clients. The second category is defined in Part (B)—other activities “necessary to carry out the purposes and provisions” of the act. All of these activities—under both Parts (A) and (B)—may be funded by grant or contract, except that certain program support activities in category (B) are to be carried out only by the corporation itself and not by grant or contract. The excepted activities are those listed in Section 1006(a)(3): research; training and technical assistance; and clearinghouseservices.

Under this analysis, therefore, the key issue is whether a particular activity is one normally conducted by lawyers, consistent with professional responsibilities, for the purpose of providing legal services to their clients. If so, it is completely consistent with the act that a support center be funded to perform the activity. Otherwise, it must be carried on by corporation employees if it is to be funded at all. For those activities of the support centers that the corporation continues to fund, we proposed contract arrangements to ensure continuing accountability.

The board of directors accepted these recommendations and voted to approve funding for thirteen support centers that engage in activities directly on behalf of eligible clients. There remained, however, a range of important policy questions and has issued regulations on many issues such as eligibility, appeals by legal services programs, governing boards of programs, hiring of attorneys by programs, and other important matters.

The board establishes broad policies for the corporation. The staff implements those policies and operates the organization on a day-to-day basis. In my admittedly biased view, we have hired an extraordinarily talented team of women and men for the various key positions in the corporation's Washington headquarters and regional offices. By the end of September we expect to have a

Delivery Methods Tailored for the Community

We will test the feasibility of implementing the test models in different community settings and the practicality of the models in terms of their relative costs and performance. We do not expect to demonstrate a single best method to deliver legal services to the poor. Rather, we shall try to identify approaches that are appropriate to individual community settings.

The first step in the study was to develop the models to be tested. We wanted to involve as broad a spectrum of views as possible in this process, and we solicited ideas on delivery systems from hundreds of interested individuals and groups. The response was gratifying, both from persons involved in legal services projects and from the private bar. An advisory panel is now helping to review these papers and to select the persons and groups who will actually operate the demonstration projects. Throughout the process, the corporation's board of directors has been and will remain closely involved.

For one of the great strengths of the corporation is that its board, which is appointed by the president of the United States and confirmed by the Senate, ensures and is seen as ensuring that the organization acts responsibly and carries out its statutory mandate apart from partisan politics. Over the past year the board has considered a range of important policy questions and has issued regulations on many issues such as eligibility, appeals by legal services programs, governing boards of programs, hiring of attorneys by programs, and other important matters.

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bankruptcy, or a firm may act as a backup or support certain categories of cases for legal services offices. Lawyers to legal services work for shorter periods of arrangement. Other firms have assigned more senior firm of Bingham, Dana, and Gould supports a similar work in one of the neighborhood legal services offices for associates, two paraprofessionals, and two secretaries to a similar program.

First, every legal services program needs additional funds. Many lawyers and bar associations do give financial support to their local programs. Many more can and should.

Second, individual lawyers in many communities have agreed to handle a certain number of cases for the poor each year. In Saint Paul, for example, a number of lawyers each take ten cases a year and handle them from the initial interview through final resolution. Denver has a similar program.

Third, several firms assign one or more of their lawyers to work in legal services offices. Covington and Burling in Washington, D.C., for example, assigns two associates, two paraprofessionals, and two secretaries to work in one of the neighborhood legal services offices for six-month periods on a continuous basis. In Boston the firm of Bingham, Dana, and Gould supports a similar arrangement. Other firms have assigned more senior lawyers to legal services work for shorter periods of time.

Fourth, private lawyers in some cities regularly handle certain categories of cases for legal services offices. These cases may be in a single substantive area such as bankruptcy, or a firm may act as a backup or support center for complex litigation.

Fifth, some firms regularly handle cases in which both parties are indigent, and a legal services program would have a conflict of interest if it were to represent more than one of the litigants. The programs in Baltimore and Cleveland have worked out successful arrangements along these lines. Private attorneys also may agree in advance to help legal services programs whenever caseloads become so heavy that the staff attorneys are unable to cope with them.

Sixth, several firms provide training in particular areas of the law to legal services lawyers. Litigation techniques are the most common of those areas.

Seventh, some firms have helped legal services programs to prepare standard forms and manuals to deal with particular areas of the law.

Eighth, we hope to establish a fellowship program that will enable legal services lawyers who have been in programs for, say, three or four years, to spend a “sabbatical” in a major firm for six months or a year. Handling three to five hundred matters a year can be exhausting and enervating. A temporary gear-shifting to concentrate on different types of problems in a private firm could be of enormous benefit to a legal services lawyer. We hope that a number of law firms will agree to join in this effort. It could go a long way toward alleviating the problem of high turnover among legal services attorneys.

Those are eight concrete ways in which firms and individual lawyers in private practice can provide essential help to existing legal services projects in their communities. It does not seem overreaching to suggest that every private attorney and firm should do so.

In some areas where no legal services program is now operating, private lawyers provide the only legal assistance that is available to poor persons. It is true that some attorneys in those areas are extraordinarily generous in giving their time and talents to aid the poor. But it is also true that all lawyers in communities without legal services programs have a special responsibility to provide that assistance.

“5 Per Cent of a Lawyer’s Time”

How much assistance should be given? Until some concrete standard is established to give content to the American Bar Association’s declaration on the lawyer’s public service obligation, adopted at the 1975 annual meeting, we can do no more than suggest. But from several surveys that have been taken recently, it seems reasonable to ask that at least 5 per cent of a lawyer’s time be devoted to legal services for the poor. That level—substantially exceeded by many private practitioners today—would mean a minimum of about eighty to a hundred hours a year for most lawyers. This may not sound like much. But when it is multiplied by the number of attorneys in private practice, the additional resources to legal services for the poor would be overwhelming.

These concrete ways in which help can be given must, of course, be in addition to the much-needed public support that the bar has given and, I hope, will continue to give to legal services for the poor. That support is essential. We need to find more and better ways to explain what we are doing and why we are doing it, to the public as well as to the Congress. We need the aid of all members of the American Bar Association in that effort.
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