Rationing Justice

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Rationing Justice

By THOMAS EHRLICH

SECOND ORISON S. MARDEN MEMORIAL LECTURE
DELIVERED BEFORE
THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
DECEMBER 13, 1979

The title for my remarks tonight comes from a speech by my mentor, Judge Learned Hand, some three decades ago at the 75th Anniversary Dinner of The New York Legal Aid Society. As always, he spoke with force and eloquence, though his comments were extemporaneous. In essence, he sought support for legal help to those without funds to pay for that help. That same theme is at the core of my comments tonight. Judge Hand concluded with an aphorism that has become the centerpiece of legal services litany. "If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice."

Those who recall that golden era of the Second Circuit Court of Appeals will recall another aphorism: "Quote Learned, but follow Gus," referring of course, to Judge Augustus Hand—Learned's cousin and colleague on the court. Like so many quips, it was funny precisely because, in its exaggeration of truth, it contained some truth.

My own message can be simply stated. It begins with a commonplace: Justice is rationed in this country. Justice is limited for those who have access to it, and access itself is sharply limited in quality and quantity. That message is hardly new; the point has been made in varying terms of sadness and anger for years. My point is not simply that justice is rationed, Judge Hand notwithstanding. Rather my concern tonight is how justice is rationed, and the complementary roles of public funds and private lawyers

Editor's Note: The author is Director of the International Development Cooperation Agency. He was first President of Legal Services Corporation, and is former Dean of Stanford Law School.
in improving the rationing process. In brief, my view is that more public planning as well as public funding is needed and that all lawyers have a responsibility to provide some of their time and talents to ensure that the operations of the legal system are as just as possible. We cannot avoid rationing justice. But we can, I think, do a better job of it. I am immodest enough to hope that Orison Marden would have applauded this message. In all events, it seeks to reflect the public spirit that marked his professional life.

Those who organized this distinguished lecture series suggested that I might use the opportunity to comment on my experience with the Legal Services Corporation, to engage in a little nostalgia about a glorious endeavor about which I maintain a deep and continuing faith.

I should emphasize at the outset that I shifted from the Corporation, in major measure, because I found myself spending more time defending my past practices than planning future improvements. I know well, the person chosen by the Corporation's Board of Directors as my successor, and I am sure that he will develop his own ideas for the future, with the comforting (and wholly proper) knowledge that he can—for some time—follow that fundamental rule of a good bureaucrat: Blame it on his predecessor, a ploy I would have used as well, if I but had a predecessor. On that basis, I hope you will let me indulge in some personal reflections on past developments in the rationing system before I suggest some tentative thoughts about legal services in the future.

I came to the Legal Services Corporation from Stanford Law School where for more than a decade I had taught and then been dean. A primary role of a dean is to consider public legal needs in the future and then to work to ensure that students gain the best possible education to meet those needs. From this perspective at Stanford, I became increasingly concerned about the rationing of justice. I slowly awoke to a reality that many of you have known much more clearly and intimately for much longer—the reality that most people are unable to have most of their legal concerns
handled at all within the legal system, let alone handled well. As I lectured and learned from the vantage-point of a law school deanship, it became sharply and uncomfortably clear to me that average citizens in general, and poor people in particular, are generally denied access to justice and are unable to obtain equal justice from the legal system, even when access is available.

The main reason, of course, is money—the cost of the lawyering services needed to gain access to the system, and especially the cost of quality lawyering necessary to gain the best possible result within the law.

The recently-released ABA survey of legal needs underscores these conclusions with harsh facts. The survey shows, for example, that only one percent of persons consulted a lawyer when faced with what they thought was unlawful job discrimination. Most often, of course, the discrimination was based on race or sex.

With little first-hand knowledge, but great expectations, I jumped at the chance to participate in helping to change this reality. What an extraordinary opportunity it seemed—and was: A chance to be involved in an area I care about with passion and to help build an organization from the start. To one who enjoys institutional architecture on the one hand and a steep learning curve on the other, it was a unique opportunity, and I reveled in it. I knew I had much to learn, though I did not realize that the most important lessons would come in very human form from the extraordinary men and women with whom I was privileged to work.

It was clear to me at the outset that a central task would be to convince those within the legal services community that the Corporation was here to stay—that after four years of trauma, danger, and brutal politics, the battle for survival had been won and the hard next issue was what we were going to do with victory. A comfortable cohesion comes from a single-issue struggle, particularly when the issue is the very existence of one’s professional commitment. The struggle so overshadows and subsumes other issues that it engenders a battlefield esprit often exhilarating to experience. I continually encountered legal services lawyers who would stop
in the middle of some current controversy to recall—with moist
nostalgia—the struggle, for example, when the Vice President of
the United States, Spiro Agnew, called for the abolition of fed-
erally-funded legal services.

I do not question, let alone criticize, that and other glorious
encounters in the trenches. The issues were vital, justice did tri-
umph, and that happened only because of the dedication and hard
work of an incredible band of believers. But beginning the recon-
struction of legal services made me feel a little like Clement Atlee
must have felt taking over as Prime Minister after Churchill won
the war but lost the election.

In all events, our initial priority was clear, at least in my own
view. We had to establish a goal for the next three or four years—
a goal to serve several important ends. First, it should underscore
to the public, to Congress, and (most of all) to those in legal serv-
ices that survival was no longer the issue but rather how well we
would serve those who so much needed our help, how effectively
we provided aggressive advocacy for poor people. Second it should
—if properly designed—provide a coherent framework for Corpo-
ration efforts over the next few years.

At the time, civil legal programs for poor people were located
mainly in the East and West, with a lesser number in the mid-
West and relatively few in the South and Southwest. Further, fed-
eral funding of these programs varied from less than $1 per poor
person to more than $10. Both of these disparities were largely the
result of the historical circumstances in which OEO funded pro-
grams in the mid-1960s. Quite naturally and properly, funds went
to areas where bar and other groups actively sought the support
and faced relatively little opposition.

By 1975, however, when the Corporation was established, com-
munities throughout the country were pressing for programs, and
I was sure that, if we did our job right, we could promote that
climate in every locality.

We had to move quickly and we did. Within a few months of
the Corporation's creation, we designed what came to be called
the minimum-access plan—A funding formula to provide every
area throughout the country with a legal-services program that would include the equivalent of at least two lawyers plus supporting staff for every 10,000 persons living below the poverty line, about $3700 of annual income for an individual or $7300 for a family of four.

Why two lawyers? Because it was roughly the standard of the then-existing best funded programs and, no less important, it seemed a realistic (though optimistic) goal for the near term. It was also easy to understand. When we talked to most members of Congress and explained that we were trying to ensure that poor people had some chance to use the legal system—though at a level far less than the 11 lawyers per 10,000 people in the population generally—few people said that this was a terrible idea. However conservative, few fought the basic concept that poor people are entitled to use the legal system.

Interestingly, almost no one asked, “Why legal services?” Whatever their views about other kinds of social programs, those in Congress with whom I talked seemed to understand that legal services are essential for poor people. For myself, there are at least four basic reasons: (1) Because legal services are an effective means to ameliorate the effects of poverty; (2) because the hurdles imposed by the legal system should not be insurmountable due to poverty; (3) because many of the substantive rules of law and the institutions that apply them affect the poor unfairly; and (4) because access to the legal system is an inherent right of all within this country; otherwise, the system itself becomes dangerously skewed.

These reasons are not inconsistent, let alone mutually exclusive responses, though each implies a somewhat different ordering of priorities in the provision of legal services.

We followed a conscious policy that permitted local programs to set their own priorities among substantive areas of the law and types of proceedings, but required them to adopt a process for doing so that involved their client communities. As a result, housing was the most important issue in South Boston, native lands claims in Hawaii, and so forth. By the end of this fiscal year, more
than 1,000 legal services offices will provide minimum access coverage to over 30 million poor people. Over 6,000 lawyers and 2,200 paralegals and other staff members work in these offices. Federal funding has grown to $300 million annually, after being frozen at $71 million for five years before the Corporation began operations.

In this sense, of course, the plan has worked. But it had weaknesses as well. Some we saw clearly at the outset; others became evident only over time. The most obvious limitation was the one-dimensional character of the plan. The stress on access made it appear to some that we did not care about the quality of justice once “minimum access” was achieved. The emphasis on two lawyers per 10,000 poor people might have made it seem to them that this minimum level was sufficient. They interpreted the uniformity of the approach to mean that all poor people faced the same quantity and difficulty of legal concerns.

In fact, of course, those conclusions were not intended; each is false. Access to legal services is only part of the problem, and not always the most difficult part. Two lawyers cannot handle more than a small fraction of even the most acute crises facing 10,000 poor people. Though the broad categories of legal concerns among poor people are strikingly similar throughout the country—80% are in the areas of family law, consumer law, housing law, and administrative law—there are wide variations and many groups for which access is particularly difficult or that face special types of legal concerns. Physically and mentally handicapped persons, the elderly, and native Americans are examples of those groups.

We moved first to raise the funding of existing programs to a minimum level, and second to provide services in areas where none existed at all. We then developed a third stage that extends the differentiation process of funding needed to take realistic account of the varying needs among poor people throughout the country. Now that the minimum access effort is nearly complete, this third stage effort will proceed at an accelerated pace.

Concerns were raised by local programs, by some in Congress, and by others, about many of the hundreds of particular decisions
and non-decisions that were made by the Corporation during my tenure. It is probably only fair to add that from no city was the discordant noise level higher than from this one. With 10 separate programs operating under one umbrella, legal services in New York reminds me of nothing so much as a set of medieval fiefdoms or perhaps a law-school faculty. But the people involved—here and throughout the country—were and are extraordinary. I could have used a little healthy skepticism from time to time, but I was willing to forego that quality—so cherished by Learned Hand—to maintain the almost total lack of cynicism that exists. Legal services is populated by an incredible crew of true believers, and I hope it never changes.

II

One criticism of the minimum-access approach is worth special attention, however, for it focuses on the future. The very fact that we set a goal and achieved it—some have suggested—means that the goal was too modest and even harmful, for those in Congress now have an excuse for not providing further funding.

My response is that our success in achieving the minimum access goal makes it essential to design and implement a new plan for the future. What should that plan be? A number of short-term efforts are already underway, the result of a substantial planning program that took place over the last year. But a major new planning initiative is now needed to map the Corporation's longer-range strategy.

That initiative should not be simply an effort to expand support for legal services to the equivalent of 3 or 4 lawyers per 10,000 poor people instead of 2 per 10,000. My point is not that more lawyers are unnecessary. They are very much needed. But for tactical as well as substantive reasons, I am convinced that this would be an unwise approach.

As a matter of tactics, the approach would be unacceptable to members of Congress for they would see it involving an endless path—first 2 lawyers per 10,000, then 3, then 4—without any prospect or basis for stopping. More significant, in substantive
terms this approach would avoid coming to grips with what I think is the key question facing those of us concerned about legal services for the public. Simply put, it is this: Assuming—as I do—that all Americans are entitled to a fair system of rationing justice, what ought to be the standards?

In my own view, a national effort is initially needed—led by the American Bar Association in cooperation with the Legal Services Corporation and other interested organizations—to be followed by community efforts sponsored by local bar associations. I hope also that a few major city bar groups—perhaps including this one—will undertake pilot studies of community legal needs and then design plans to ensure that those needs are met. I believe that within a few years—say by 1985—the needs for federal fundings of legal services for poor people should be based on this larger planning process.

Over the past few years I have spent some time reviewing community health and nutrition planning efforts, and I realize how much controversy surrounds those efforts. Further I know that it is far more difficult to measure legal needs than needs for particular vitamins and minerals. Nonetheless, I do think it is possible to use a major survey of legal needs sponsored by the ABA to provide a framework for this approach.

In essence, the survey shows the incidence of legal problems in each of 29 main substantive areas and the range of variation based on age, sex, race, and other factors. The survey has been criticized on several grounds. It did not include a number of types of legal issues, including some of particular concern to poor people. Perhaps most significant, it covered only those legal problems that the respondents could identify. Almost all people face problems from time to time about which they do not obtain legal counsel solely because they are unaware that the law may offer solutions. Several studies have tried to measure these matters, though obviously this is extremely difficult.

In all events, the survey can be used to set a basic typology of legal needs for average communities. My suggestion is that individual bar groups analyze the range of probable legal needs of
the population as a whole within their communities, using the survey data as a base and modifying it as appropriate in light of local circumstances. In a number of communities, important parts of this work have already been done by legal services programs.

The next step is to examine the extent to which these needs are met, community by community, and to design plans to meet at least minimum requirements in major substantive legal areas. Leadership in developing such plans should be in local bar associations working in collaboration with local legal services programs and other community groups. State groups should step in if local ones do not take the lead. Depending on the income levels of the community, a large share of the needs can be met by private lawyers on an individually negotiated fee basis. This is generally true of the legal problems of most businesses and of many individuals as well. Further, in some substantive areas—wills, for example—this approach is sufficient for most people who seek the service. As a rule, matters that essentially involve voluntary economic transfers should bear the market cost of those transfers. But a significant share of the legal concerns facing average individuals are of a different character.

An almost infinite variety of possible typologies could be designed in analyzing the extent to which government ought to finance, in whole or in part, the costs of legal services to meet those concerns. Currently, we look solely to ability to pay. To the extent funds are available, legal service offices provide free assistance to those with incomes below poverty levels. Given a demand by poor people for those services in every community that far exceeds resources, priorities among types of problems must be established, as I indicated.

What about those whose incomes are not far above poverty lines? Currently, most of those persons are also effectively outside the legal system. Except in situations when a contingent fee can be negotiated, they can rarely use the system.

What about extending publicly-funded legal assistance to those with income levels somewhat above bare subsistence, but nonetheless well below levels that enable funding of a private lawyer
at unsubsidized fees? The statute establishing the Corporation authorizes service to all those “unable to afford” it, not just to the very poorest. The understandable response of many who currently work in, or benefit from, publicly-funded legal assistance programs is that the scarce public resources currently available ought to be used exclusively for indigents, since they are most in need. They properly emphasize that, to a poor person, a legal problem is all too often a crisis—a dispute with a landlord may mean no housing, a car that breaks down and does not meet its warranty may result in unemployment, denial of social security benefits may literally mean starvation. All too often, for a poor person, a legal issue is an issue of survival. And for all too many, channels of access to authority that do not involve lawyers are closed to poor persons. Several studies have shown that public and private means of consumer complaint and redress are used far more frequently by middle-income persons than by poor people.

Whether the number of legal problems faced by poor people is more or less than the number faced by others is less clear. The ABA survey indicates some increase in that number as income rises. I am extremely dubious about that conclusion. Certainly the quantity of real-estate issues and probate matters is far less for poor people than for others. But I believe that those matters are more than offset by the enormous range of questions involving administrative benefits—social security, aid to dependent children, and so forth—matters that particularly concern poor people. Further, awareness of the legal dimensions of a problem plainly increases with education, and education increases with income. In my view, therefore, though poor people obviously face fewer legal problems in areas where economic resources are involved, this reduction is more than offset by the increase in other problems, particularly those relating to administrative benefits.

What then of a graduated fee schedule based on ability to pay—a system that would require individuals with incomes above the poverty line but still below, perhaps, $10,000 annually—to pay a portion of the costs of essential legal assistance? One argument for this approach applies, in essence, to every legal services arrange-
ment. Its proponents urge that at least a minimum fee should be charged to all legal services clients so that they will have some financial stake in the efforts their lawyers are pursuing. In my view, this argument is falacious as applied to poor people. A legal controversy terrifies most people, particularly indigents, and lawyers personify the law, which is why, sadly, so many wait until it is too late to obtain the help they need. The unfortunate but understandable reaction of a poor person living in a slum tenement on receiving a subpoena is to ignore it and hope the problem goes away, only to find that he or she has then been subject to a default judgment.

There is another, though also controversial argument in favor of legal-services offices charging on the basis of a graduated fee schedule for those who have limited resources. The argument, of course, is that this approach will enable service to a far broader group than would otherwise be possible.

The majority of legal-services lawyers with whom I have discussed that matter disagree. Most often they urge that all possible energies should be focused solely on poor people—people who most need those services. Although I have substantial sympathy for this position, my own view is that far more experimentation ought to be done with graduated fee schedules than has been the case up to now.

Analogies to the British legal system should be viewed with skepticism, for so much of that system is fundamentally different from ours, but it is worth mention that the just-issued report of the Royal Commission on Legal Services recommends precisely this approach as a means to expand the availability of legal assistance.

In the United States, as in other countries, free or partially subsidized legal assistance has been available based solely on income levels, even in criminal matters for which the right to legal counsel is now constitutionally guaranteed. Similarly, the type of legal services available to those unable to pay has been considered largely in terms of payment mechanisms. The statute creating the Legal Services Corporation, for example, mandates an exten-
sive study of different types of programs, but refers solely to variations in the means of paying lawyers—judicare, pre-paid plans, and so forth. The results of that study will be available shortly, and should be of benefit to everyone concerned about the costs, quality, client satisfaction, and impact of legal assistance efforts.

Another, and not necessarily inconsistent approach is to consider the character of the legal problems involved and other factors, rather than to focus solely on the income of the person facing the problem. A variety of scales might be adopted in weighing the extent to which legal counsel ought to be available. One analysis is suggested by analogy to a recent study prepared *pro bono* by Hogan and Hartson for the Legal Services Corporation. That study considered various arguments concerning right to counsel in civil cases, and focused on a number of key variables relating to both the particular proceeding and the parties. Let me mention a few of those variables, without suggesting that the list is all inclusive.

First, what is the risk to the individual? In the criminal context, an indigent is entitled to counsel in any case in which the penalty may be imprisonment. In civil cases, the obvious analogy is to the potential of civil commitment. But there are other fundamental personal interests that may be at stake in a civil proceeding though they do not necessarily involve incarceration.

Second, what is the degree of state control? In some types of civil matters—divorce and adoptions are examples—individuals cannot act except through legal procedures controlled by the state. Regarding this variable, like the others, the question is often one of differences in degree rather than in kind.

Third, how complex are the proceedings—how important is a lawyer's help? Fourth, what is the capacity of the litigant? The point is obvious in the case of minors and the mentally ill, but capacity is a relative issue and can vary widely depending on education and other factors. Fifth, what is the relative balance of abilities among adversary parties in handling the legal matter? Finally, what about the efficiency of the legal system itself—to what extent will a proceeding be delayed by lack of counsel?
Each of these factors, and no doubt others as well, can be analyzed at length, as can the balancing process involved in weighing their comparative importance. The issues here are broader than those in right to counsel cases, for they include both legislative and administrative representation and actions to change or enforce existing laws. But the study that I mentioned has made a significant start.

Litigation in this area has most often involved an alleged constitutional right to counsel. I believe that a sound case can be made for that right extending beyond the limited circumstances in which it has previously been recognized. My expectation is that, over time, this constitutional right will be recognized in a series of specific special circumstances, based on factors such as the ones I have mentioned. A number of incremental steps were taken to establish the constitutional right to counsel in criminal cases, over a substantial period of time, until the Supreme Court decided the *Gideon* and the *Arginsinger* cases, and I suspect a similar pattern will occur in civil matters as well, though not without setbacks.

My main point here, however, is that counsel ought to be provided in some civil proceedings to those who cannot afford it—not because it is constitutionally required but because it is right in terms of rationing justice. Quite apart from protecting any particular individual, the legal system becomes dangerously skewed when the legal rights of one group—consumers, tenants, or others—are not represented. A brilliant new book by Professor Morton Horowitz on the development of our legal system during this country's first one hundred years underscores the impact of the skewing process; although significant steps have been taken to minimize the dangers, they are still clear and present.

Most obviously, renewed efforts are needed to prevent legal problems from arising. Preventive steps, particularly through requiring simplification and uniformity in common and recurring legal matters between private parties with equal resources, can often do far more good for more people than any number of lawyers. Let me offer one example suggested by Professor Abram Chayes. In New York City, as in many urban areas, thousands of
evictions are sought each year on grounds of non-payment of rent. The landlord's failure to meet standards established under the housing code is a common defense. If landlords were required to produce certificates of habitability before bringing suit to evict, the savings in both court and lawyering time could be substantial.

A danger, of course, is that the burdens of many proposed reforms in the legal system—reforms to minimize what I once referred to as legal pollution—may fall primarily on poor people, and particular care must be taken to ensure that those without political muscle are not unfairly burdened in the name of reform.

When a legal problem cannot be avoided, every effort should be made to enable people to handle the matter without a lawyer. Legal Services programs have pioneered—out of necessity triggered by scarce resources—in designing do-it-yourself kits and, when an advisor is needed, in the use of paralegals acting under a lawyer's supervision. My guess is that by the end of this century, if not before, paralegals will outnumber lawyers in this country.

This change is part of a larger pattern—the shift toward wholesaling legal services whenever possible rather than retailing them, toward mass-production whenever possible rather than individually negotiated lawyers' services for individual clients. Many bemoan this shift, including, I am sure, a number in this room. I have a fair degree of sympathy for their views. Among other concerns, it is far less satisfying to be a wholesaler.

But the harsh fact is that most Americans are unable to afford the legal help they need when they need it, and the only way to meet their requirements is through a variety of arrangements far removed from the traditional, cottage-industry approach. Many of these methods are already well under way. Group and prepaid plans are now established parts of the legal landscape, and I have no doubt that they will continue to expand steadily. Unions negotiating benefits for their members have been the major organizing force for much of this effort. I believe that the growth of legal clinics will be even more rapid.

Given this range of mechanisms, most of the needs within a community for legal services could be met without public re-
sources, if there is a serious planning process devoted to that end. It should consider what types of problems for what income groups can be handled by legal clinics, by group plans, and by other collective arrangements as well as by lawyers working individually.

For those below poverty levels, publically-funded legal assistance programs will continue to be essential, and they will need far more funding than in the past. Based on my own past experience, I believe that the delivery of services to poor people should be through a variety of different payment mechanisms—singly and in combination—using private lawyers as well as staff attorneys, depending on the particular circumstances.

In every community with which I am familiar, however, justice will continue to be rationed unfairly unless there is a significant increase in the pro bono contributions of private and public lawyers. Perhaps more than any other urban bar, this Association and its members have led in the effort to promote those contributions. I realize that the Association is now considering a far-reaching proposal to require a minimum level of pro bono services by all members. I support that basic concept with enthusiasm and have urged its inclusion in the new Code of Professional Conduct, currently being drafted by an ABA Commission, of which I am a member.

A wide range of concerns has been raised about the concept of a modest required contribution of time and talent by all lawyers, and I certainly recognize that lawyers—particularly in New York—donate more of their efforts in the public interest than any other profession. Why lawyers, and not doctors—for example—is the most common complaint. My own reply can be simply stated: lawyers are an essential part of the public justice system, with monopolistic access to the workings of the system. With that monopoly comes a public obligation to help ensure the sound workings of the system—otherwise the rationing of justice becomes warped in ways that are dangerous not only to poor people, who are denied an opportunity to use the system, but also to the public generally, who are denied a legal system that works fairly.

Some lawyers have argued that there is little that they can do
to help poor people—that their professional competence is in corporate finance, or in some other area far removed from poor people's problems. But many legal aid programs have found that, with relatively modest amounts of training, even bond indenture lawyers can re-emerge from their specialist shells. Much of the work done in legal services offices requires substantial experience as well as skill—just as in private lawyers offices. But private lawyers from a wide range of specialty backgrounds can be of immense help in serving poor people.

Let me relate just a few examples of the types of pro bono arrangements already in operation. Private lawyers in many 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 support center for complex litigation. A number of firms have assigned one or more of their lawyers, paralegals, and support staff to work in legal services offices for periods of up to six months. Further, some firms regularly handle cases in which both parties are indigents and the legal services program would have a conflict of interest if it were to represent more than one of the litigants. Private attorneys may also agree in advance to help legal services programs whenever caseloads become particularly heavy.

Other firms provide training in particular areas of the law to legal services lawyers. Litigation techniques are the most common of those areas. And some firms have helped legal services programs to prepare basic forms and manuals to deal with special fields.

I suspect that some private lawyers who resist pro bono help to poor people are scared—scared that they may be embarrassed, or at least uncomfortable, in working with people from different backgrounds than their own. There are many sound arguments for quality clinical courses in law school—courses that provide opportunities for students to work with poor people under careful supervision. But among the most important reasons—perhaps the most important—is that these clinical courses minimize this understandable and very human reaction. They give students a sense of just how terrifying the law can be to many poor people, how
often lawyers are the law for those people, how helpful attorneys can be, and how rewarding it is to provide that help.

Private lawyers are often joined by legal services lawyers in resisting required or even voluntary *pro bono* efforts. Some staff attorneys in legal assistance programs argue that they want to practice law for poor people, not supervise private lawyers who provide that service. More generally, some legal services programs have, in my view, shown too little understanding of the importance of working with the private bar. Several programs here in New York are prime examples of how useful those efforts can be when there is a significant commitment on both sides.

* * *

These, then, are some tentative thoughts on how, working together, we can better ration justice.