POVERTY LAW APPLIED: A CASE STUDY OF A NEIGHBORHOOD LEGAL SERVICES PROGRAM

by

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Biographical Statement

Michael Appleby was born on September 24, 1938, in Burbank, California. He attended Burbank High School for two years, and graduated from San Rafael High School in 1956.

He attended the University of California at Berkeley from 1956 to 1960, when he graduated with an A. B. (Honors) in political science. While at Berkeley, he became chairman of Project Pakistan-India-Ceylon, and led a student travel team to India and Pakistan during the summer of 1958.

Upon graduating, he joined the American Friends Service Committee's Community Development Program, and spent six months in village development work in Mexico.

He was then awarded a National Defense Education Act fellowship by the City and Regional Planning Department at Massachusetts Institute of Technology, which he attended from 1961 through 1968. In the summer of 1962, he worked as a research analyst for the London County Council. During the year 1962-63, he took a leave of absence to work with the Friends Peace Education Program in Cambridge. After returning to MIT, he spent the summer of 1964 as a research assistant for the Harvard-MIT Joint Center For Urban Studies urban development project in Guayana, Venezuela. In 1965 he worked as a research assistant for Project Transport at MIT. From autumn 1965 through the summer of 1967, he conducted his doctoral field research in New York City. While in New York, he served as a program research consultant for Mobilization For Youth. During 1967-68, he was an instructor in the Department of City and Regional Planning, MIT.

ABSTRACT

The Practice of Poverty Law: A Case Study of a

Neighborhood Legal Services Program

by

Michael Appleby

The experience of the Legal Services Unit of Mobilization For Youth with providing legal assistance to low income residents of the Lower East Side of New York City is examined from three perspectives: (1) to identify the functions legal advocacy can perform for the poor; (2) to evaluate the potential of the use of law as an instrument of social and institutional change; (3) and to determine the relationship of legal services to other program strategies for dealing with urban poverty.

Materials illustrating experience with the representation of welfare recipients, public housing tenants and applicants, defendants in criminal cases, parties in Family and Juvenile Court proceedings, private housing tenants, suspended school students, and consumer fraud victims, are presented. The mutual relationships of the legal services and other Mobilization For Youth programs are also examined.

The analysis shows that legal advocates can perform the following functions for the poor: reduce the effects of discriminatory biases in the law, make use of protections provided by the law, assert entitlements to public benefits, defend against abuse of constitutional rights, enforce the intent of welfare legislation, and reduce dependency on public servants. Legal services also offer valuable sources of evaluative feedback on the performance of public service programs and laws which affect the poor.

Unit experience indicates law as an instrument of social change is limited by narrow bases of judicial review, and the unwillingness of the courts to substitute their discretion for that of public institutions or the legislature. Preparation of test cases is also constrained by the infrequency of cases which raise test issues, delay in the prosecution, and the pre-emption of issues by settlement in advance of court action.

The most significant institutional change has occurred in the public welfare system where a clear set of standards and an impartial appeal system made effective legal advocacy possible. The presence of legal advocates in itself

produced related change in the behavior of slum landlords and merchants. It is found that legal advocates provided strategic support to tenant rent strikes and welfare recipients groups. It is also shown that legal services increased the effectiveness of the neighborhood services program of mobilization for youth.

Legal services programs are found to have a high degree of relevance to comprehensive urban programs such as that provided by the Model Cities Act for the following reasons: (1) legal services meet a range of needs associated with poverty not met by other program strategies; (2) a legal service can offer important feedback on the performance of local programs and provide the basis for a coordinated effort by the Model City Agency; (3) legal services complement the work of other programs.

Finally, the extent to which the legal services program can be generalized is examined, and it is found the replication of experience will depend in part on: the attitude of the local bar association, the tolerance of the local political and economic structure of legal actions taken in behalf of the poor, the policy-making independence of the legal program, and the availability of attorneys willing to work with the poor.

Thesis Supervisor: Bernard F. Frieden

Title: Associate Professor of City Planning

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in partial fulfillment for the degree of Doctor of Philosophy.

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This is a small note of gratitude to the many individuals who have in many different ways contributed to this enterprise. It is possible to name but a few.

I want to thank all those engaged in the practice of poverty law who gave so freely of their time and ideas. I could not have made a start without the help of Harold Rothwax, Edward Sparer, Marty Spiegel, Sue Ann Shay, Nance Le Blanc, Margaret Taylor, Stephan Antler, Joe Zumchak, Bernie Clyne, whose cooperation, advice, ideas and insight are expressed throughout this volume.

My academic support has been extremely gratifying. I am indebted to Bernard J. Frieden, James Beshers, Lisa Peattie, Lloyd Rodwin and many others whose patience, helpful criticism, and encouragement sustained me in this work. Also crucial to this work has been the sympathetic support I have received from all those associated with the Joint Center for Urban Studies. I have received both sustenance and a haven there.

Finally, I could not have survived the agonizing last hours of this production without my faithful friends to the very last: Karen Zamecnik, Peter and Barrie Grenell, and the many crisis helpers who came forward in the final hours.

The extent of one's dependence on others becomes very clear in a project such as this. I am grateful to all whose support made this possible.

I, alone, am responsible for what follows here.

Michael Appleby
Cambridge, Massachusetts
May 10, 1968

INTRODUCTION

POVERTY LAW APPLIED: A CASE STUDY OF A NEIGHBORHOOD LEGAL SERVICE PROGRAM

CHAPTER I

POVERTY LAW APPLIED: A CASE STUDY OF A NEIGHBORHOOD LEGAL SERVICE PROGRAM

Introduction - 1. The Advent of Legal Services in Poverty Programs

The 1960's may well be remembered by social historians as the decade in which America "rediscovered" poverty, briefly adopted a programmatic military metaphor[1] by waging a "war on poverty," and finally turned away from the domestic front to pursue a military campaign in Asia. In this period, the "rediscovery" of poverty as a national problem has been the occasion of a great deal of fresh rethinking, new research activity, and numerous sophisticated attempts to deal with problems of low income groups in a variety of contexts. One such context has been the mounting financial, social and political crisis of the major American cities caught in the squeeze of an increasing low income minority population and the simultaneous loss of crucial economic resources as growing numbers of businesses, industrial concerns and white middle class taxpayers move to the suburbs.[2] The deteriorating central districts of

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[1]For an interesting application of the military metaphor to the experience of New Haven's Poverty Program, see Jean and Edgar Cahn, "The War on Poverty: A Civilian Perspective," Yale Law Journal, Vol. 73, No. 8 (July 1964), p. 1317-1352.

[2]A comprehensive presentation of the crisis facing American cities is found in Advisory Commission on Intergovernmental Relations, Metropolitan Social and Economic Disparities: Implications for Intergovernmental Relations In Central Cities and Suburbs (Washington, D.C.: Sept. 1964, Draft Report), 189 pp.

these cities have been the scene of some of the most comprehensive and ambitious poverty programs.

Beginning with those efforts sponsored by the Ford Foundation Gray Areas program and continuing with the programs sponsored by the Office of Economic Opportunity, the over-all emphasis has been upon creating conditions conducive to the upward mobility of low income groups by otherwise removing the obstacles of poor education, low employment potential, etc. Such "guided mobility" strategies, as they have been called by one observer, [1] propose to promote upward class mobility by pursuing in varying degrees the following major programmatic goals:

> To extend the amount and quality of present social services to the hard-to-reach lower-class population; to offer new methods of education, especially in the area of job training; to reduce unemployment by retraining and the creation of new jobs; and to encourage self-help on an individual and group basis, notably through community participation and neighborhood organization. In addition, programs in recreation, public health, delinquency prevention, and housing are often included .... [2]

Some programs relate their activities to a youthful population in an effort to control and reduce juvenile delinquency; [3] others seek to reduce poverty by

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[1] Herbert Gans uses this term in his article "Urban Poverty and Social Planning," found in The Uses of Sociology, ed. by Paul F. Lazarfeld, William H. Sewell and Harold L. Wilensky (New York: Basic Books, 1967), p. 440.

[2] Ibid., p. 441. Gans points out that this description is an idealization of the numerous programs which contain these goals in varying degrees. See, for example, illustrative plans as noted by Gans (p. 472): City of Oakland, Proposal .. for a Program of Community Development(City of Oakland, June 1961, mimeographed); Action Housing Inc., Urban Extension .. in the Pittsburgh Area (Sept. 1961, mimeographed); Action For Boston Community Development, A Proposal For a Community Development Program in Boston (Boston, Dec. 1961, mimeographed); and Community Progress Inc., Opening Opportunities: New Haven's Comprehensive Program for Community Progress (New Haven, April 1962, mimeographed).

[3] See Mobilization For Youth, Inc., A Proposal for the Prevention and Control

encouraging the growth of community organizations and the promotion of political action; while still other programs concentrate upon educational reform, the provision of employment opportunities, and the development of community institutions better equipped to meet local needs.

In some cities, poverty programs adopted an aggressive advocacy strategy by demanding reforms in the public and private institutions whose practices adversely affected their low income constituencies. In other cases, the new programs were more of an extension of already established service institutions and political interest groups. Although poverty programs bore different relationships to existing political and institutional service structures from community to community across the country, they produced a full range of education, housing, employment, community organization, business development and social service programs.

Tangible evidences of this activity were quick to appear: community groups were formed; storefront service centers were opened up; job training centers were established; day-care centers initiated; compensatory education programs appeared in the schools; local residents were hired as program aides in the schools and in the community, etc. The very breadth of program required the services of a wide variety of professionals which included welfare workers, community organizers, teachers, housing experts, psychologists, economists, and city planners, to name a few.

However, because the problem was seen in terms of inducing mobility, certain kinds of services were not seen as immediately relevant to the process of removing education, employment and community obstacles to upward class movement. The fundamental problems of low income groups were felt to be of a social and political nature.

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of Delinquency by Expanding Opportunities (New York, 1961, mimeographed), 617 pp.

Educational deficiencies were to be removed, employability was to be increased, community self-reliance was to be encouraged, improved social services were to be offered, etc. While from the guided mobility perspective the programs thus generated could be regarded as fairly comprehensive, with a few exceptions the importance of one crucial dimension of poverty status was recognized in an after-the-fact fashion as having a relation to the other programs. It was found that a large proportion of the poor become entangled with the law at some point in their lifetime, and that such entanglements have fairly serious implications for the goal of breaking out of the vicious circle of poverty. Only one of the Ford Foundation Gray Areas programs, the one in New Haven, offered legal services as part of the over-all program strategy from the very beginning.[1] In one other program supported by the Ford Foundation, Mobilization For Youth, a legal unit was established after social workers and community organizers found they were unable to offer much assistance to clients who became involved in criminal court proceedings or who were subject to legal actions taken against them by merchants or landlords.[2] Further

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[1] For a discussion of the New Haven poverty program and a proposal for neighborhood law offices based on the experience of the legal programs there, see Cahn and Cahn, op.cit., p. 1317-1352.

[2] In 1964 after nearly a year of program activity, Mobilization For Youth added a Legal Services Unit to its broad spectrum of poverty and anti-delinquency programs in the Lower East Side of Manhattan. Preliminary research showed a wide range of problems where legal representation would greatly benefit the poor. A MFY progress report written soon after the Legal Services program began, described the scope of legal problems facing the poor in this way: ""As tenants, complainants, defendants, suspects, welfare recipients, public housing residents, litigants in workingman's compensation cases, and holders of installment buying contracts, the youth and adults of the inner city constantly interact with the legal establishment."" Mobilization For Youth,"Action on the Lower East Side, Progress and Proposal" (New York, 1964, mimeographed report), p. 117.

complicating the work of the MFY programs were the extreme pressures on existing legal resources such as The Legal Aid Society due to high caseloads, inadequate staffing,[1] restrictive income requirements, and narrow definitions of the kinds of cases accepted.

The two neighborhood legal programs broke new ground in urban policy. The experience gained in New Haven by Community Progress, Inc., and in New York by Mobilization For Youth strongly influenced the character of Federal legal programs later sponsored by the Office of Economic Opportunity.[2] In one instance, the serious limitations placed upon the Legal Services Program of Community Progress, Inc. by local interests led to an emphasis upon protecting OEO legal programs from the interference of local vested interests.[3] The experience of the Mobilization

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[1]For a discussion of some of the problems facing the Legal Society in providing assistance to indigent defendants in New York criminal courts, see the discussion in Chap. V111, Part I. See also J.E. Carlin, J. Howard, S.L. Messinger, "Civil Justice and the Poor," Law and Society Review, 1.1, pp. 57-59. In some areas Legal Aid refuses to assist clients in Bankruptcy proceedings due to pressures from local business communities which are a primary source of financial support for the Society. Often for the same reason, Legal Aid offices are reluctant to press claims against businessmen, landlords, etc. See Carlin et al., ibid., pp. 58-59.

[2]See "Introduction to Conference Proceedings," The Extension of Legal Services to the Poor Conference Proceedings, Nov. 12-14, 1964 (Washington, D.C., U.S. Government Printing Office, 1965), pp. ix-xi.

[3]The Cahn's proposal for neighborhood law firms reflects the sad experience fo the legal services program in New Haven: "fulfillment of the complex tasks is only possible if the firm has both the liberty and the resources necessary to proceed. CPI's (Community Progress Inc.) experience with neighborhood legal services indicates that such liberty may not be available where a lawyer's decision must be subordinated to the concerns, perspectives, and phasing of a comprehensive community. The law's capacity to bring controversies into focus tends to make legal services too controversial for an organization to absorb if it must retain the support, or at least the sufferance of the major institutions in a city."" Cahn and Cahn, op.cit., p. 1349.

For Youth Legal Services Unit with providing legal assistance in a wide variety of situations such as rent strikes, welfare disputes, public housing conflicts, etc., demonstrated many uses of law for asserting the rights of the poor. Moreover, MFY successes in welfare challenges, and the defense of tenants in rent strikes lent strong credence to arguments supporting the use of law to promote social change. Of critical importance to this record, however, was MFY's ability to defend its policy-making independence against outside interference. In many ways MFY Legal Services Unit served as a prototype for the OEO program which appeared later.[1]

With the passage of the Economic Opportunity Act in 1964, the Federal government, in addition to a wide variety of other programs, accepted the responsibility for financing legal services for the poor. The act authorized the Office of

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[1]The influence of Mobilization's legal program can be seen throughout the literature on legal services for the poor. See for example: 1) The Extension of Legal Services to the Poor, op. cit.; articles by MFY staff, Edward V. Sparer, "The New Public Law - Relation of Indigents to State Administration" (pp.23-40), and Nancy Le Blanc, "Landlord-Tenant Problems" (pp.51-60), and the description of the MFY program as a prototype of a Neighborhood Legal Services Office. 2) Pat Wald, Law and Poverty, Report to the National Conference on Law and Poverty, June 23-25, 1965 (Washington, D.C., 1965), 112 p. See acknowledgements in the introduction, citations in Chapter II "The Poor Man and the Law," and the discussion of Housing Law (pp.12-20), the discussion of welfare Law (pp.30-35), and the description of MFY program experience in Chapter IV "Broadening Legal Assistance to the Poor" (pp.69-74). 3) Department of Health Education and Welfare, Neighborhood Legal Services- New Dimensions in the Law (Washington, D.C., 1966), 79 p. Here, the Mobilization For Youth Legal Services Unit was again selected as a case example of a neighborhood legal assistance program, see pages 35-41.

Economic Opportunity to provide Neighborhood Legal programs with up to 90 percent of their budgets.[1] The Act also provided for technical assistance, administrative grants, grants for experimental legal programs, and training grants for educational programs for both lawyers and poverty workers.[2]

The orientation of the OEO legal program as contained in its program guidelines represented a major break from legal services of the past. Legal assistance was to be made highly visible and accessible; the law was to be used to assert the interests of the poor, not merely to defend an individual from punitive action; the programs were to remain independent of outside interference and at the same time were to involve the poor at a policy-making level. In summary, the new direction of the OEO legal program was characterized by:

> (1) The importance placed upon the establishment of neighborhood law offices to increase the accessibility of legal services to the poor; (2) the requirement that the poor be represented on the governing board of the legal service agency to enhance responsiveness to client needs; (3) the adoption of a more aggressive stance in promoting the collective as well as the individual interests of the poor, including the use of advocacy as an instrument of social change; and (4) concern for insuring the independence of the legal service organization from those vested interests that might be threatened by more vigorous representation of the poor.[3]

Once the Office of Economic Opportunity entered the legal field, the number of legal service programs in poor neighborhoods grew rapidly. Thus, while in late 1964 the conference on the Extension of Legal Services to the Poor could discuss only two fully developed ongoing neighborhood programs which provided a full range

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[1] Economic Opportunity Act, Title II, Sec. 204, 78 Stat. 516 (1964), U.SC. (1964), as quoted in Pat Wald, op. cit., pp.110-111.

[2] Ibid., Sec. 205, 207, 208.

[3] Carlin et al., op. cit., p. 67.

of legal representation, [1] by June 1965 the conference on Law and Poverty reported newly active programs in Washington, D.C., Boston, Massachusetts, and Oakland, California,[2] with twelve applications for programs in other areas.[3] By August 1966 eleven months after the program's inception, the number of operating neighborhood legal programs had grown to 160 (a total of 500 authorized offices) in forty-three states with a budget of over $27,000,000.[4]

II. The Study - Research Questions

The following research paper is a case study of one experience with providing comprehensive legal assistance to the poor.[5] The object of the study is the Legal Services Unit of Mobilization For Youth.

The origin of the unit, its organization, operation and goals, and most important, its experience with providing legal representation ot the poor will be examined. The unit has made important contributions to the newly developing areas of poverty law, has pioneered the neighborhood law office concept, and has had a significant impact upon its own community. For these reasons the experience of the Legal Services Unit will be of interest to students of poverty law and to those concerned with the strategies of effecting social and institutional change in the environment within which

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[1] Extension of Legal Services to the Poor, op.cit., Part I.

[2] Wald, op.cit., pp. 74-78.

[3] Ibid., pp. 78-79.

[4] Legal Services Program of the Office of Economic Opportunity, Equal Justice: Report of the Legal Services Program of the Office of Economic Opportunity to the American Bar Association, August 8-11, 1966 (Washington, D.C., 1966, mimeographed) Page 1.

[5] Comprehensive here refers to two aspects of a legal services program. First,

the poor must live. A presentation of the Legal Unit's experience in each area of the law where a significant amount of representation was provided will constitute the largest proportion of the case materials analyzed here. The study will cover the period from the Unit's inception in January 1964 through the fall of 1967. An additional set of interviews relating to program interdependencies, school cases and domestic relations issues was conducted in March 1968.

The research will address itself to three broad purposes. The first is to provide an analysis of the functions which legal representation of the poor can perform. The second is to examine the use of law as an instrument of social change as exemplified by the Unit's work. Finally, a third purpose is to assess the relationship of neighborhood legal services to other urban poverty programs. Each purpose implies a number of research questions.

A. A Functional Analysis of Legal Representation of the Poor

The intent, here, is to identify the functions which legal representation can play for low income clients, poor neighborhoods, and in a more general sense the public at large. A functional analysis of the impact of the MFY Legal Services Unit will concern itself with the following several dimensions:

(1) For the individual: what in fact can a legal representative accomplish for the client as he relates to public institutions, landlords, businessmen, etc.?

(2) For the Poor Neighborhood: What functions can a legal assistance program perform which are relevant to an entire neighborhood?

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it applies to programs which handle the full range of legal problems which affect the poor. There are no restrictions (except on the basis of income) upon the types of cases accepted. Secondly, comprehensive refers to the social services which complement and support the work of program attorneys.

(3) For Public Institutions (Welfare, employment, police, etc.): How does the presence of legal representatives at the side of their clients affect the operation of such public services?

(4) For the public at large: Can neighborhood legal assistance programs perform functions which go beyond the representation of the interests of a particular individual or neighborhood? What are such functions?

B. The Use of Law As An Instrument of Social or Institutional Change

A second purpose of the study is to assess the relevance of legal services programs to strategies of social change. The question here is: To what extent can the law be used as an instrument for social change? Can the provision of legal representation to the poor, in and of itself, act as a stimulus for change? If so, what kinds of change can be attributed to such an intervention? The intent, here, is to distinguish between those problems which a neighborhood legal program can affect and those which require other forms of activity.

Social Change and Institutional Change: Working Definitions

At this point it is well to indicate what is meant by social change and institutional change. The definitions proposed here will be simple and will not be placed within a more generalized theoretical framework. First, the experience of MFY Legal Services Unit with welfare, housing, criminal, consumer fraud, unemployment compensation, and domestic law cases will be analyzed to identify instances of change which can be attributed to the intervention of a unit lawyer, the threat of litigation, or to the presence of legal services in the neighborhood. For the purposes here, social change will be defined as any or all of the following: changes in the relationships between classes of individuals (such as changes in the attitudes of landlords toward indigent tenants who assert their legal rights, or the effect which the presence of a

lawyer might have on the relationship a welfare recipient might have with his welfare worker)[1]; changed relations between groups of individuals and community or government institutions, such as those between welfare recipients and the Department of Welfare; emergence of new groupings of individuals such as welfare or tenant associations. Other examples of social change might be new developments in community-police relations, or the reduction of the incidence of consumer fraud.

Institution, for our purposes, will refer to a general form of organization. Such organization contains a bureaucratic structure of hierarchically organized activities directed toward specific goals. Decisions affecting clients of these organizations are made according to defined rules. In the main, the analysis will concentrate upon public institutions with legislative mandates setting forth both goals and general outlines of procedure. Examples of such institutions would be the Department of Welfare, public housing authorities, and the criminal, juvenile and family court systems. This definition, however, is not meant to exclude quasi-public institutions such as privately supported settlement houses or other agencies which are characterized by more simple bureaucratic structure and are less dependent upon a highly articulated set of rules defining their behavior.

For the purposes of this study, institutional change will be analyzed along two dimensions: content and process or procedure. Changes in the

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[1] This might include, for example, the reduction of the sense of powerlessness and inequality inherent in the formal (dependence) relationship between a service "giver" (welfare worker, landlord, public housing manager, etc.) and the service "receiver" (welfare recipient, public or private housing tenant, etc.).

content of an institution refers to growth of new programs or the provision of services, facilities or personnel not previously available. An example of this would be the initiation of a babysitting service, or, negatively, the elimination of an unsatisfactory program.

The second dimension of institutional change involves processes of internal administration and procedures for dealing with the institution's clients. Examples of this form of institutional change would be: specification of applicant's rights in the tenant selection procedures of a public housing authority; modifications in the hearing process for eviction from public housing; elimination of elaborate investigations of eligibility for public welfare; or establishing a student's right to legal representation when his suspension from school is at stake.

The Legal Services Unit as a Form of Institutional Change

Inasmuch as the Legal Services Unit of MFY provides services previously unavailable and also represents a change in program content for MFY, the Legal Services Unit itself represents the form of institutional change as defined immediately above. In contrast to the situation prevailing before 1964, the Legal Services Unit represents significant advancement in the quantity, quality and availability of free legal representation for the poor in the Lower East Side. The services are located in the neighborhood and are readily accessible. The Unit's lawyers work on a full-time basis; follow a case as it progresses; and are able to continue working with a particular case throughout the entire judicial process. Representation of community groups is now possible as is the initiation of cases in many areas of law uncovered by other legal resources available to the poor.

The Legal Services Unit is also a catalytic agent of change. A major goal of the Unit is to effect social and institutional change of benefit to the poor. Throughout the study a dichotomy will seem apparent between providing legal representation as a service to the poor and using such representation as a tool for change. This distinction is only partially useful. Broad categories do differ in the potential they hold for enacting far-reaching precedent. Some cases such as those involving divorce or routine criminal charges, have less potential than those cases involving welfare or housing issues for influencing institutional procedures or effecting a change in the law. Yet the very existence of comprehensive, on-going social-legal representation for the "service" cases requiring intensive casework intervention reflects a significant form of institutional change itself. For this reason then, each type of case found in the Unit's experience will be of interest, either as part of an institutional change directed toward equalizing the operation of justice by providing free comprehensive legal representation to the poor or as an attempt to effect change in other institutions and the law itself.

C. To Explore the Relevance of Legal Service Programs to More Comprehensive Urban Policies

A third major purpose of the research is to examine the relevance of legal assistance programs to other poverty and urban development programs. This will involve both the identification of the functions performed by legal representation as well as the clarification of the interrelationships with other urban programs. The extent to which the Legal Unit depends upon the activities of other MFY programs

and other agencies as well as the Unit's contribution to their work will be analyzed.

The study will present materials from Mobilization For Youth Neighborhood Service Centers and the Community Organization program. The intent is to identify the extent to which the Legal Unit depends upon the activities of these programs. Of equal interest is the way in which the Legal Unit contributes to the efficacy of these programs. Clarification of such program interdependencies, hopefully, will assist social policy-makers in their efforts to develop functionally integrated sets of urban poverty programs.

Finally, the extent to which the Legal Services Unit depends upon and contributes to the work of other programs and the functions legal representation plays for the indigent client will be considered in the context of a larger urban policy framework. The policies of the Model Cities Programs of the Department of Housing and Urban Development and the poverty strategies associated with the Office of Economic Opportunity will provide an appropriate context for such an evaluation.

In summary, this research paper will examine the experience of the Legal Services Unit of Mobilization For Youth in providing comprehensive legal representation to a low income neighborhood. The analysis will identify the functions which legal services play for the poor, evaluate the use of law as an instrument of social change and assess the relevance of such services to general urban policies.

III. Methodology

A. Interviews

This research is exploratory in nature. Its purpose is to discover the functions of legal service programs and their potential as a catalyst for social change. The

research is of a hypothesis-seeking character, and does not set out to substantiate a theoretical point of view.[1] While there is no set of hypotheses to be tested, hopefully some theoretical implications may be drawn out of the case materials presented. Tha analysis of the Legal Services Unit of MFY is simply a form of follow-up research whose purpose is to clarify what a particular program is, in fact, able to do, what it cannot be expected to do, and how, in view of this information, such a program relates to other program strategies.

The methodology reflects the simplicity of research purpose. The legal case materials presented here are the product of two sources of information:

(1) A total of thirty-three interviews with the lawyers, social workers, and administrative staff of the Legal Services Unit;

(2) Case records, legal briefs, memoranda, and reports of the Unit for the period January 1964 through June 1967.

A second set of materials originated with the MFY Neighborhood Service Centers and the Community Development program. The approach to both of these programs was the same as that of the Legal Unit. The field and administrative staff members were interviewed and case records, reports, and memoranda were reviewed.

Although the process of gathering information was essentially the same for all three programs, the Legal Unit interviews differed significantly from those of other programs. The interviews of the Unit attorneys posed a special problem. Due to the complexity of the law and the rapidity of change in any one area of law, a Unit attorney has to develop a high degree of specialization.[2]

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[1] I am indebted to my good friend Mayer Spivack for this term "hypothesis seeking" which quite succinctly expresses my own view of this paper. The term was used in the course of the presentation of his research into the design of mental hospitals to the coloquia of the Department of Sociology of Brandeis University, March 8, 1968.

[2] See Chapter II for a more detailed description of specialization among Unit lawyers.

Thus, one attorney would handle the criminal cases, another the welfare caseload, and a third, the housing cases, etc. As a consequence, each interview was open-ended and no strict interview schedule was established. However, most interviews did focus on a number of the same issues in addition to inquiries specific to the area of law involved. For each area of law (welfare, housing, criminal, etc.) interviews with Unit attorneys sought to bring out the following kinds of information:

-- Descriptions of typical cases encountered.

-- Identification of critical legal and social issues in that area of law.

-- Description of the cases which raised important issues or in which important results had been obtained.

-- The attorney's observations of the general conditions affecting the client (for example, the welfare regulations, landlord practices, the operation of a particular public program, etc.) in the particular area of law.

-- The division of work among unit attorneys, unit social workers and the staff of other MFY programs or outside agencies.

-- The responses of representatives of public institutions, landlords, merchants, etc., with whom the Unit attorney must interact as he represents his client's interest.

-- Cases or instances which involved some form of change. The attorney's view of the potential for the use of law as an instrument of social change in their specialty.

The interviews with Unit attorneys attempted to develop a picture in each area of the law which included the typical problems confronting an indigent client, the institutional

and legal environment with which the client must contend, the major issues raised by the Unit, and the response to the intervention of Unit attorneys representing the client. Unit social workers were asked about the typical kinds of cases in which they provided assistance, how the work was divided with the attorney, and differences in professional perspective. Unit administrative staff provided valuable information concerning the growth and development of the Unit as well as its day-to-day operation.

The interviews with Neighborhood Service Centers and Community Development program staff were structured quite differently. The intent here was to develop a picture of the activities of the two programs and to identify the ways in which these programs both depend upon and contribute to the work of the Legal Services Unit. As before, the interviews were essentially unstructured and open-ended although the topics covered were fairly consistent. The interviews of NSC workers and Community Development organizers sought to bring out the following information:

-- The nature of the worker's job. The organization goals and types of activities carried on in the program (types of service, public campaigns, etc.).

-- Typical cases brought in by indigent clients, relation to the client, kinds of assistance offered.

-- The responses of landlords, welfare workers, etc., to the NSC or Community Development worker's intervention in behalf of the client.

-- The conditions under which the services of a Unit attorney are called upon.

-- The division of work when a NSC or Community Development worker collaborates with a Unit attorney on a case or project.

-- The degree to which the NSC and Community Development programs depend upon the availability of easily accessible legal assistance.

-- The functions these programs perform for the Legal Services Unit.

A total of fifteen interviews was conducted among the staff of the Neighborhood Service Centers and the Community Development program.

B. A Note on the Bias of the Study

It should be admitted at the outset that this analysis is conducted from one point of view. The materials contained here are based on the experiences, arguments and case materials presented by both the attorneys for the Legal Service Unit, and the neighborhood workers, and community organizers of Mobilization For Youth. The problems of the poor in the Lower East Side are seen from the perspective of MFY staff members. While low income residents of the area are not an immediate source of the materials presented here as the interviews were limited to the staff of three programs, their outlook is represented throughout the study of the form of the case materials whose sources are the Unit's clients themselves. This is particularly true because Unit attorneys encourage their clients to define their problems in their own terms. For this reason, the cases described here are an expression of how such problems associated with poverty appear to the individual.

There is no attempt here to present the other side of any given issue. The limitations of time and space which govern this research enterprise do not permit an equal commitment of time to a detailed explanation of the particular difficulties of welfare workers, school teachers, landlords or local merchants. Perhaps some of the legal and social problems experiences by the poor can be attributed to the economics of public institutions and slum neighborhoods. Ideally, this present volume would be the first of a two-part analysis of the constraints which bear upon both ends of poverty

relationships. The purpose here, however, is to identify the impact which legal counsel can have on a typical range of problems which confront an average low-income person - the bias of the study derives from this purpose.

C. Organization of the Study

The study will be divided into three parts. The first will provide an introduction to the practice of poverty law, and consist of a chapter on the origin and present organization of Unit activity, and a chapter setting forth some general contextual features which the legal representative of a low-income client must take into account. Part II will be made up of eight chapters, each of which examines the experience of the Legal Unit in a particular area of the law. The first four chapters will consider the legal problems associated with public service programs (welfare, public housing, public school system suspensions); the remaining four chapters will present case material related to the private market (housing, consumer law) or individual social problems (criminal, domestic relations). Part III will present chapters which examine Unit experience according to the research questions proposed above. Its chapters will include a functional analysis of legal counsel of the poor, an evaluation of the potential of law as an instrument of social change, and a consideration of program interdependencies and social policy implications of legal service programs.

PART I

THE ORIGIN AND CONTEXT OF A NEIGHBORHOOD LEGAL SERVICES PROGRAM

CHAPTER II

THE ORIGIN AND CURRENT OPERATION OF THE LEGAL SERVICES UNIT

The purpose of this chapter is to describe the factors which led to the organization of a Legal Services Unit at Mobilization For Youth, and to trace the development of the Unit from its inception in 1964 to spring and summer of 1967 when the bulk of this research material was gathered. The chapter is divided into the following parts: (I) The need for legal representation. — The Vera Foundation proposal for a legal program, (II) A short organizational history of the Legal Services Unit, and (III) The present (1967) organization, operation, and policy orientations of the Unit.

I. The Origin of the Legal Services Unit of Mobilization For Youth

A short introductory note on the character of Mobilization For Youth as envisioned by its sponsors is appropriate here. Mobilization For Youth began as a demonstration program of research and action designed "to advance the understanding of juvenile delinquency and to combat the social problems of juvenile delinquency and youthful crime on the Lower East Side of New York and elsewhere." [1]

[1] Mobilization For Youth, "Certificate of Incorporation." January 12, 1960. (Copy) p.1. Unpublished Document Presented as Exhibit "A" of the Legal Services Unit Petition to Appelate Division of Supreme Court of New York, First Judicial Department.

Mobilization bases its activity upon what has become known as "The Opportunity Theory"which holds that the delinquent behavior of the fighting criminal or drug gang represents efforts of deprived individuals who face blocked legitimate access to success to create alternate (illegitimate), "opportunity structures with their own definitions of success and sources of respect."[1] From this premise the argument is made that:

> "no effort to prevent juvenile delinquency can succeed which doesn't provide young people with genuine opportunities to behave differently."[2]

The young must be given a stake in acceptable activities through creative, exciting and meaningful work, education, recreation and cultural programs. The variety of programs generated by this perspective is both impressive and comprehensive and include work training programs and employment services, experimental education programs, cultural arts programs for delinquents, and an adventure corps for pre-adolescent children.

The adult community is also seen as a critical determinant of delinquency and as such is an important resource for reinforcing desirable behavior patterns among young people:

> In the long run the young will be far more responsive to an adult community which exhibits the capacity to organize itself, to manage its own problems, to impose informal sanctions, and to mobilize indigenous resources for young people, than they will be to a community which must have these functions performed solely by external agents.[3]

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[1] See Richard A. Cloward and Lloyd E. Ohlin, Delinquency and Opportunity: A Theory of Delinquent Gangs (Glenco, Ill.: The Free Press, 1960).

[2] Mobilization For Youth, "A summary. A Proposal For the Prevention and Control of Delinquency By Expanding Opportunities (June 1963, Unpublished Document Presented as Exhibit "B" of the Legal Unit Petition to the Appellate Division of the Supreme Court of New York, First Judicial Department), p. 3.

[3] Ibid., p. 4.

Accordingly, assistance to community groups, and efforts to organize grass roots community organizations are initiated. Neighborhood Service Centers offer a broad range of services to families in trouble. The intent of these programs is to provide resources to stabilize the low income family and to help it to affect its environment. A commitment to research, evaluation, and the documentation of results is explicit in all the programs.

A. The Perception of the Need for the Legal Representation of the Poor

Despite the broad range of activities and the sophistication in theoretical perspective, Mobilization's impressive and detailed proposal does not anticipate either the legal ramifications of the program activities or the relevance of the legal profession to its aims. The need to involve the legal profession in Mobilization's activities became apparent after a few months. Provision of legal services to the poor is an improvisation on the original program strategy, and is, in effect, a product of lessons learned early in Mobilization's experience in the Lower East Side.

Numerous instances of a need for legal representation were quickly apparent. In one area of Mobilization For Youth activity, detached gang workers found their usefulness to gang members severely limited after arrests were made. For example, when a gang member turned his gun over to a social worker who then passed it on to the police, the worker himself was threatened with prosecution because possession of the weapon was illegal. The police argued that weapons could only be turned in during amnesties without risk of prosecution. In another case, a young boy accused of forcible rape made an involuntary confession (of statutory rape) when he claimed that he had never had intercourse with the girl (who was underage) without her consent.

The advice of a Mobilization For Youth lawyer before the court appearance could have prevented this.

In another situation, a female client of Mobilization feared that she might be killed by her common-law husband who had threatened her with a knife. She had been stabbed by him and hospitalized a few months earlier. Despite repeated appeals to the police and to the courts, she was denied police protection. After a great deal of anguish, and complicated legal maneuvering she obtained protection for one day before the husband was to appear in court on a felonies assault charge. Clearly, legal representation early in the problem could have assured this woman more equitable treatment by the police and the courts.[1]

Moreover, the MFY Neighborhood Service Centers whose purpose it was to assist families with a wide variety of problems found numerous contexts where persuasion or even the citation of the law was insufficient to defend their client's interests. Landlord- tenant conflicts would often end up in court with the social worker's client at the mercy of the landlord's lawyer. Much of the service center's work involved dealings with the Welfare Department where then, as now, it was found that in many cases negotiation, moral persuasion or appeals to the rules had little effect on case-hardened welfare workers and their supervisors. In other situations Service Center workers often could do nothing for a client whose wages were being attached for a television set overpriced by 300%. In such cases, the worker would have no recourse but to refer the client to a distant Legal Aid Society

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[1]Vera Foundation "A Proposal To Set Up A Legal Unit For Mobilization For Youth." (May, 1963, unpublished) 25 p. The material upon which the cases described here is based can be found in the Appendix of the Vera proposal.

office or an appropriate state agency with the high probability that the client would fail to pursue the case any further.[1]

B. The Vera Foundation Proposal

The need for legal representation had become so evident by early 1963 that the matter of acquiring legal assistance was brought to the attention of the MFY board. In March 1963 The Vera Foundation, a philanthropic institution well known for its legal reform interests, was invited to analyze the legal problems of MFY programs and their clients, and to submit a program proposal for meeting these needs. Three months later The Vera Foundation presented a report which both documented MFY legal requirements and set forth an outline of a program which would meet them. The Vera proposal described a legal services program which would perform the following functions for MFY:

(1) Provide direct assistance to MFY clients in certain types of cases, and refer all other cases to appropriate legal agencies;

(2) Provide MFY staff, clients, and community leaders with basic understanding of legal principles, processes and rights;

(3) Use the law as an instrument of social change.

Direct Service and Referral

According to Vera, the legal unit was to "consist of a legal director - an attorney experienced both in the criminal law and the welfare and housing areas of civil law; one or possibly two assistant attorneys; clerical help; and a pool of volunteer lawyers."[2] The director was to coordinate the unit's work and decide which cases to refer and which to handle within the unit. The proposal assumed that

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[1] Ibid.

[2] Ibid., p.2.

the unit would refer the more routine cases to the Legal Aid Society or the Consumer Fraud Bureau of the New York Attorney General's Office, and handle itself only those cases particularly pertinent to MFY interests or research aims - those with "special implications."[1]

The Vera Foundation saw the legal problems of the poor as considerable, and expected that a large volume of cases would develop. A pool of 50 volunteer lawyers to be contacted through the Young Democrat and Young Republican political clubs was proposed to meet this demand for legal services. The volunteer attorneys, to be guided by the director, were to make visits to jail or to the client's home and work out of the Neighborhood Service Centers. According to the proposal, the pool of volunteer attorneys would make possible a 24-hour call service and enable the legal unit to maintain extensive liaison with other legal services and state agencies.

Legal Orientation of Mobilization for Youth Staff, Clients and Community Leaders

An important function of the legal unit was to make the legal process and its implications for the individual comprehensible to MFY staff and to the clients themselves. The legal director was to draw up informative materials regarding an individual's "basic rights and obligations" in housing, welfare, workingman's compensation and installment buying areas of the law. Community education clinics were to be offered by the pool of volunteer attorneys, and were designed both to educate the community as to its legal rights and obligations as well as to elicit cases which otherwise might not come to the attention of the legal unit.

Law as an Instrument of Social Change

The Vera proposal anticipated that the flow of cases would bring to light

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[1] Ibid., p. 3.

"areas of the law and regulations or procedures of government and service agencies which cause difficulties for the client or make it hard for him to exercise his rights."[1] The response of the Legal Unit to these problems was, as envisioned by the Vera proposal, to research the basis of the law, regulation or bureaucratic procedure in question. Such research was to:

> (1) Delineate the options for a departmental head (of a public agency);
> (2) Provide persuasive authority for a change in a public agency policy;
> (3) Supply, in appropriate cases, the basis for instituting a legal suit to compel change.[2]

One area of research, proposed by the Vera Foundation, was the possible uses of court proceedings to compel public authorities to perform duties imposed upon them by law. Also suggested was experimentation with the use of summons in lieu of arrest, and the development of legal-medical narcotics experiments to demonstrate the value of the medical approach to addiction.

A study and proposal for a program to be operated by Vera was presented to the MFY board of directors in May 1963. Although the MFY board accepted the report, it declined the Vera offer to operate the Legal Services programs. Instead, Mobilization set out to establish a legal services program on its own.

The MFY version of the proposal is almost identical to that of the Vera Foundation. The major difference between the two is in the role which the faculty and students of the Columbia University Law School play in the MFY version. A member of the law faculty is to supervise the unit, and an "advisory committee of

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[1] Ibid.

[2] Ibid.

faculty members will act as a consulting body to the program."[1] Volunteers are to be drawn from the student body to conduct legal research and assist the unit's attorneys with cases requiring extensive preparation. Except for the special relationship to Columbia Law School, the MFY proposal incorporates the major principles, organizational format, and supporting arguments of the Vera Foundation proposal.

II. A Short Organizational History of the Legal Services Unit
A New Director

A. Initial Funding and Organization of the Advisory Committee

Mobilization For Youth submitted its program to the U.S. Department of Health, Education and Welfare, and in November 1963 succeeded in obtaining a $50,000 grant for the expenses of the legal unit until June 1964.

Once the necessary funds to initiate the Legal Services Unit had been obtained, MFY approached Columbia Law School to assist in the organization of an advisory board and the operation of the Legal Unit. Despite MFY's substantial relationships with other schools in the University, it appeared that the Law School was unlikely to accept the request because of the school's policy not to participate in social service programs. In spite of the improbability of formal participation in the program by the Law School, Professor Monrad Paulsen, a prominent member of the faculty undertook to organize an advisory committee composed of law faculty but not formally associated with the University. It was also through Professor Paulsen's efforts that the first director of the Unit, Edward V. Sparer, Esq., was hired.

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[1] Mobilization For Youth, "Proposal For A Legal Service Unit To Be Operated By A Law School In Cooperation With Mobilization For Youth" (June 1963, Unpublished) p. 4.

In September 1963 the new director spent two months on a part-time basis visiting with MFY social workers, attending Neighborhood Service Center meetings, and speaking with neighborhood residents. During this time, he acquainted himself with the dimensions of the legal problems of the poor, and began to see where legal intervention in behalf of the poor was most needed. In November 1963 three additional attorneys were added to the Unit on a full-time basis.

B. Court Authorization of the Unit

A major issue confronting the Legal Services Unit at the very beginning was obtaining authorization to offer free legal services to the poor. After a month of unauthorized practice the Unit became aware of Section 280 of the New York Penal Law which prohibits a corporation from the practice of law without fee. This provision in New York law is a legislative enforcement of Canon 35 of Professional Ethics which prohibits any agency, corporate, or personal relationship from intervening between a client and his lawyer.[1] The defense of a client's interest is held to be the paramount duty of a lawyer, and it is feared that if a corporation provides legal services to individual members or clients, the corporation's interest might, in some cases, take precedence over that of the individual client. While corporate provision of legal services is held to be a misdemeanor, exceptions are made for "organizations with benevolant or charitable purposes" as authorized by the Appellate Division of the Supreme Court of New York. Prior to MFY's application only Legal Aid and the Bar Association of New York City had been authorized to offer free legal services.

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[1]American Bar Association, Canons of Professional Ethics - Canons of Judicial Ethics (St. Paul, Minn.: West Publishing Co., 1963), p. 29.

It had been expected that the court would quickly approve the MFY application. Instead, the court requested a letter of approval from the Association of the Bar of New York City before it would accept or rule on the MFY application. The matter was then referred to the Bar's Committee on Legal Aid chaired by an attorney sympathetic to the provision of legal services to the poor.

Despite the chairman's confidence in obtaining quick approval, the committee balked. It was dubious of the value of one more program of legal assistance for the poor with a leadership of unknown competency when such services were already provided by the Legal Aid Society. Nevertheless, the court authorization of MFY's application was considered justified because of the special relationship with Columbia University Law School. The approval of the Bar committee was made conditional, as the committee insisted that the authorization must specify the intent of the Legal Unit: namely that it was a temporary activity, of an experimental nature, and would not duplicate legal services already offered by The Legal Aid Society.[1]

Application for the authorization of MFY to furnish paid attorneys or counsel, or render services of any kind to persons who are financially unable to obtain counsel was made to the Appellate Division (First Department) of the Supreme Court of New York in December 1963. The petition to the court set forth the following points:

1. The basic policy decisions of the Legal Unit will be made by a supervisory committee made up of faculty from Columbia Law School;

2. The day-to-day operation of the Legal Unit shall be the responsibility of the Legal Director;

3. All attorneys for the Unit will be members of the New York Bar;

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[1] Mobilization For Youth, "Petition To Appellate Division Of the Supreme Court Of New York," January 1964, Unpublished Petition For Court Authorization Of The Legal Services Unit, p. 3.

4. There will be no interference in the conduct of particular cases by lay members or officers of MFY;

5. It shall be a basic objective of the Legal Services Unit to supplement the work of the Legal Aid Society, not to compete with it;

6. It shall be the policy to represent only those who are financially unable to obtain counsel.[1]

The petition was approved as stated for a period not extending beyond January 1, 1968. MFY had become the third organization in New York City's legal history to be authorized to provide free legal services to the poor.

C. Early Activities of the Unit

The Legal Services Unit began its work in the secluded, protective environment of the fifth floor of the MFY administrative building at 214 East 2nd Street. The first months (November 1963 through February 1964) of the Legal Services Unit were largely spent in legal research, formulation of Unit policy, and definition of legal issues. However, as early as November one attorney became intensely involved with a rent strike movement which was being organized, with MFY assistance, in the Lower East Side. This attorney played a critical role in the organization and coordination of the legal representation of striking tenants. A second attorney at the outset was also handling an increasing number of criminal cases. Nevertheless, it was in the first weeks of 1964 that important policy decisions of the Unit were made.

Isolation from the street allowed Unit attorneys to assess the areas of the law in which they were likely to be involved. Legal research effort was a necessary antecedent to action because many areas of the law which most involve the poor were

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[1] Ibid.

little explored and relatively underdeveloped.[1] Investigation of uncharted portions of the poverty laws was also a prerequisite to the definition of issues and the setting of priorities for the Unit's activities. Moreover, extensive consultations with MFY social workers and members of the community were continued during this period. The pressure of a large caseload was not yet a problem because the Unit was not well known, cases were by referral only, and a good proportion of clients could be passed on to the Legal Aid Society.

Modifications in the Original Proposal

The petition for court authorization of the Legal Services Unit was legally binding upon MFY. As noted before, the petition specifically makes the Faculty Supervisory Committee responsible for the determination of policy, the Legal Director responsible for individual case control, and prohibits "interference in the conduct of particular cases by lay members or officers of Petitioner."[2] The petition states that the proposal submitted as exhibit "C" (The MFY version of the Vera Foundation Report) of the petition is the "context in which policy decisions must be made."[3] The organizational structure of the Unit was legally binding while the program content was not. MFY was free to move among a variety of program emphases contained by the proposal. This is exactly what occurred at the outset of the Unit's operation.

In the course of his exploratory discussions with MFY and staff from September through December 1963, the Unit Director became increasingly dissatisfied with

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[1] For an interesting discussion of how under-developed the law affecting a poor man's rights is in comparison to the articulation of the law affecting the interests of propertied classes, see Jerome Carlin, Jan Howard, and Sheldon Messinger, "Civil Justice and the Poor," Law and Society, I, No. 1 (February, 1965).

[2] Mobilization For Youth, "Petition To Appellate Division," op. cit., p. 3.

[3] Ibid.

the program proposed by the Vera Foundation. He found the proposal to be "largely devoid of significant and concrete, direct representation suggestions," and attributed this to the fact "that the personnel drawing the proposal were not lawyers and were not themselves sensitive to the wide scope of need not attended to by the Legal Aid Society."[1] Further, regarding the three major functions of the Unit as outlined by the proposal - referral to Legal Aid Society, legal orientation of MFY staff, use of law as an instrument of social change - Sparer concluded:

> The reference function did not itself justify the employment of the three or four lawyers contemplated; the training function as divorced from direct involvement could be carried out by one lawyer on a part-time basis; many basic legal problems ... existed in the community and could not be referred to the Legal Aid Society as that organization did not provide service for those problems. The most important of the Unit, therefore, was function (C) above (the use of law as an instrument of social change). The duty charge, it seemed to me, was to develop and carry out a demonstration of the value of legal service to the poor in those very basic areas where the Society was not presently giving service. The concurrent duty, I believed, to evaluate...the best form of effecting the legal rights of the poor.[2]

Moreover, Vera's emphasis upon community legal orientation programs, and the use of persuasion to effect change seemed misplaced in view of the magnitude and severity of problems confronting the Lower East Side poor.

The Unit Director decided the proper course was to establish a program which would emphasize the use of law as an instrument of social change. Within this general orientation, the legal test case was to be the primary vehicle for creating new law as well as establishing the rule of the law in the administrative processes of welfare programs. This policy orientation conforms with the original proposal which

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[1]Edward V. Sparer, Director of Legal Services Unit, "Memorandum To Members Of The Policy Committee - Legal Services Unit," March 4, 1964, p. 2.

[2]Ibid., p. 3.

contemplates "instituting a legal suit to compel change."[1]

In a significant way an emphasis upon the use of law as an instrument of change brought the proposed legal program more clearly back into the mainstream of legal adversary tradition. The Vera proposal as well as the subsequent MFY draft, contained many elements which conflict with the inviolability of the lawyer-client relationship in the legal tradition. For example, when the proposal speaks of a legal analysis delineating "the options of a departmental head" and "providing persuasive authority for a change of policy," or proposes the development of "working relationships with the legal divisions of the Welfare Department, Housing Authority and other relevant city departments," it establishes the basis of relationships which potentially could interfere with the lawyer-client relationships of Unit attorneys.

D. An Initial Policy Statement: "Poverty, Law and Social Welfare"[2]

The Unit Director's exploratory discussions with MFY social workers and clients led him to conclude that the most important legal needs of the poor involved their relations with government-sponsored welfare programs. These were areas of the law largely unserved by the legal profession, and involved issues which were generally defined in a way precluding legal intervention. The Director's January 11, 1964 memorandum, "Poverty, Law and Social Welfare," summarizes his view of the legal needs of the poor, and serves as a basic policy statement for the Legal Services Unit.

In "Poverty, Law and Social Welfare," he develops a philosophical

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[1] Mobilization For Youth, "A Proposal for a Legal Services Unit," op.cit., p.11.

[2] Edward V. Sparer, Director of the Legal Services Unit, "Poverty, Law and Social Welfare (January 12, 1964, unpublished memorandum).

justification for representing poor clients of government agencies; documents poor clients' needs for legal representation in matters of welfare, housing, civil and criminal law; and proposes several program strategies for the Unit.

The memorandum argues that the housing, unemployment insurance, relief, old-age assistance programs of the welfare state affect nearly every dimension of the life of the poor, and that the legal profession has failed either to develop a rule of law in the administrative practices of these programs by failing to provide the legal assistance necessary to the assertion of the legal rights of the poor in this area of administrative law. An emphasis central to the argument is contained in the following passage from Harry W. Jones' "The Rule of Law and the Welfare State" as quoted in this memorandum:

> The new expectations progressively brought into existence by the welfare state must be thought of not as privileges to be dispensed unequally or by fiat of government officials, but as substantial rights of which the claimant is entitled to an effective remedy, a fair procedure and a reasoned decision. Anything short of this leaves one man subject in his essential interests to the arbitrary will of another man who happens to partake of public power; and that kind of unequal and demeaning encounter is repugnant to every sense of the rule of law.[1] (Underlining added.)

Aside from asserting that welfare benefits are rights, the Unit Director argued that the "ready access to skilled legal assistance which is independent of control by the involved government agency" is a basic requirement of an "effective remedy, fair procedure and reasoned decision" to which a claimant is entitled in matters of dispute.

By way of the memorandum, the Director suggested a three-point program relating to welfare law, including the following:

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[1]Harry W. Jone, "The Rule of Law and the Welfare State," Col. Law Review 143. As quoted by Sparer in "Poverty Law and Social Welfare," op. cit., p. 4.

1. A study of welfare cases to determine whether minimum, federal and state standards of eligibility are being observed. A consideration of appropriate legal action in the event such is warranted.

2. A study of welfare cases to see "(a) whether the constitutional rights of welfare client are being violated in the course of the administration of the program; and (b) whether welfare clients are subjected in practice to different standards of law enforcement..."

3. "A broad study to determine generally, the kind of rights which do, or should rest in welfare clients." [1]

These studies would have as their initial foci, the application of the Welfare Abuse Law of New York, the non-utilization of federally guaranteed fair hearing procedures in welfare disputes, and the violation of an individual's right to privacy through the use of midnight raids and other unreasonable investigatory practices by the Department of Welfare. In each situation, initiation of litigation is assumed where appropriate.

In the housing area, the memorandum outlines the ineffectiveness of legislation designed to promote decent housing conditions for the poor (receivership, rent reduction, code enforcement, etc.), and argues that a major part of the problem is the absence of lawyers to aggressively enforce present housing legislation. The memo notes that because Legal Aid did not provide assistance in prosecuting housing violations at that time, the Legal Unit could use the housing law in behalf of the poor.

In cases involving unemployment insurance, where an adequate system of appeals existed, the Unit was to provide counsel, previously unavailable at appeal hearings, and to explore the relevance of previously unused portions of the state unemployment law.

The memo describes three needed functions for the Unit to play in the promotion of equal justice under criminal law. The first involves representation of indigent

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[1] Sparer, "Poverty Law and Social Welfare," op. cit., p. 6-8.

defendants at the police station house where traditionally the defendant is the most likely to do himself irreparable damage through inadvertent admissions or coerced statements. Accordingly, the Unit will make counsel available to youth of the MFY "upon arrest and booking at the police station." A second function involved the need for "developing a set of norms, as well as safeguards, for the determination of the dispositional issues in the post-conviction stages of criminal proceeding."[1] Here, the Unit would develop a defense attorney's role for representation of youths in probation and related post-conviction matters. The third function outlined in the criminal law is a preventive one. It is hypothesized that a properly trained attorney in conjunction with a gang worker can interact with "gang members and other youth in such a way as to increase their respect for the prohibitions of the law and to encourage their utilization of the constructive work and other opportunities made available to them by such social agencies as MFY."[2]

In consumer law, the memo proposes that the Legal Unit handle those cases which can be settled without extensive litigation and refer the more difficult cases to Legal Aid. In addition to providing representation, it was proposed that the Unit undertake a program of consumer education for selected MFY staff and local residents.

The memorandum concludes by setting forth a referral policy for civil cases which are normally handled by the Legal Aid Society. According to this statement, the Legal Unit will undertake an educational program for MFY and local agency social workers and community leaders who will refer suspected civil cases to the Director of the Legal Unit for a determination of whether the case should be handled

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[1] Ibid., p. 13.

[2] Ibid., p. 14.

within the Unit. However, the referral function is explicit: "All traditional civil law problems which cannot be settled by immediate negotiation will be referred to the Legal Aid Society."[1] In certain undefined situations, the problem will be handled within the Legal Services Unit itself. From the very beginning, a serious effort was made to avoid unnecessary and destructive conflict which could easily arise between organizations with such similar areas of concern.

In late January 1964, "Poverty, Law and Society" was approved as a policy statement by the Faculty Advisory Committee of the Legal Services Unit. As such, it sets the stage for important issues which arose in the first few months of the program.

The clear implication of legal actions being instituted against city agencies and the preparations for a challenge to the Welfare Department's administrations of the Welfare Abuses Act precipitated an effort on the part of city authorities to control the Unit's policy-making prerogatives. A conflict over the Unit's representation of "welfare abuse" cases quickly developed and led to city intervention through its representatives on the MFY Board.

In this instance, the possibility of welfare administrative practices being subjected to legal scrutiny created an awareness of the Legal Unit's potential for intervention into affairs heretofore considered within their exclusive domain of responsibility and authority. City authorities felt that representation of poor clients of city programs was a potentially disruptive influence as well as a dilution of their administrative power. Once the threat was perceived, an attempt was made to neutralize the Unit by denying it policy options which might affect city activities. This attack occurred in the form of an investigation of the Unit's program by the MFY

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[1] Ibid., p. 12.

Board Committee On Direct Operations in May 1964.

After a long, hotly contested meeting in which the outcome was often in doubt, the Committee voted to approve a Faculty Advisory Committee statement which reaffirmed the Unit's policy-making independence, case control, and its right to represent cases involving public institutions.

The resolution of this issue is of extreme importance to the Legal Services Unit. The Unit's policy-making independence has made possible, for example, serious representation of welfare clients, perhaps the area most productive of change; the defense of rent strike cases; and the effort to extend principles of legal representation into hotly contested areas such as school suspension proceedings. It is difficult to imagine how any of these forms of legal assistance could have been possible had the principles of direct representation, policy-making independence, and exclusive case control been sacrificed to some form of inter-professional "cooperation" (as was proposed by city representatives).

Moreover, in addition to facilitating forms of legal assistance to the poor otherwise not possible, the independence of the Unit reduced its vulnerability to institutional or political pressures which might arise from the prosecution of particularly sensitive individual cases.[1]

Relations with the Legal Aid Society

From the very inception of the Legal Unit to the present day, an important fact of existence for the Unit has been the presence of the Legal Aid Society, which is the oldest and largest institution providing legal representation to indigent clients

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[1]For a more detailed account of the controversy surrounding the policy-making independence of the Unit, see Appendix I.

in New York. A condition of the New York Bar's approval of the Unit was contingent upon there being no competition with the Legal Aid Society. The petition for the court authorization of the Legal Unit is explicit on this very point:

> Petitioner makes special note here of the policy decisions reached by the Legal Services Unit as follows: It shall be a basic objective of the Legal Services Unit to supplement the work of the Legal Aid Society and Not to compete with it..."[1]

At the outset, the Vera Foundation made the referral of cases to Legal Aid one of three major functions of the Legal Unit. This was continued in the MFY draft of the proposal. According to the proposal, the Legal Unit would serve as a feeder of cases to the Legal Aid Society. In some cases, especially those involving youthful defendants, MFY would perform the pre-trial case preparation (gathering and interviewing witnesses, etc.). Only those cases with "special implications" were to be handled within the Unit.

Early policy statements of the Legal Unit emphasize the supplementary nature of the Legal Unit. Sparer's first policy memorandum, "Poverty, Law and Social Welfare," argued that the Legal Unit in no way competed with the Legal Aid Society inasmuch as the kinds of cases it planned to represent were outside the scope of services normally provided by the Society. With criminal cases, where competition was a possibility, a referral policy was defined, and the Legal Unit played a supplementary role by providing pre-trial services to Legal Aid attorneys handling cases for Lower East Side residents.[2] The Unit committed itself to refer all "traditional civil law problems which cannot be settled by immediate negotiation..

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[1]Mobilization For Youth, "Petition To Appellate Division Of the Supreme Court of New York," op. cit., p. 3.

[2]Sparer, "Poverty Law and Social Welfare," op. cit., p.12.

to the Legal Aid Society."[1]

Although the Legal Aid Society was quick to offer its support to the Legal Unit when it was seeking the approval of the City Bar, relations became strained after the Unit was in operation. At the end of the first year, the referral policy had been largely abandoned inasmuch as by then it had become apparent that referring a large proportion of cases to the Legal Aid Society had serious defects.

Initially, a conflict arose over the Legal Unit's insistence upon following a case after it had been referred. Moreover, it became evident that the process of referral itself was defective inasmuch as it was one more instance of the poor being passed through a series of referrals. It was also clear to the Unit that once the community became acquainted with the referral process, local clients would tend to by-pass the first step. The Unit's experience was that about half of the referrals failed to follow through with Legal Aid.

Aside from relationships with the neighborhood there was growing dissatisfaction within the Legal Services Unit with the way some cases were being represented by Legal Aid. There was the suspicion in some of the cases that Legal Aid was not aggressive enough in defending a client's interest or that compromise was too easily accepted. Such feelings originated partly in the different orientations of the two organizations. The Legal Services Unit was committed to the use of Law as an instrument of social change. The Legal Aid Society, in contrast, was providing legal assistance as a charitable service to the indigent and thus was more committed to a service orientation than to social change. Moreover, some Legal Aid lawyers were suspected of assuming that low income victims of consumer fraud were suckers;

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[1] Ibid., p. 12.

that low income clients should be willing to accept compromise; and that legal representation was a privilege, not a right. The dissimilarities in viewpoint led to MFY interference with several cases referred to Legal Aid. Understandably this practice led to resentment on the part of Legal Aid attorneys and by late 1964 the Legal Unit stopped referring civil and consumer fraud cases to the Legal Aid Society.

Nevertheless, the capability of the Legal Aid Society to represent large numbers of civil and criminal cases permits the Legal Unit to be more selective in the cases it accepts. In this way, the Unit is able to offer higher quality of representation to its clients that would otherwise be possible. For example, a sizeable proportion of criminal defendants continue to be referred to the Legal Aid Society. Such clients are involved in cases of adult repeaters, drug sales, etc., where the capacity of the Unit to offer more intensive investigative and social work support services than those available to the Legal Aid defendant is largely irrelevant. Moreover, in domestic cases, where one side is represented by MFY, the other is referred to Legal Aid. All low-income clients are referred to the Legal Aid Society, while those who can afford counsel of complainants in fee-producing cases are referred to the City Bar Association.

The Growth of the Unit: 1964 - 1967

The Legal Services Unit began with four attorneys, one full-time secretary, and several secretarial trainees supplied through MFY job training programs. The President's Committee on Juvenile Delinquency and Youth Crime provided $50,000 for the first six months of the Unit's operation and $100,000 for the period extending

from July 1, 1964 to June 30, 1965. The expenses for the fiscal year 1965-1966 were met by a $117,354 joint grant of which the Ford Foundation provided 48.5 percent and the President's Committee on Juvenile Delinquency and Youth Crime provided 51.5 percent.[1] The added funds supported two more attorneys who joined the Unit in September 1965. At this time, the Unit moved from its location on the 5th floor of the MFY's 2nd Street office building to a more accessible street-level office on 3rd Street

In Fiscal 1966-67, a major expansion of the Unit was made possible with a grant of $572,320 from the Office of Economic Opportunity. The grant provided for seventeen attorneys, an office manager, three social workers, eleven secretaries, eight community workers, nine part-time law students, and fourteen full time law students during the summer. The grant also provided for the opening of three additional neighborhood offices and the purchase of a mobile legal unit.[2]

Just as the Legal Unit has expanded, the caseload has grown dramatically. In the first year of operation, January 1964 to January 1965, the Unit handled 777 cases. In the 1965-1966 period, the number rose to 1065 cases, an increase of 57 percent. The Legal Unit handled 2664 cases in 1966-67, and additional increase of 249 percent. At the present time, the increase in attorneys is sufficient to meet the larger flow of cases although it is an open question as to what the eventual demand for legal services will be. A more detailed breakdown of the caseload over time is provided in Appendix I.

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[1] Mobilization For Youth, "Application For Community Action Program To Expand the Legal Services Program of Mobilization For Youth" (March 15, 1966, unpublished), p. 2.

[2] Ibid., p. 7-15.

In summer of 1965, Edward Sparer became Director of the Center for Law and Poverty at Columbia University, and Harold J. Rothwax, who previously had been with the criminal section of the Legal Aid Society, assumed the responsibilities of Unit Director.

III. Current Organization And Operation Of The Legal Unit

A. The Relationship with Mobilization For Youth

Under OEO funding the policy-making independence of the Board of Advisors of the Legal Unit is made more explicit. As a condition of receiving the grant, the MFY Board of Directors had to formally divest itself of responsibility for Legal Unit policies. Appendix B of the application to the court makes the following statement:

> In order to ensure the maximum independence of the Board of Advisors of the Legal Unit in setting policy and developing a program for the Unit, the Board of Directors of MFY will be asked to specifically delegate all policy control over the Unit except as is necessary to ensure that the Unit is available to other divisions of MFY, both in response to the need for individual services and as is necessary to provide fiscal supervision and accountability over the Unit.[1]

Under the previous arrangement, even though specific policy-making responsibility was that of the Unit's supervisory committee, it was unclear as to whether the authority of the MFY Board of Directors could supercede that of the Unit's Faculty Advisory Committee in policy matters. While the court authorization explicitly prohibited interference in individual cases and placed policy-making responsibility in the hands of the Unit's Supervisory Committee (now its Board), it did not spell out the relationship between the Unit's Supervisory Committee and the

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[1] Ibid., p. 3.2

MFY Board in disputes. Fortunately, there has been no occasion which forced a clarification of this point as the MFY Board never attempted to influence the policy of the Unit.

The MFY Board is, however, responsible for the "fiscal integrity and accountability" of the Legal Unit. The Legal Director must submit a budget to the Board, abide by it, and is subject to the procedures of the MFY accounting department. Nevertheless, MFY may not, by OEO requirements, intervene in the Legal Unit's affairs on other than purely administrative or budgetary issues.

The Legal Unit relates to other MFY programs in a variety of important ways. For example, Neighborhood Service Centers are sources for a substantial proportion of the Legal Unit's clients (variously estimated from 60 percent to 80 percent of intakes). Unit lawyers specializing in criminal cases frequently enroll defendants in MFY training programs. Often a defendant's participation in such a program will be accepted as sufficient evidence of intentions to improve for a suspended sentence to be elicited from an otherwise unsympathetic judge.

Interrelationships with other MFY programs will be discussed in the chapters on substantive areas of the law and in the concluding analytic chapters.

B. Advantages and Disadvantages of the MFY Tie

Recently, the possibility of the separation of the Legal Unit form MFY was discussed by the Unit's Legal Director and the Executive Director of MFY. The main disadvantage of the relationship, according to the Unit Director was that while the Legal Unit remains a part of MFY, potential clients assume that the Unit will

not represent their causes against MFY.[1] It seems clear that should a conflict arise between MFY and community groups, it is unlikely that the Legal Unit would be called upon to prosecute the case against the MFY programs.

It was agreed, on the other hand, that the Legal Unit had many functional relationships with other MFY programs which more than outweighed the disadvantages of the tie. The Neighborhood Service Centers, the training programs, the accounting services, all made the work of the Legal Unit more effective and vice versa. According to the Unit Director, the advantages of close coordination, cooperation and mutual support between MFY programs are too important to sacrifice for the sake of complete independence.

C. Legal Services Unit Advisory Board

The Advisory Board is responsible for the policies of the Unit. It can set priorities on the cases accepted by, for example, placing a greater emphasis upon welfare appeals or de-emphasizing cases involving domestic relations. Although the Board may consider broad areas of policy, it may not intervene in the handling of a particular case. Attorneys of the Unit may bring cases to the Advisory Board for consultation, but the final decision as to how the case will be handled remains the

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[1] An example of this occurred in spring 1965 when a group of local artists and writers sought to enjoin, and then to challenge a Community Poverty Board election organized by MFY. The artists claimed that there had been little publicity or advance notice of the election with the likely result that a well organized institution such as the Catholic Church could capture the Board. Such an event, in their opinion, would mean that the Poverty Board would not represent a significant, less organized portion of the community. The Unit Director suspects that the artists' group chose to obtain the services of a local lawyer, instead of those of the Legal Unit due to the assumption that one program of MFY could not be used to challenge the activities of another.

prerogative of the responsible attorney who in turn is responsible to the Director of the Unit.

The present Board consists of seven faculty members drawn from Columbia and New York University Law Schools, two lawyers, a judge, and three local residents.[1] Three community representatives of the poor have been added to the Board in order to conform to the OEO requirements. All three are Puerto Rican women;two are active in welfare recipient groups and the third is a voluntary worker at a city mission. Four additional community representatives are yet to be appointed to bring the community component of the Board up to OEO standards which require "maximum feasible participation of the poor," both in planning and carrying out programs financed under Section II of the Economic Opportunity Act of 1964.[2] The remaining four community representatives are to be selected by the Lower East Side Community Committee or other neighborhood groups.

The Advisory Board plays more of a consultative role than that of initiating policy. The Advisory Board is a source of legal expertise and, with the addition of community representatives, a source of community feedback for the Unit. In the past the Unit Directors have defined the issues for the Board and have taken the initiative in the formulation of policies and programs. However, when a particularly difficult or sensitive issue arises, the Director may call upon the Board for advice. An example of the typical relationship between the Unit Director and the Board is the policy memorandum,"Poverty, Law and Social Welfare," which to become effective required approval by the Board. Heretofore, it has not taken the initiative

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[1] Ibid., p. 5, Proposal.

[2] Ibid., pp. 5-6, Proposal.

in formulating policy or program.

D. The Poor and the Advisory Board

The representatives of the poor on the Board offer Faculty Board members and the Unit staff an important body of direct experience. While they cannot be expected to master the intricacies of some legal questions, the community representatives on the Board often provide vivid and compelling human dimensions to the housing, welfare, and consumer problems of the neighborhood.

A common issue in providing legal services concerns the extent to which policy should be determined by representatives of the community or by members of the legal profession. Many lawyers fear that uninformed laymen, who might be unaware of legal tradition, its prohibitions and its complexities, could propel a legal services program into unwise expenditures of resources and legal talents.

These fears, however, have not been borne out in the experience of the Legal Unit to date. According to the Director, the education and expertise of other members of the Board tend to intimidate the community representatives and consequently there are problems in getting community representatives to come to meetings. This may be resolved when the community representation is brought up to full strength. Nevertheless, some aspects of the problem are fundamental. Extreme differences in education, ethnic background and economic class, as well as the consequent differences in attitudes, values and skills, obviously cannot be overcome in a short period of time.

There remains the question of Unit responsibility to its constituent population in the Lower East Side. While it may be argued that the question of community control of the Unit is not a crucial issue while the Unit is staffed by attorneys with

strong commitments to the use of law to effect social change, this, of course, could easily change as the Unit became more established and less innovative, and increasingly bureaucratic.

E. Division of Work: Professional Roles

The Attorney

The primary responsibility of a Unit attorney is to provide representation and counsel to individual clients or groups of clients. This entails the full range of activities familiar to the legal tradition. A Unit attorney will, therefore, represent his client in court, prepare or direct the preparation of the documents pertaining to the case, advise the client on his rights, legal obligation, and the consequences of alternative courses of action; prepare the client for what to expect in the legal process in court; negotiate in behalf of the client, and make referrals to Unit social workers, MFY programs, or other service programs. While the work of each attorney is formally under the supervision of the Legal Director of the Unit, in practice, with the exception of certain sensitive cases, each attorney is free to defend his client's interests as he sees fit. Intervention of the Legal Director in individual cases has, under the present director, been unusual.

Specialization Among Attorneys

The complexity and the rate of change which characterizes poor man's law requires that Unit lawyers specialize in one or two areas of practice. By concentration on a limited range of cases, each attorney is able to keep abreast of recent developments in his area of the law; acquires a familiarity with the general types

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[1] An example of such cases would be those involving damaging or sensational publicity or cases raising important constitutional questions.

of cases encountered; and develops a special competency in defending or prosecuting the client's interest.

The rapid expansion of the Unit has meant that a number of younger attorneys who require some preparatory training have been hired. Each new attorney, except for those with extensive and relevant experience, is assigned to a more experienced attorney over a period of several months. Senior attorneys also serve as consultants on the intricacies of the law in their own specialization. As the new lawyer gains in experience, the supervision is replaced by occasional consultations. One characteristic of the Unit's operation is the frequent collaboration between attorneys. However, the lines of specialization are flexible enough so that each month most attorneys will handle several cases outside their areas of expertise. In such cases, there is little hesitation in calling on the experience of another more experienced attorney.

The Social Worker

Under the OEO grant, professional social workers have become an integral part of the Legal Services Unit. Previously, when a case required social work support in addition to legal assistance, the Legal Unit would rely upon the staff of the MFY Neighborhood Service Centers (NSC). However, because of the severe pressures upon the staff and facilities of the Centers, it was often difficult to obtain the required in-depth services of a NSC social worker. It became apparent that to meet its needs the Legal Unit required a staff of social workers to handle its cases exclusively. The proposal for the OEO grant describes the social work as a functional support of legal representation in the following way:

> ... a social worker in each branch office is necessary to provide non-legal help for clients of the office who may have non-legal as well as legal problems and particularly where the non-legal problems are involved with the legal problems ... Also there are frequently cases, particularly involving the Welfare Department, which have not yet and may never, reach the stage requiring a lawyer ... where the obtaining of welfare benefits (or some other benefit) is necessary to solving the legal problem of the client (e.g., a summary proceeding by the landlord for non-payment of rent) ... having a social worker in the office who can handle the problem would considerably increase the time available to the lawyers for purely legal matters.[1]

In their several months at the Legal Unit, social workers have proved their value in a far greater variety of contexts than originally anticipated in the OEO application. They have not only dealt with the extra-legal problems of clients, but also have contributed significantly to the pursuit of the client's legal interests. The role of the social worker is a unique and fruitful one and because of its relevance to other legal programs warrants a detailed description.

Cases most commonly requiring social work services are those involving welfare, child custody, neglect, and psychiatric commitment issues. Criminal cases involving juveniles, first offenders, or those cases in which the legal action threatens to break up a family often require the intervention of a Unit social worker. The two primary functions performed by the Unit's social workers are:

1. Assistance in the preparation and pursuit of the client's legal case: investigation; carrying out of initial negotiations in behalf of the client; testimony as an expert witness in court.

2. Client-related casework: supportive activities, case follow-up, and in-depth servicing of the client's problem.

Investigation

Perhaps the most important function of the social worker from the lawyer's

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[1]Mobilization For Youth, "Application to Community Action Program," op. cit., p. 11.

point of view is that of investigation. In cases where the issues revolve around the home, an investigation of home life and analysis of the family's employment, educational, psychiatric or service needs is crucial to the preparation of the legal case. By simply verifying the facts in a case, the social worker can often refute false accusations, correct misrepresentations of the situations, or obtain new information. According to one Unit social worker, home visits are particularly helpful in welfare cases where a client is quite frequently accused of lying about his needs. The Unit social worker simply ascertains the accuracy of the client's claims. The social work supervisor of the Unit notes that the presence of a lawyer on the first contact with a welfare agency often leads to fearful, rigid responses. Consequently, Unit social workers carry on much of the direct negotiation with child custody or neglect cases. However, throughout the negotiations, it is clear that a legal action will be initiated if necessary. In cases where a solution is not reached by the social worker, the attorney on the case will inform the agency involved of his intention to bring legal action. If results are still not forthcoming legal proceedings are initiated. By handling the first round of negotiations in behalf of the client, the social workers provide the attorneys with more time for purely legal matters.

Expert Witness - Consultations

Because of their familiarity with the client, knowledge of the facts of the case, and their professional background, Unit social workers frequently are asked to testify as expert witnesses in psychiatric commitment cases, welfare fair

hearings, and child custody or neglect proceedings.[1] In such cases, the favorable presentation of the client's position from a professional social work viewpoint can effectively discount analyses prejudicial to the client which are introduced by agency professionals.

The availability of Unit social workers for consultation is another advantage of their inclusion in the Legal Services Unit. Aside from being an important source of information, the social worker offers a professional viewpoint and method of approaching problems which can be useful to an attorney who must decide how best to represent his client. One attorney, who specializes in Family Court cases (child custody, neglect, juvenile offenses, etc.) finds the social worker with whom she works a valuable consultant. The social worker in this case acts as a sounding board by reacting to the attorney's thinking about alternative solutions to a client's problems; advises the attorney about a family or client from a social work perspective; or appears in court as an expert witness. The same attorney, who was formerly with the Legal Aid Society in the Family Court, told how, in the absence of a social worker, she had to act as an amateur social worker, detective, and psychoanalyst simultaneously. In her opinion, it was a relief to have professional resources which absolved her of these roles. Clearly, the presence of

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[1]An illustrative example of the use of Unit social workers as expert witnesses is a recent case involving the efforts of a mother to get a child back from an agency in which the child had been placed due to an earlier neglect proceeding. The agency had refused to return the child and the mother came to the Legal Unit for assistance. After an investigation of the facts, the attorney in charge of the case had a social worker testify as to the strengths of the home environment provided by the mother and suggest what additional services would be needed to justify the return of the child to its mother. The action was successful.

another professional orientation and set of skills within the Unit is a valuable resource for an attorney confronted with cases involving complicated family or personal issues.

It should also be noted, however, that the differing orientations also lead to conflict over what is best in a particular case, the attorney is oriented toward the client's legal rights whereas the social worker may seek a "best overall solution" which involves some compromise of the individual client's interests. One Unit report written by a social worker describes the conflict in the following terms:

> Problems must be faced continuously which arise from the fundamental difference in the role of the lawyer and the social worker - the lawyer is the advocate for the individual client, the social worker views the individual in the context of his closest social relationships.[1]

Maintenance of Contact and Follow-up

Other important functions of the Unit social workers include maintaining contact with the client throughout the case, seeing to the many details arising from the case, and following up the settlement of the legal problem with whatever social worker's time will be spent ensuring that a client understands and fulfills the requirements of the legal process and that the client keeps the attorney informed of new developments in the case. In this way, the social worker provides an important link between the lawyer and a client.

Client-centered Functions of the Social Worker

In addition to making important contributions to the legal representation of a client, the Unit social worker plays an important supplementary role in situations

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[1]Legal Services Unit of Mobilization For Youth, "Memorandum of Social Work Practice in one MFY Legal Services Office"(June 1967, unpublished), p.2.

where the solution of the legal issues leaves serious social problems unresolved. In some cases the legal problem itself is a major crisis during which the client must be offered as much support as possible. This is particularly important in criminal cases where the defendant is involved in what seems like a life and death struggle. By explaining the judicial process to the client, and making him realize that the lawyer and social worker will aggressively defend him, the social worker can help make the experience a more constructive one. Sometimes the criminal action itself can threaten to damage the client irreparably.[1]

Social workers also provide support to young people who are just beginning to have encounters with the law. By establishing a good personal relationship with such a person, the social worker is in a position to help with the recurrent crises typical of this age group.

Extensive casework is often required to meet a client's family problems. In one case a Unit social worker had to help restructure family relationships before a legal problem involving the custody of six children could be resolved.[2]

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[1]In one such case, a Unit social worker helped Manuel, a young Puerto Rican accused of stealing from a payroll company. He was bright and ambitious, had graduated from high school, and was attending night school at a local college. Yet because of the threat of jail, with its serious consequences for his employment future, Manuel was losing hope and was threatening to drop out of school. A Unit social worker helped to persuade him to remain in school, arranged for the young man to pay back the money, and was attempting to secure the cooperation of the probation department should the Unit attorney secure a period of probation in lieu of a jail sentence. In this case, without the intervention of the social worker, Manuel might have dropped out of school, ended his struggle for upward mobility, and incurred a more severe jail sentence in the process.

[2]In another similar case, the social worker was able to bring an estranged husband back to care for three young children in a situation where the wife was on the verge of going to jail for selling narcotics. Without the return of their father, the children had no alternative to being placed either in the custody of their alcoholic,

Other clients need continuing help after the immediate legal problem has been eliminated. One social worker noted a time of much needed support comes after a mother has regained the custody of her child. Severe problems arise for the mother of adjusting to the child's need and demands and to its very presence. A social worker is in a position to provide homemaking services and advice to ease the difficulties of the transition period. Another type of case requiring intensive follow-up work involves the release of a client from a mental institution. Here the worker can help the client adjust to an unregulated existence, find a place to live, or get a job. When an institution is reluctant to release a client of the Unit (in absence of a community institution) it will often place him in the custody of a lawyer. In such cases the Unit social worker plays a key role in backing up the attorney.

The kinds of cases described above require time-consuming involvement which is beyond the resources of the Unit's attorneys. They necessitate assistance in serious non-legal problems to which legal representation is irrelevant, and clearly demonstrate the importance of the social work component to the provision of comprehensive legal services to the poor.

Secretarial Staff

The secretarial staff of the Legal Unit helps relate the Unit to the neighborhood. All but two of the fourteen secretaries and receptionists speak Spanish and

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senile grandmother or in a public institution. The solution became possible only after a thorough investigation of the situation and subsequent intervention by a social worker. An attorney, lacking time to investigate the alternatives in the home situation, might be forced to choose between two such undesirable alternatives.

come from Puerto Rican backgrounds. Even more important, three-fourths of them now live or used to live in the Lower East Side. Over half of the present (June 1967) secretarial staff was recruited through the MFY job training program. After a training period of about three months, the trainees who had best handled the requirements of the work were hired on a full-time basis.

There is widespread agreement in the Unit on the value of having a predominantly Puerto Rican secretarial staff. Drawn from the neighborhood, the secretaries know the community and are known to it. The presence of a Puerto Rican staff which includes three attorneys is thought to make it easier for a Spanish speaking client to make use of the Legal Unit by facilitating the handling of his problems and offering him an environment which minimizes his language and cultural difficulties.

The receptionists are responsible for filling out a simple intake records form for each client, referring the client to an attorney, and for all other clerical work of the Unit.

Law Students

For the past four years the Legal Services Unit has hired law students in the summer to conduct research projects. The OEO grant for this expands this program to include hiring students on a part-time basis during the school year as well as in the summer. The law students conduct legal research for the staff attorneys; they assist in the drafting of memoranda of law and briefs; they advise clients on routine matters; and in certain cases, in presence of a staff attorney, they represent clients in court.

Vista Volunteers

The Legal Services Unit is fortunate in having the services of six Vista

volunteers and two Vista lawyers. One of the lawyers acts as a staff attorney with the full range of responsibilities including a major share of the mobile unit work; the other Vista attorney assists Unit attorneys at a branch office. The remaining volunteers assist the social workers with investigation of cases; serve subpoenas and other legal processes; file court papers for the Unit; and conduct community research.

The Style of the Legal Unit

The Legal Services Unit seeks to minimize the social and physical distance between it and its clientele and emphasizes respect for the individual. The social distance is reduced in part by the Puerto Rican secretarial staff; in part by the Puerto Rican attorneys in the Unit; and in part by the way clients are treated. Each attorney has a separate office where the client can be interviewed in private. Translators are provided when necessary. The aim is to hear each client out and each is encouraged to tell his story. One Unit social worker expressed amazement at the willingness of the Unit attorneys to hear out all clients. The worker noted that occasionally individuals with paranoic delusions would seek out the Legal Unit; attorneys would justify meeting with such clients by asserting that every person has the right to be heard and have his legitimate interests represented. Free legal representation for the poor is considered a right and not a charity. Every client receives an explanation of the law in his case, is told what to expect, and is advised on alternative courses of action.

The Legal Services Unit attempts to remain accessible at all hours. Attorneys are available on call twenty-four hours a day, including weekends. The offices remain open until six or eight in the evening, and it is not uncommon for Unit

attorneys to stay even later.

Under the 1966-67 OEO grant the Legal Services Unit has established two branch offices, is planning a third, and has purchased and operated a mobile legal unit. Each branch office has three attorneys, a social worker, a community worker, a secretarial staff, two law students, and a MFY Neighborhood Youth Corps trainee. The location of the branches is intended to serve the several distinct ethnic neighborhoods found in the Lower East Side. One branch office is located in the St. Marks area which is predominantly Ukranian, the other is on Delancey Street in the midst of a large Puerto Rican community. A third office is planned for the Bowery-Chinatown section of the Lower East Side which is a Chinese and Orthodox Jewish neighborhood.

The mobile unit is a self-propelled vehicle complete with a desk for a typist-receptionist, a work table for an attorney, and a couch for clients. It is parked in a highly visible and accessible location where it remains for a week before moving on to another location. Simple problems are handled at the mobile unit; clients requiring more extensive representation are referred to the Legal Unit's main or branch offices. The diffusion of legal services is based on the assumption, as one observer phrased it, that: "the poor, because of ignorance, fear, lack of funds or apathy, will not venture out of their neighborhood to get legal help. The solution is to bring the law office to them."

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[1]Norman A. Olch, "Representation in Criminal Cases by a Neighborhood Law Office: A Study of the Legal Services Unit of Mobilization For Youth" (January 1967, unpublished student paper), p.2.

F. Policy Orientations of the Unit

The Use of Law as an Instrument of Social Change

Emphases upon the need for effecting change in institutions, laws, and economic practices affecting the poor, and upon the role the law might have in promoting such change, have been characteristic of the Unit since its conception. Social change is an important Unit goal and is based on the recognition that a de facto bias against the poor as a class exists in the law, both as it is written and practiced. Many areas of the law (Welfare rights, Tenancy in Public housing) are poorly developed because few cases have been tried in them. Indigents rarely have the knowledge or resources to challenge the determinations of the institutions upon which they depend. Moreover, many legal protections, procedures for the redress of wrongful decisions, go unused because such remedies are unknown to a large majority of the poor and because legal resources for pressing claims or grievances have been unavailable.

A commitment to the use of law as a tool for social change has continued throughout the experience of the Unit. The first activity of the Unit was to identify the areas of law which required legal intervention in behalf of the poor. Soon thereafter, the unit challenged the improper application of the "Welfare Abuse" by the New York City Department of Welfare. Since that time the fair hearing has been effectively used within the Welfare system to strike down unfair, illegal or arbitrary rulings. Throughout the Unit's activities there is the assumption that opportunities to effect change in the law or institutional procedure will not be foregone. Indeed, the broad range of legal problems brought to the Unit by indigent clients is indicative of the need for change in the law, in public administrative practices, and

in the behavior of unscrupulous landlords and commercial establishments. This practice led to resentment on the part of Legal Aid attorneys and by late 1964 the Legal Unit stopped referring civil and consumer fraud cases to the Legal Aid Society.

Nevertheless, the capability of the Legal Aid Society to represent large numbers of civil and criminal cases permits the Legal Unit to be more selective in the cases it accepts. In this way, the Unit is able to offer higher quality of representation to its clients than would otherwise be possible. A sizeable proportion of criminal defendants continues to be referred to the Legal Aid Society. These clients are involved in cases of adult repeaters, drug sales, etc., where the capacity of the Unit to offer more intensive investigative and social work support services than those available to the Legal Aid defendant is largely irrelevant. Moreover, in domestic cases where one side is represented by MFY, the other is referred to Legal Aid. All low-income clients are referred to the Legal Aid Society, while those who can afford counsel or complainants in fee producing cases are referred to the City Bar Association.

Tests, Caseload Volume, and Social Change

An important shift in the policy of the Legal Unit occurred in the first year. At the outset the legal test was seen as the primary instrument for effecting institutional and social change. The policies proposed in "Poverty, Law and Social Welfare" are predicated upon challenging the legality of institutional and private malpractices by means of test cases. However, the first Unit Director recalls that by the summer of 1964 it was apparent that winning a test issue was not sufficient to insure a change in practice. It was possible to win a test in welfare law and have

the Department of Welfare handle all other uncontested cases as if nothing had happened. It was clear that to enforce a change in administrative practice, as in other legally guided behavior, it was necessary to prosecute a volume of similar cases to back up the change. It took approximately one hundred cases and nine months, after winning the first test, to force the Department of Welfare to implement a change in its application of Section 139a ("Welfare Abuse") of the Social Welfare Law.

By fall of 1964, the Unit was no longer singling out welfare cases for tests, and rejecting all others; a greater volume of welfare cases was accepted and representation has grown steadily since that time. Presently, the use of caseload volume in conjunction with test issues is an important strategy of the Unit. With the addition of more attorneys to the Unit, representation of large numbers of cases on a given issue was possible. The current Legal Director of the Unit, Harold J. Rothwax is a persuasive advocate of the use of a large caseload to put "unremitting pressure" on whatever individual or agency is guilty of the targeted malpractice. The fact that tests must be backed by a large volume of cases to enforce change is one of the more important lessons of the Legal Services Unit's experience.

Equal Justice Under the Law

Much of the Unit's work can be described as making equality under the law a reality. The justice of the law itself is not in question; the law is simply made to work in accordance with the professed egalitarianism of this country. Improved representation of criminal defendants, defense of indigents in consumer fraud cases, securing an individual's rights under the law in housing, welfare benefits, or unemployment insurance payments are all forms of equalizing the position of poor

with the more affluent classes vis-a-vis the law. Despite the importance of social change in the outlook of the Legal Unit, the bulk of cases it handles are not tests and do not result in changes in the law or administrative practice. These are the cases where the impact goes no further than the individual client; they are cases where comprehensive legal representation ensures that the indigent client receives as equitable treatment as possible within the limits of the law. While the provision of service, the realization of equality under the law, is not the over-arching goal of the legal unit, it is the goal which is the most descriptive of the greater part of the Unit's activities.

Total Law: A Strategy for the Representation of the Poor

To provide comprehensive legal services and to practice "Total Law" are the same thing: a client's social and legal problems are dealt with simultaneously, without what is often an artificial distinction between the two areas of concern. The intent of a "total law" emphasis of the Unit is to provide a service capable of responding to the full range of a client's problems.[1] It has been the experience of the Unit that a client's legal difficulties are frequently surface manifestations of social or economic problems which if left untouched would likely be the source of

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[1] A good example of this involves the case of a woman who had received a $500 grant from the Department of Welfare through Unit efforts. Inasmuch as this woman had neither family nor friends to assist her with furnishing her apartment, the possibility of being defrauded by an unscrupulous salesman was a serious one. To meet this danger a Unit Vista volunteer spent two days advising and shopping with the elderly woman. The Unit's responsibility to the client did not end with the $500 grant, but included protecting her against sharp business practice.

recurrent legal encounters.[1] For this reason the Unit attempts to ascertain for each client whether social services in addition to legal assistance is required. The investigation of a particular case often reveals social and legal problems not indicated by the initial interview. Social work assistance makes possible an attack on the social origins of a legal problem.

Preventative Law - Community Education

The Unit seeks to prevent the occurrence of legal problems by educating the community to its legal protections and by encouraging the use of legal resources to enforce these protections. Here the attempt is to teach the Unit's clients to recognize situations where the intervention of an attorney would be relevant. The neighborhood is encouraged to make use of the Legal Unit before a problem becomes serious or as soon as a legal problem is suspected.

Unit attorneys meet several times a week with community groups, local agencies, the MFY staff or MFY programs. The Unit also prepares explanatory legal materials for the neighborhood. An attorney in charge of housing cases, has

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[1]The case of Arturo Gomez is a good illustration of what is meant by "total law." Arturo is a father of eight children, is employed by the Transit Authority, and lives in public housing. All of this was abruptly threatened one Saturday night when he drank too much, brawled with a policeman, and was arrested. Because of the arrest, Arturo was threatened with the loss of his job, the expulsion of his family from public housing and the probability of having to go onto public welfare. The Unit attorney in charge of the case contacted the Transit Authority to prevent Arturo being fired, spoke to the Housing Authority to prevent the eviction, and won the criminal case. Subsequent investigation by a Unit social worker revealed that Arturo had recently attempted to start a small grocery store and had lost $6,000 in the process. He began drinking heavily under increased pressures of supporting a wife and eight children. His fracas with the law was clearly related to the failure of the store and subsequent financial difficulties for his family. Consequently, a Unit social worker began to work with Arturo and his family in an effort to help him get out of debt and improve financial prospects. Although such an accomplishment would be by no means easy, it is the only solution which would be likely to preclude a recurrence of entanglements with the law for Arturo.

drawn up a widely used booklet which explains the law, tenants' rights and legal remedies in private housing. A wallet card with instructions on what to do upon arrest was distributed to neighborhood youths. It is felt that an informed community is a prerequisite to enforcing existing rights and creating the legal pressure necessary for social change.

PART II

CASE MATERIALS IN THE PRACTICE OF POVERTY LAW

CHAPTER III

THE PRACTICE OF POVERTY LAW: THE CONTEXT

Introduction

The purpose of this chapter is to set forth the context of the legal and institutional environment within which the practice of poverty law takes place. The discussion will consider the general character of the law which defines both the problems encountered by a legal representative of the poor, and the options open to him. The chapter will consist of two parts. The first will explore the forms of bias in the law which affects the poor, and consider how such biases are translated into the legal relationships between the poor and private individuals or organizations. Part II will examine the nature and the context of the relationships extent between the poor and the public service institutions. Of particular interest here is the way in which recipients of public benefits are dependent upon public servants. Equally pertinent to this discussion is the bias in public administrative procedures which both determine a person's eligibility and provide a structure for the appeal of adverse decisions.

An Introductory Note: Legal Rights and Means of Enforcement

What seems to be a simple, almost tautological point underlies the whole of the Legal Services Unit experience with providing legal counsel to the poor. It is simply

that there is no such thing as a legal right without the means of enforcing it. For example, the Bill of Rights has little effective meaning if an individual is denied the means of enforcing the rights provided therein.[1] An individual's right to privacy, or his right to freedom of speech are of little functional consequence if they can be denied to him, and if he has no way to ensure their observance. Thus, to protect his legal rights and legitimate interests the individual must be able to enforce them.

The enforcement of legal rights requires what is known in the legal tradition as party initiative.[2] This notion refers to the fact that for the legal system to be brought into play in the defense of individual rights or legitimate interests, it must be moved by the action of an aggrieved party. By its nature, the legal system remains inert until actuated by such a party. Thus, it is up to the individual who has been wronged to initiate action through the legal system.

Party initiative, in turn, requires the presence of two conditions: (1) a knowledge of the law or of legal rights to the extent that their violation can be recognized, and (2) access to the means necessary for

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[1]This argument was repeatedly stressed by Unit attorneys.

[2]The following discussion is based upon concepts elaborated by Jerome Carlin, Jan Howard and Sheldon L. Messinger in their "Civil Justice and the Poor", found in Law and Society, Vol. 1, No. 1, February 1966, pp. 9 - 28.

the defense of rights through the legal system. A person must know he has certain legal rights, and must have some way of enforcing compliance with these rights through the legal system. In the context of the law, the enforcement of an individual's legal interest requires the assistance of a lawyer because the effective use of the legal system requires a highly specialized body of knowledge and experience not available to the average individual. Simply because he lacks financial means, a low income person cannot be expected to acquire the legal expertise necessary to defend himself. Consequently, without access to a lawyer, the poor have no effective legal rights except those which are observed on a voluntary basis. In the absence of a simple knowledge of rights and the access to legal counsel, both necessary to make party initiative feasible, the poor are subject to a wide variety of abuses. Equality before the law is possible only if all individuals are equally capable to take the initiative in defense of their legal rights. Thus, the absence of legal representation for the poor permits the development of a wide variety of illegal practices which exploit the relative helplessness of individuals who cannot render effective the protections of the law.

The issue of party initiative is discussed here without reference to the problem of an individual's attitude toward the use of the law. The point here is that for a legal right to be a reality, a person must

first know that his situation raises legal issues, and that it is amenable to legal action. Further, he must be willing to initiate such action in the defense of his interests, and finally be able to secure the assistance of legal counsel. While the Legal Services Unit meets the last of the pre-conditions, the availability of legal resources does not, however, resolve the need for a community knowledgeable of what constitutes a legal problem. Nor does providing legal resources for the poor in itself necessarily meet the problem of attitudes toward the use of the law. As will be seen in later chapters other MFY programs, in addition to the Legal Unit, assist lower East side residents to identify problems susceptible to legal action.

I. The Character of the Law Affecting the Poor

While the development of neighborhood legal assistance programs in part meet the requirements for effective party initiative regardless of income, there are forms of bias in the substantive content of the law as well as in the administration of legal process which make it difficult for the poor to obtain equal justice. According to Carlin, Jan, and Messinger in "Civil Justice and the Poor" the law discriminates against the poor in the following three ways: (1) by favoring certain parties over others, (2), by creating separate and unequal legal systems for the poor and minority groups; (3) and by permitting de facto socio-economic inequality to be translated into differential judicial

results.[1] Each form of bias in the law is the source of difficulties for the poor and in no small way contributes to the perpetuation of poverty.

Favored Parties

The law is the end product of many contending interests and to the extent that one set of interests can prevail over another, the resultant legislation is written in such a manner as to protect the dominant set of interests. It is well documented that the poor are the least well organized and articulate for projecting their interests into thepolitical arena and ultimately into law. As a consequence, over centuries of legal evolution the law had come to favor certain groups of interests over others. In general, this has come to mean that the law protects and enhances the rights and interests of the economically ascendant over those of the less privileged.[2] Carlin, et.al. describes the favored parties bias of the law in the following way:

> The law favors certain parties or roles in a relationship; and the poor are less likely to be found in these roles. Thus substantive and procedural law benefits and protects landlords over tenants, lenders over borrowers. According to traditional legal doctrine, the tenant's obligation to pay rent is independent of his lessor's covenant to repair and maintain the premises. Thus, unless there are statutes to the contrary, the tenant cannot withold rent as a means of compelling

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[1] Ibid., p. 22-29.

[2] Ibid., p. 12.

> landlord compliance with health and safety codes and contractual obligations.

For example, a basic tenet of the law regulating commercial transactions places the onus upon the buyer to beware of the fraudulent seller. The effect of this commercial principle is to place the low income consumer at a serious disadvantage. He is the least sophisticated shopper, rarely knows his legal rights, and is the least able to assert these rights in the legal system. Often he unfortunately believes the solution to being cheated is to stop payment. Moreover he rarely has the time or money or knowledge to initiate legal action against the seller[1]. The frequent end-result of this imbalance is garnishment of wages, loss of income and occasional loss of job.

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[1] Complicating the disadvantaged state of the low-income consumer, the "buyer beware" principle opens the way for a host of fraudulent practices:

> The poor are often a clearly defined target for unscrupulous sales techniques. Their capacity to protect themselves from fraud, deception and misrepresentation is usually limited -- they may be unaware if being defrauded; they may be unaware of their rights; or they may be reluctant to instigate corrective action. Their inaction is regarded as satisfaction.

President's Panel on Consumer Education for Persons with a Limited Income, Report: The Most for Their Money, p. 2. As quoted in Patricia M. Wald, Law and Poverty (Washington: National Conference on Law and Poverty, June 1965), p. 24.

There are examples of favored party bias in procedural law as well. In New York City where, as will be detailed later, the tenant's right to decent housing is better protected than elsewhere in the United States, procedural requirements for withholding rent (when basic services are not provided) are biased in favor of the landlord. Thus "New York requires a violation of record to provide essential services. This requirement may subvert the rights of tenants because of the difficulties involved in establishing an official record of violation."[1] Merchants as well have procedural advantages. They have access to attorneys and marshalls to carry out legal debt collection actions; they are not required to make an appearance in court whereas the consumer must frequently take several days off from work if he learns of the action at all.[2]

Favored party bias can also be found in the public sphere where public housing tenants can be evicted without stated cause, where school children can be suspended without the opportunity to present their side of an issue. The notion of favored party status is also applicable to

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[1] Carlin, et.al., op.cit., p. 15.

[2] This discussion is based on David Caplovit's, The Poor Pay More (New York: Glencoe Free Press, 1963), p. 151. See also Chapter X on Consumer Fraud for a description of the non-service of court process which nearly automatically results in default judgement, wage garnishment, and frequently a loss of a job.

many appeal procedures which in effect operate to protect the public institution or the public servant to the disadvantage of the indigent appellant. Although an exhaustive survey of instances of favored party bias of the law is not possible here, it seems apparent that it is a pervasive characteristic of the law affecting the poor. That this bias is so prevalent is a function of the nature of the favored parties bias: the law accords certain advantages to particular roles and the poor rarely occupy these roles.

Dual Law - De Jure Denial of Equal Protection

A second source of bias in the law which works to the disadvantage of the poor is the existence of dual systems of law which provide one set of remedies, benefits, or protections for middle or upper middle class individuals and a wholly different set of principles and procedures for indigents. This form of legal bias involves the development of two separate systems of law each for a different socio-economic class. The consequence of this is a form of legal second-class citizenship for lower-class whites, Negroes and other less privileged groups.

One area where the dual nature of the law is particularly apparent is the law of domestic relations. Jacobus ten Broek, a noted student of family law, argues that there are two systems of law relating to families, one which is applied to the poor and yet another relevant

to families with ample means. The rules differ with respect to property relations, the initiation or termination of marriage relationships, and support responsibilities for relatives.(1) ten Broek's contention as presented by Carlin, et.al., is that

> The family law of the rich is 'civil family law' created, developed and administered by the courts - not designed in either substantive provision or judicial administration to meet the needs of the poor. The family law of the poor is public law, administered largely through state and local non-judicial agencies and more concerned with minimizing costs than maximizing the rights and interest of the recipients.(2)

Other areas of government activity exhibit a similar dichotomy. Reich argues that the government has one set of rules for providing benefits to the rich and another for the poor. Moreover, he contends that entitlement to government largesse is less likely to be protected as right when the recipient is poor and relatively powerless.(3) In contrast to favored party bias which largely was a function of a person's role in a relationship, de jure bias applies different laws to the same roles of presumed equals. While certain roles such as father, mother, school child, etc. are similar for rich or poor alike, the law

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[1] Carlin, et.al., op.cit., p. 18. See also the discussion of rent strikes in Chapter IX.

[2] Ibid., p. 18.

[3] C. Reich, "Individual Rights and Social Welfare: The Emerging Legal Issues," Yale Law Journal 74 (1965), 1245., as discussed in Carlin, et.al., p. 19

is discriminatory in that different legal principles are applied to such roles on the basis of an exogenous income differentiation.[1]

De Facto Bias

A third form of bias in the law finds its source in the differential capability of individuals to make full use of the protections and benefits of the law. In contrast with de jure bias where separate legal systems affect the same categories of individuals, de facto bias is found in situations where the law may treat all groups equally, but where by virtue of the lack of economic resources or information, certain groups may not be able to obtain equal justice before the law. One observer suggests that in some instances where the rich and the poor are dealt with according to the same legal principles, the advantage of the wealthy is increased.[2] The de facto bias in the law is perhaps the most common characteristic which discriminates against the poor:

> "de facto bias is pervasive because so many correlates of poverty such as indegency, ignorance, and insecurity, can serve as barriers to justice. In essence it is bias by default. It represents a failure of the law to take into account the differential capacity of rich and poor to realize the protection and benefits which the law provides."[3]

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[1] Ibid., p. 18. The authors note that where it can be shown the rich and poor are not equal although they play the same roles, the argument that dual law bias is per se objectionable loses some of its force.

[2] An argument proposed by E. Ehrilch, "Fundamental Principles of the Sociology of Law," 238 (1936), as paraphrased by Carlin, et.al.,op.cit., p. 21.

[3] Ibid., p. 21-22.

Examples of the de facto bias can be found in consumer housing, domestic, and criminal law; in fact, it exists in nearly every area of the law affecting the poor. A recently repealed New York divorce law provides a good illustration of de facto bias. Under the old law it was only possible to obtain a divorce on the grounds of adultery. While in some cases, this provision led to staged adulterous "affairs" for the purpose of a divorce, its general effect was to encourage those with sufficient means to obtain out-of-state divorces. While the same option was theoretically open to the poor, it was financially impossible. Consequently, the poor had to settle for legal separation or consensual unions. Thus, while the law applied equally to all New York residents, in actual practice, the availability of a divorce was a function of income. Only now is the morass of legal separations, consensual unions, "desertions", illegitimate children resulting from the limited options open to the poor under the former law being worked out.

Consumer law also exhibits a de facto bias in the fundamental "buyer beware" principle which assumes that consumers are essentially equal in the exercise of careful choice. However, as already noted, all buyers are not equal and as will be shown in the chapter on consumer fraud, the poor are thus particularly vulnerable to sharp business practices. It may well be that commercial exploitation is a correlate of poverty, and that efforts of legal services to combat fraudulent practices will meet limited success until the lack of sophistication, social isolation, physical immobility associated with

poverty status are eliminated; until poverty itself disappears.

Another illustration of de facto bias is found in the bail system in criminal law. The practice of imposing bail requirements in many cases not only deprives a low-income defendant of his immediate freedom, but has been shown to greatly affect the defendant's chances for a successful defense of his case. As will be discussed in greater detail in Chapter IX which considers the unit's criminal law practice a defendant who is released on bail is better able to gather witnesses and other information for his defense, retain his job, and otherwise establish the basis for a more sympathetic treatment by the court. Obviously a defendant who is not able to develop his case in this manner cannot obtain judicial consideration equal to the defendant who can.

These three forms of bias in the law establish important conditions and tactical requirements for the work of the legal Services Unit of Mobilization. In an important sense, much of the work of the unit is simply overcoming the discriminatory effects of the law which result from de facto, de jure or favored party biases of the law. The functions which legal representation can play for the poor are, in part, a product of the legal biases discussed here.

II. Public Institutions and the Poor

Many aspects of a low income person's life are directly affected by public institutions. Moreover,

the influence of public programs upon his life extends from the time he is born until he dies. One observer describes the pervasive impact of public activities on lives of low-income people in the following passage:

> From birth to death, decisions of the most vital significance to poor persons are made in the offices of governmental agencies.....Depending on its admission policies an average poor man will probably be born in a city hospital, and engage in his first organized play in a public nursery. The public school system will later determine whether he gets an education and what kind. The local housing authority will determine whether he will be admitted into or evicted from what may be the only available decent low income housing; by the time he is a teenager, the poverty program will determine whether he is eligible for job training; if he gets a job and loses it the unemployment office will determine what kind of between-job-assistance he will get; if he later falls into severely hard times, whether or not his wife and children will eat will depend on the decisions of the local welfare department; in old age his security will essentially be that given by the social security office; even the nature of his funeral may depend on whether or not his family is eligible for a lump-sum death benefit from the Federal Government.[1]

Because of its encompassing influence on the lives of the poor, the environment of public institutions forms the context within which much of the legal representation takes place. Environment here includes those factors which generate many of the problems encountered by the

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[1]Edward V. Sparer, "The Poor Man's Lawyer and Governmental Agencies," Conference Proceedings: National Conference on Law and Poverty, (Washington: U.S. Government Printing Office, June 1965), p. 37.

by the poor in their relations with public institutions, which also create opportunities for legal intervention, and which limit the options open to the legal representatives of the poor. Aspects of this environment which are of particular importance are: inadequacy of resources committed to public programs, stringent and harshly applied eligibility standards, the nature of the dependency relationships between public service givers and their client-receivers, the unchecked exercise of discretion in public decision-making, and de facto bias in administrative procedures of public programs. Such aspects of public service programs determine the kinds of cases brought into the Unit. The following discussion is intended to provide an introductory framework for the chapters which analyze the Unit's work in important areas of poverty law. The object is to establish a general perspective within which to consider the specific problems of the poor in their dealings with public agencies and in this way to provide a framework for the case materials presented here.

A. The Financial Crisis of Public Institutions

The crisis facing many of the public institutions responsible for serving the poor has been well-documented and does not need to be repeated here. Pertinent to the discussion are the effects of inadequate resources upon the quality of service that public institutions are able to provide their clients. Throughout the practice of the Legal Unit the problem of the scarcity of public resources

recurs. The severely limited resources available to public programs shows up in many ways. It is reflected in high welfare caseloads, overcrowded schoolrooms, and high rates of turnover among poorly paid, overworked probation officers and school teachers. It is reflected in the lack of adequate community-based programs to meet the needs of juvenile offenders, in the extremely high case loads of Legal Aid attorneys, in the courts, in the lack of adequate psychiatric treatment in correctional institutions, and in the limited supply of low-income public housing units.

Public indifference or antipathy to the needs of the poor has created an economy of scarcity which limits the quality of service that public institutions are able to provide and often has led to the imposition of strict eligibility criteria in many programs. Where the poor are concerned, the emphasis appears to be more upon saving money than in meeting fundamental human needs. Thus,in welfare programs caseworkers frequently go to extreme lengths to affirm and reaffirm a client's eligibility. The public housing administrators are forced to reject large numbers of eligible applicants because the demand for units so exceeds the supply. Frequently because facilities are so over-crowded suspended students must wait up to six months before being placed in a special school for students with discipline problems.

These and many other dimensions of the poverty of public programs both generate unit cases and constrain the alternatives open to unit attorneys. Thus,

a Unit attorney may seek to prevent the suspension of his client from school simply because there is no alternative but a long period of enforced idleness; or the attorney may work to keep a child from being institutionalized because of the paucity of therapeutic resources available, or an attorney who represents public housing applicants or tenants threatened with eviction must consider the context of a very limited supply of units. The scarcity of resources in the public economy is perhaps the most important determinant of legal issues involving public institutions.

B. Problems of Dependency in the Welfare State

As noted at the outset of this discussion, the poor depend upon a wide variety of public programs for many services which hold a crucial significance for their well-being. In each instance, the individual is subject to the decision-making responsibility of a public servant. For example, the welfare recipient is subject to the judgement of a case worker, a student to his teacher, a parolee to his probation officer or an unemployed worker is subject to the decision of the local unemployment insurance office. These relationships can be multiplied throughout public programs which serve the poor. The essential character of the relationship is dependency. The primary issue which arises out of public dependency is whether public benefits are to be treated as legal rights or whether public benefits can be conferred at the pleasure of the

responsible agency.[1] Issues which involve the arbitrary or unreasonable exercise of discretion in the determination of a client's eligibility for public benefits are found throughout the Unit's cases which relate to public institutions.

The problem of discretion is accentuated by the often highly disadvantaged position of the client of a public agency. Typically, the public client is poorly educated, has little political or organizational sophistication, has a language problem, is a member of a minority group, or is a recent migrant to the city. The recipient has a serious de facto disadvantage in asserting his rights or demanding fair treatment as he has few of the social and educational resources necessary to deal with responsible government employees on an equal basis. Moreover, the poor, as a group, have little influence on the political processes which determine the character of the institutions which ad-

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[1] Richard A. Cloward and Richard M. Elman, describe the problem of discretion in the following terms:

"A measure of discretion, it should be noted is vested in all who function in bureaucracies, whether public or otherwise, for no set of policies and rules can be so precise and inclusive as to provide firm guidelines for all the varied circumstances presented for decision. In effect the task of explicating the meaning of statutes then falls upon various administrative bodies, and thus the political struggle shifts from the legislatures to the arenas of administrative decision making. The struggle to control the discretion of the administrator - and that discretion expands with the very ambiguity of his mandate - is, from the vantage point of the low-income person, a rather uneven one. If a continuing community wide controversy ensues over the decisions promulgated by governmental social welfare administrators, he, at least is rarely a party to it." As quoted in Mobilization for Youth, "Neighborhood Service Centers," (New York, 1967, unpublished draft), pp. 9-10.

minister public programs. As a consequence the low-income person, according to one observer becomes:

> nothing so much as a refugee seeking escape from a battle that constantly ebbs and flows and shifts from one arena of his existence to another. Since the recipients are the objects of what is usually defined as public charity, the most punitive methods of policing and judging can and often do enjoy public sanction. And if low-income people lack the collective political power that would enable them to join the battle over the kind of social welfare system our society is to have, it must also be said that they lack the resources as individuals to deal day by day with the governmental functionaries who police and judge them.(1)

The public client often lacks perhaps the most elemental resource for judging whether his rights are being observed. That is, frequently he has no access to the rules and regulations to which he is subject. Thus, the applicant for public housing may never learn why he was not accepted; or a public welfare recipient whose benefits have suspended may not know the reason for the termination. In welfare cases few of the recipients are aware of the basis upon which they receive or are denied benefits. Hearings before the New York State Board of Social Services in July 1967 revealed for example:

> Very few applicants or clients are aware of their rights. Most of those who are seem to

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[1] Ibid., p. 10.

> have obtained the information through clients or through lawyers. Clients do not have access to the rules and regulations which would permit them to find out if an agency official is violating department policy. They do not have access to the budget schedules which would allow them to find out how much money they are entitled to receive.[1]

Further, the welfare client is often not informed of the right to appeal adverse decisions and is usually unaware of the procedures and protections provided to him by law. In the absence of such information, the public client has no basis upon which to assert his right to program benefits.

Moreover, aside from his disadvantaged position with respect to sophistication, experience and knowledge of his rights, the client often faces a diffuse and complex bureaucratic organization where there is no clear locus of authority for dealing with his case. He has little idea how decisions are made, and who is the final determinant of a decision which may have a profound effect on his life. Typically the decision which determines his fate is reached at an unseen supervisory level and serves only to increase the client's sense of helplessness.

In addition, there is a very personal dimension to the dependency relationship of a client of a public program. Here the client is directly dependent upon a public

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[1] Metropolitan Applied Research Center, Inc., "Welfare Hearings Summary," (New York: Sept. 1967, unpublished report), p. 4.

giver for a crucial element in his existence - a welfare check, unemployment compensation, a decent housing unit in a public housing program and because of this relationship is subject to the service giver's discretion. For example, he may, if he gets on the wrong side of his public housing manager, be subjected to an eviction proceeding, or, if he has a conflict with the welfare worker may be suddenly cut off from benefits, or he may not be able to have his household brought up to minimum standards or obtain his winter clothing check. This leads to various strategies for currying the favor of the service giver who otherwise may terminate the client's benefits. The potential of this relationship for the humiliation of the client should be abundantly clear. Welfare recipients frequently complain of the abusive treatment they receive at the hands of welfare workers, and of the personal indignities required of them by welfare regulations.[1]

Many of the same aspects of dependency can be found in the private law context also. In private law, the low income tenant is frequently ignorant of the law, is unsophisticated and is not aware of the protections he is entitled to under the law. He is in fact, dependent upon the good will of his landlord to maintain

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[1] It should be noted that the personnel dependency relationship does not apply so much to the unemployment compensation program where the right to a benefit is much more clearly defined and automatically processed than are questions of benefits in the welfare program, eligibility for public housing, or the right to an education in school suspension hearings.

the premises or to not evict him without cause. Moreover, the low-income tenant is at a great disadvantage in his relationship with the landlord whose business it is to know what he can do and what provisions of the law he can ignore.

This is equally true for the slum merchant who knows the law well, understands what requirements of the law he can safely avoid and knows the extent to which he can extract payments from low income consumers. Thus, not only within the welfare or public institutional context but also in the public market, the low income person finds himself in a structured-dependent role, where to obtain an important element of his life, he must maintain a good relationship not only with his welfare worker, his public housing manager, or school teacher, but also his landlord or his local merchant.

C. Some Assumptions Which Underlie Public Services

One set of assumptions encountered in public agencies which serve the poor picture the service giver as completely sympathetic to his client. Thus, the teacher, or welfare worker is presumed to empathize with the client and seek to fulfill his needs in the best manner he knows how. Further, it is assumed that the service-giver knows his client, knows his needs and has some way of determining what is best for him. The service-giver according to this view, approaches his client with few preconceptions and attempts to do his very best by him.

These assumptions are particularly characteristic of welfare and school programs although they are also found in public housing and in the Family and Juvenile Courts.

A second set of commonly held assumptions which rationalize the behavior of public service-givers toward their clients hold:

- that the client is essentially dishonest, unreliable and is not to be trusted.
- that the client is out to cheat the state by falsely claiming eligibility for benefits or by claiming greater benefits than he is entitled to.
- that the client is lazy, poorly motivated, and irresponsible.
- that the client is incapable of managing his own affairs and is not therefore in a position to judge what is done in his behalf.

The last point is often the justification for the substitution of the service-givers definition of what is best for the client for that of the client himself. In such cases, it is assumed that not only does the service-giver know better what the client needs, but it is also his duty to protect the interests of the public institution as well.

The first of these views, however, ignores the possibility of there being a conflict of interest between the client and the service giver. For example a conflict may exist between a welfare worker and his client due to

the amount of paper work required of the welfare worker for each additional grant accorded to the client. Accordingly, while it is to the client's interest to obtain a winter clothing grant for his children in the fall it may involve for the welfare worker half an hour to an hour of additional paper work.

In public housing, a conflict of interest may develop between a housing manager who promotes a quiet, peaceful community and must maintain the physical condition of his buildings and a tenant who desires as few restrictions as possible upon the use of his apartment or the behavior of his children in the project. Frequently, conflict centers around issues of housekeeping or the misbehavior of children.

In public schools, the need of a student for individual attention, and that of the teacher to maintain a disciplined class can lead to conflict. Students who come from broken homes or troubled families often demand special care which a teacher in an overcrowded classroom cannot give. The end result can easily be the suspension of the very students who most need the teacher's help.[1]

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[1] The concept of the "total institution" proposed by Erving Goffman is a good framework for analyzing the conflict between the individual and a large organization. Goffman describes the "total institution" as one which must provide all the needs of its clients and consequently to manage large numbers of people, must limit the expression of each client's individualism. While Goffman speaks of institutions which confine their clients (mental hospitals, prisons), it is suggested that a similar conflict exists in the public schools. (I am indebted to Miss Peattie of the Joint Center for Urban Studies for this point). See Goffman, Erving, Asylums (Garden City, New York: Doubleday and Co., Anchor Books, 1961). p. 386.

In general, conflicts of interest originate in both the scarcity of resources available to public institutions and in the organizational requirements of operating a program involving large numbers of clients. Usually, the conflict is resolved to the disadvantage of the poor.

D. De facto Procedural Bias in Public Institutions

Each of the public institutions discussed in the following chapters, provides its clients with a system whereby adverse decisions which concern issues of a client's obtaining or retaining a public benefit can be appealed. De facto procedural bias in this context refers to the way in which most appeal systems work to the disadvantage of the appellant client and serve to protect the institution and the responsible service-giver.

Appeal procedures are biased against the client in a number of different ways. In some, particularly in the school suspension hearings, the student is unable to present his side of the story. In this case, suspension hearings are nothing more than a mechanism for presenting a decision post factum, to the family and the student involved. In welfare hearings the client must present his own case and defend his point of view against the arguments of professional representatives of the institution. Clients who have a language problem and must be provided with a translator have no assurance of a correct translation.

In these situations the client is offered little assistance in presenting his side of the story. He may be cross-examined by the attorneys or the officers of the institution and in some cases, there is an attempt to discredit him.

Another characteristic of de facto procedural bias is that the appeal procedure is structured to protect the service-giver. This is particularly evident in school suspension hearings where the student is not allowed to present his side of the story. To justify their decision, the teachers and principles involved often feel it incumbent upon them to cite instance after instance of misconduct on the part of the student. In public housing eviction hearings for example, the client may be presented with a dossier which includes instances of misbehavior, violation of housing authority rules, rumors from neighboring tenants and a wide range of second-hand information. The client in this situation must defend against such a record and relate to an imposing hearing committee, his side of the story and suggest why he should be allowed to remain in the housing project. Clearly within such a context, it is unlikely that a client will receive a fair consideration of his story.

The end result of the dependency relationships with the public institutions, of the complex bureaucratic procedures, and of the client's lack of information as to the appropriate laws, rules and regulations which effect his eligibility or his entitlement to various benefits, is that he must depend upon a service-giver he doesn't trust, and whose interests frequently

conflict with his own. The net effect for the client is humiliating dependency: an overriding sense of powerlessness to affect his own life and environment.

Summary:

The foregoing discussion is intended to sketch out the important features of legal and institutional environment within which representation of the poor must take place. The object is to present aspects of the law which make it necessary to provide the poor with legal counsel. Of interest here, is the way in which the law discriminates in favor of certain parties, provides protections, benefits and penalties for the wealthy different from those provided to the poor, and the way in which the legal system, in effect, works to deny the poor equal protection. The need for legal services arises out of these very inequities in the law, and the performance of a particular program can be evaluated according to the extent that the discriminatory effects of the law can be reduced.

Finally, the relationship of the poor to public institutions must also be considered. Here, many problems originate in an environment where due to insufficient resources, benefits or services must often be based upon minimum not maximum standards. Other issues originate in the dependence of a client on a public service-giver or agency. The client rarely knows his rights or the protections of the law, and his dependence upon a particular service giver undermines

his willingness to challenge the decisions of that worker. If the client should raise a challenge he is confronted with procedural biases which operate in such a way as to protect the service-giver and, in effect, deny a fair consideration of his case. These then, are some of the outstanding contextual features of the work of the legal Services Unit of Mobilization for Youth. As such they provide an introduction to the examination of legal Unit experience in important areas of law which is presented in Chapters IV through X.

CHAPTER IV

REPRESENTATION OF WELFARE CLIENTS

1. The General Context of Welfare Administration and Law

Issues of public welfare and the poor have been, in a variety of forms, a traditional American preoccupation. The national mythology holds that every man with hard work, patience, thrift, and perseverance can follow in the footsteps of the Fords and Rockefellers of previous generations. America is held to be the land of abundant opportunity; success has only to be grasped. The continuously expanding frontiers, plentiful land, and vast resources in early American history offered opportunities whose exploitation demanded a hard working self-reliant population. Whether appropriate or not, theories of the individual's responsibility for his fate; the virtues of thrift, self-reliance; respect for the "self-made man" and an almost paranoic fear of the degradation associated with dependency and the poorhouse, have been projected into a highly industrialized twentieth century. It has been suggested that the natural wealth of America and its strong traditions of rugged individualism, explain, in part, why social welfare legislation, so important for the protection of the working population in an industrial economy, appeared so late in the country's development - Bismark introduced the first welfare legislation in 1880 - and then only after a devastating economic collapse.[1]

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[1]Elizabeth Wickenden, "The Administration of Welfare Rights" in National Conference on Law and Poverty: Proceedings (Washington, D.C.: U.S. Government Printing Office, 1965), p. 35.

A continuing political combat rages between, a coalition of rural farm and conservative business interests dedicated to the self-evident propositions of the past and opposed to the welfare needs of the present, and a coalition of industrial unions, urban political organizations, and humanitarian groups committed to varying solutions of poverty problems generated by an industrial economy. Overtones of this country's puritan heritage can be identified in the persistant suspicions of conservative groups that the welfare rolls contain a preponderance of lazy, shiftless, morally deficient individuals who are cynically exploiting the good will and charitable inclinations of conscientious, hard-working Americans by cheating the public welfare programs. It is within this peculiarly American culture of public charity that local welfare programs must exist. The consequences of such a culture have necessitated the growing involvement of the Legal Unit in welfare law.

A. Two Perspectives of the Administration of Welfare Assistance Programs

The problems of public welfare programs can appear quite differently when viewed from: 1) the perspective of the welfare administration and 2) from that of the recipient of welfare benefits. From either perspective, the problems of the public welfare system are quite serious, complex, and not easily solved.

Nota bene:

At the outset it should be noted that the analysis of welfare administrative practices refers only to the activities of the New York City Department of Welfare. Although some of the legal issues are more relevant to a particular group of welfare recipients than others, most of the issues do not break down by benefit categories such as Old Age Assistance (OAA), Aid to the Disabled (AD), or Aid to Dependent Children (ADC), and therefore will not be analyzed separately with reference to such aid classifications.

Regardless of a welfare administrator's dedication to the interests of welfare recipients, he must contend with a variety of political, economic and organizational pressures. Moreover, the complexities of New York politics demand a degree of political and organizational sophistication of the public administrator, usually not required in other cities. The political arena is populated by numerous articulate and well organized interest groups, each commanding enough political power to have an injurious effect on most public programs. While the political foci of power in New York are decentralized, individual interest groups can be extremely powerful. The chaotic nature of New York politics does not make the work of public administrators any easier. Further complicating the operation of public programs are lines of political influence, stakes of agency interest, and internecine conflict among a bewildering number of public agencies. Sayre and Kaufman in their seminal political case study, Governing New York City, illustrate the difficult position of the public administrator in the following passage:

> The strategies of the line administrator - winning internal control of his agencies and manipulating his environment require as we have seen, accomodations with all the participants in the contest for the stakes of politics who are concerned with the agency decisions. To render himself less open to all the conflicting and contradictory demands and instructions, and to all forms of resistance and opposition to his will, the agency head has to muster the support of all the friends he can find and strike bargains with everyone around him. To preserve his discretion in some areas of his jurisdiction, he must surrender in others. He has to placate his allies, to keep them on his side and pacify those who are rarely active in his aid lest they use their influence to injure him and his influence. He has to balance a welter of facts to survive, let alone to progress, for virtually everyone he deals with has an independent source of power. [1]

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[1] Sayre, Wallace, Kaufman, Herbert, Governing New York City (New York: Russell Sage Foundation, 1960), p. 355.

In addition to the normal difficulties of organizational survival in New York politics, the welfare administrator must deal with a range of problems peculiar to his job. Limited resources must be balanced against increased caseloads. Conservative demands for austere economy measures must be accommodated, militant union pressures must be negotiated, high rates of staff turnover reduced, and Federal-State administrative requirements met. In sum, the welfare administrator must contend with:

> The ordinary pressures for economy; the extraordinary demands for economy that continually arise: the organized and strident anti-welfare demagogues who constantly seek material to exploit for their claims that the lazy and fraudulent and the welfare client are synonymous; the constant internal pressure from an overworked underpaid and everchanging staff; internal maneuvering from a would-be successor; external relations with a state agency which may be led by an administration of the other political party. [1]

The product which emerges from the crossfire of these many pressures is a compromised one. Although the broad intent of welfare programs is to sustain the victims of poverty while a rehabilitative process may be undertaken, the net effect of the welfare critics has been a series of legislative and administrative compromises which humiliate the welfare recipient. The cost of welfare to an applicant is high in psychological terms; the invasion of individual privacy is extensive, and the standard of living provided is just above subsistence levels. Elizabeth Wickenden, an eminent figure in the social work world, describes the results of pressures on the welfare programs in these terms.

> .. we have set up every kind of barrier to exclude or discourage the

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[1]Edward V. Sparer, "The New Public Law: The Relation of Indigents to State Administration," The Extension of Legal Services to the Poor (Washington, D.C.: U.S. Department of Health Education and Welfare, 1964), page 31.

> desperately poor from even this level of aid (subsistence) - arbitrary definitions of eligibility related to age, family relationship (such as the absurd requirement in many states that there be no man in the home), employability, duration of residence in the state and every sort of procedural hurdle and humiliation. [1]

The defects of the public welfare system are well-documented and the intent here is not to duplicate these materials, but rather to draw from them a few representative pieces which describe the context of welfare policy and the consequences for the treatment of welfare clients at the time the legal unit began its work.

B. Welfare Problems at the Outset of the Unit's Work

In 1962 the New York Legislature investigated the state's welfare program. A respected welfare consultant was retained for the study, and subsequently, a report documenting the inadequacy of funds, the dehumanizing treatment of recipients, and an excessive preoccupation with repeated determinations of client eligibility was submitted. In an opening passage of the Report to the Moreland Commission on Welfare, the Greenleigh Associates identify some of the problems associated with New York's welfare programs. They put it this way:

> The public assistance program of the State of New York has become one of the most narrow, restrictive and complete in the U.S. Even though the level for those who pass the eligibility requirements is more adequate than in most states it is just barely enough to maintain life and not enough to maintain health and decency ... the policies and procedures governing the program and the way in which most applicants and recipients are dealt with shows little regard for them as human beings, defeats their attempts to regain self-esteem and self-direction and tends to prolong the duration of dependency... the almost exclusive concern with eligibility has precluded a necessary concern with applicants and recipients as human beings with problems. [2]

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[1]Elizabeth Wickenden, op.cit., p.32.

[2]Greenleigh Associates Inc., Report to the Moreland Commission on Welfare: Findings of the Study of the Public Assistance Program of the State of New York (New York: 1963), p. 74.

Welfare participants in many welfare action groups frequently complain about the humiliating treatment they receive at the hands of welfare workers.[1] A common complaint is that of being treated like "animals." Equally serious as the disregard for the self-respect of the welfare recipient are the administrative requirements which deprive the welfare clients of normal bases of self-respect.[2] Such is the case with the New York eligibility requirements which provide that an applicant may receive welfare benefits

> when he exhausts his money, gives a lien on his property to the welfare department, turns in the license plates of his car, and takes legal action against his legally responsible relatives. When he is stripped of all material resources, when he 'proves' his dependency, then and only then is he eligible. Welfare policies tend to cast the recipient in the role of the propertyless, shiftless pauper. This implies he is incompetent and inadequate to meet the demands of life. 3

Efforts to verify the eligibility of applicants and to review the eligibility of present recipients, consume a great deal of departmental activity. Such determinations involve a variety of welfare staff, intake workers, caseworkers, supervisors, support investigators, and must be repeated every six months. Moreover, the demands of a conservative state legislature for strict accounting of all expenditures, and constant review of eligibility to prevent cheating produces vast amounts of paper work and a continued invasion of recipients' private lives. The consequences of such pressures conflict with the rehabilitative ideal of the welfare program and create

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[1]See Sherman Barr, "Poverty on the Lower East Side: A View From the Bottom" (New York: Mobilization For Youth, 1964, paper presented to Columbia University School of Social Work Training Institute), 17 pages.

[2]Edgar May, The Wasted Americans (New York: Harper and Row, 1964), 224 pages. See Chapter VI, "Turnstile Guardians", for the dilemmas of the caseworkers and related degradation of the welfare client.

[3]Greenleigh Associates, op.cit., page 78.

results[1] such as the following:

> "From my own experience and research," said one witness at out public hearing, "50 to 60 percent of a case worker's time is spent on bookkeeping. I thought I would be able to help people, but I was a bookkeeper." He related an instance in which an elderly couple, each getting Old Age Assistance, and each treated as a separate case .. moved to a new neighborhood and the rent went up. To revise the rent allowance upward, the witness said, he had to fill out a file of 30 different pieces of paper. This paperwork explosion plagues welfare workers everywhere. The files bulge with records in triplicate, quadruplicate, quintuplicate - all designed to set forth facts and substantiate action and justify reimbursement.[2]

The emphasis upon cost leads to bureaucratic absurdities. For example, the detailed account-keeping applies to the smallest details, as Murray Kempton indicates here:

> The New York welfare system is by now so refined that it allots 49 bobby pins a year to every unemployed woman and nine haircuts to every unemployed man. There is no such precision in the definition of the rights of its clients; they are ruled by the discretion of welfare workers who in the best of cases are under continual reminder to keep costs down. [3]

C. The Caseworker-Client Relationship

Strict accounting of all expenditures and the emphasis upon economizing by restricting outlays provides an institutional basis for potential conflict between the caseworker and client. [4] Often evasion and deception are required of the recipient

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[1]Thomas R. Brooks in "The Caseworker and The Client", New York Times Sunday Magazine, Jan. 29, 1967, p. 72. A statement quoted illustrates the conflict between the rehabilitative goal and bureaucratic requirements of the welfare system: ""If we are to help our clients to take full advantage of all that could change the hopeless despair in which so many of them live then we need proper training and, above all, sufficient time. High caseloads and strangling red tape are incompatible with anything that could be called social work.""

[2]Greenleigh Associates, op.cit., p. 76.

[3]Murray Kempton, "When You Mobilize the Poor," The New Republic, Dec.5, 1964, p. 13.

[4]See Thomas R. Brooks, op.cit., p. 72.

if her family needs are to be met. A young pregnant mother who obtained an additional check she was not entitled to, told an MFY worker: What did I lie for? I'll tell you--to buy my child's crib."[1] Another MFY client: "I never complain about anything to welfare. The more you complain the more angry they get. . . . . .He's going to cut you off if you complain too much. I shut up and just take it."[2] Conversely, welfare workers who are sympathetic with their clients, and indeed, there are quite a few, are often pitted against a system which, if they adhered to its demands, would require them to enforce extremely degrading regulations.[3] Obviously, a great deal depends on the attitude of the caseworkers to their clients.[4]

D. Some Origins of Arbitrary Practices

The Unit Attorney in charge of welfare cases estimates that approximately 85% of the welfare cases originate in arbitrary, unreasonable or illegal decisions

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[1]Sherman Barr, op. cit., p. 2.

[2]Ibid., p. 1.

[3]A good illustration of the humiliation of recipients by constant emphasis on eligibility is a case where a 40-year-old unemployed father of six, applied for a supplementary clothing grant for a new white shirt (to seek work) and new underwear. The caseworker, a young woman of twenty-two was told when she asked for an approval of the grant that she must verify the condition of the man's underwear. The potential humiliation for a grown man having to submit to an examination of his underwear was obvious, and the caseworker sought the advice of more experienced workers. She was simply told to falsify the investigation report: to confirm the need without actually checking it out. (Edward V. Sparer, in Address to a Conference of Welfare Recipients, February 26, 1967.)

[4]"'Case workers,' I was told by one, 'fall into one of two categories--the little FBI type, you know, people who really enjoy going into homes to pry, and the givers.'" Thomas R. Brooks, op. cit., p. 31.

of the welfare worker. The remaining 15% challenge policies, the legality of which the Department of Welfare is willing to defend. Cases involving an arbitrary or legallyuntenable action is usually settled in advance, at the last moment, and before the FairHearing is held.

In some areas of welfare law, legislation is vaguely written and standards are poorly defined. Welfare law is also characterized by the lack of common law development which adds to the potential confusion. Legal advocacy, in the absence of fee-paying clients, has not been brought to bear on legal issues implicit in welfare legislation. The rights, obligations and protections of the welfare recipient and responsible agencies have not been defined in the same way as the relationships between parties in other areas of the law. In welfare law standards of official conduct by which to measure the exercise of discretion and power are difficult to define in such a way as to prevent abuse. (How is need measured? What amount of benefits is a recipient entitled to? How are special circumstances to be defined and taken into account?) The complexity of a large number of aid programs and the infinite variety of client needs, make the exercise of considerable discretion in determining what the client is to receive inevitable.[1] Where welfare depends upon precise definition of need there will always be a need for worker discretion. A further complication is the high rate

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[1]Edward V. Sparer, "Social Welfare Testing," The Practical Lawyer, Vol. 12, No. 4, April 1966. The abuse of discretionary power is an especially recurrent problem with regard to the requirement that ADC recipients seek work with the actual decision left to the worker. "Although Mrs. Smith (the caseworker) technically does not have the final say. . . . Her 'determination of need' may mean a winter coat for a school child, rubbers for the spring rains, perhaps a (cont.)

of turnover (± 30%) in New York's Department of Welfare.[1] Often an inexperienced welfare worker will be insufficiently acquainted with the law which he is responsible for administering. Due to high turnover, few caseworkers know the bewildering number of programs, and regulations to be of much help.

While lack of knowledge on the part of the welfare worker and the impreciseness of the law can frequently produce arbitrary and unreasonable treatment of welfare recipients, there is also an interpersonal dimension to the problem. The serious difficulty with relying upon the goodwill, sympathy and understanding where the law is not explicit is that personality conflict between welfare worker and recipient is not uncommon. Indeed, as just shown, welfare regulations provide a formal basis for worker client conflict by structuring their relationship in terms of contradictory motivations. When conflict does arise, the reasonableness and objectivity of a worker's decisions are overcome and the quality of personal treatment as well as the substantive amount of welfare benefits a recipient may receive suffers as a result. Also having serious consequences for the client are problems of communication and understanding which arise out of the welfare worker's coming from one cultural and ethnic background and the recipient from another. Language problems also complicate the relationship as do racial and ethnic enmities. The recipient, as already noted, can often contribute

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(cont.)presentable dress for a job quest or in the present case a layette for an unwanted new arrival. Or it can condemn the client to a subsistence with moldy mattresses, worn blankets and threadbare clothing--and to eating in shifts for lack of chairs in the kitchen." Thomas R. Brooks, op. cit., p. 27.

[1] "A Department of Welfare Study indicated that of caseworkers hired in 1964, 44.6% had resigned from the Department by 1965. The current rate is estimated at approximately 30%." Thomas R. Brooks, op. cit., p. 72.

to the conflict by persistent harassment of the caseworker for additional benefits. The many problems of poverty understandably can produce abrasive results. In any case, when conflict does arise, in the absence of legal assistance, it is the recipient who loses.

Such conflict in itself would not be serious if the recipient had access to a supervisory staff which would intercede in the recipient's behalf where the unfairness of a decision was evident. The unit's experience has been that welfare supervisors almost always back up their subordinates with little regard for the substantive issues raised by the conflict situation.

A great deal, therefore, depends upon how the client and the welfare worker get along.[1] Obviously, the extent to which a welfare worker is able to relate to a client, will affect the zeal of the worker in protecting the client's rights, or ensuring that his needs are met, etc. Dislike for a client is easily translated into harassment, peremptory treatment, disregard for the client's procedural rights and the standards of benefits to which the client is entitled. Indeed, the abuse of welfare recipients moved one observer to comment:

> The more we comprehend the concrete experiences of the impoverished, the more questionable appears the theory that welfare clients are best handled by benevolent agencies which purport to guard their interests.[2]

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[1]A good illustration of this is the case of a disabled veteran who had been receiving welfare assistance for 10 years without incident. During that time he had been allowed to have a telephone. A new welfare worker was assigned to his case and threatened to suspend welfare payments if the phone was not removed immediately. (From Legal Unit Records, 1967)

[2]Edward V. Sparer, "Role of the Welfare Client's Lawyer," UCLA Law Review, Vol. 12, No. 2, January 1965, p. 366.

1. The Perpetuation of Arbitrary Practices: The Failure of a Protective Mechanism

We have shown that administrative pressure on the welfare worker to reduce costs, and the desire of the welfare recipient to increase her family's allotment to better meet their needs are contradictory and often lead to conflict.[1] This is a problem despite the availability of hearing procedures designed to protect the welfare client against unlawful, arbitrary, or unreasonable decisions. When conflict arises, the sides are unequal; the welfare worker usually is supported by his superiors; the recipient, if he knows his rights, has recourse to an administrative appeal. The result of this unequal contest is that recipients frequently suffer improper abrogation of their procedural rights and are forced to rely upon smaller welfare payments than those to which they are entitled. Further complicating the recipient's position is the fact that adverse decisions are usually not explained. The Moreland Commission found that in one county 37.5% of those interviewed had not been told why assistance was cut off.[2] In such cases the recipient, accused of fraudulent claims, for example, has no way of disproving the charges against him, cannot confront his accusers, learn evidence against him or present his side of the case.[3]

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[1]An example of the caseworker's side of the conflict: "Another grievance concerns the thanklessness of the job. A young man said, 'you work all the angles, push through all the paper and get your client a grant. I mean, you've worked. She gets her check and the phone rings. You answer and what do you get? Complaints. It isn't enough, or she's bugging you for something else.'" Thomas R. Brooks, op. cit., p. 72.

[2]Moreland Commission, op. cit., p. 68.

[3]Edward V. Sparer, "The Role of a Welfare Clients Laywer," op. cit., p. 372.

2. The Fair Hearing: A Welfare Recipient's Remedy

Federal and New York law offer the welfare recipient a means to challenge decisions of local welfare agencies which receive state or federal funds. United States Civil Code provides that a welfare recipient may request a hearing to appeal a ruling involving cash benefits.[1] The law provides that once a Fair Hearing request has been made, the hearing must be held, unless the welfare recipient withdraws the request. In practice, the local welfare department may not take the initiative in withdrawing a request; such a decision can be made only by the welfare client.

In New York, Fair Hearings are administered by the New York Department of Social Welfare. The hearings are held before a referee supplied by that same department. The state is responsible for local departments' conformance to state and federal requirements. The Fair Hearing is an important means by which the State Department of Social Welfare fulfills its policing function. The state is responsible for investigating a complaint, and is empowered to reverse local decisions which violate state or federal regulations.

In a typical case, the state will exert pressure on a local department to settle a case which involves flagrant violation of welfare provisions. The pressure takes the form of an investigation which the state makes for each Fair Hearing request. Such investigation will often include interviews of the local welfare center staff plus a review of the case records. The intervention of the state can prove very embarassing to the local department in cases where the recipient is clearly supported by the law. Consequently, few hearings actually take place

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[1] Ibid., p. 30, Note 93.

because the local departments reverse their rulings rather than risk an adverse precedent. Moreover, according to unit attorneys, few hearings are held because the state appears to have the policy of adjusting cases and the present administrations seem to want to settle cases with a minimum of controversy.

Federal regulations require fair hearings to be held within 60 days of the request. Both the welfare recipient or his representative and the Welfare Department representatives present their respective cases before a state referee. Written arguments (briefs) are presented by each party after the hearing. Decisions and transcripts are to be handed down by the state referee within thirty days; the local welfare department has another thirty days' period in which to implement the ruling. Thus, if all the maximum time periods were utilized, a welfare client might be forced to endure privations related to an improper ruling for a period of four months. In actual fact, it frequently has taken six months to complete the hearing process.

The length of time it takes to reverse a decision remains a major defect of the Fair Hearing, and detracts from its usefulness as a remedy for the welfare recipient in matters of dispute.

An Alternative to the Fair Hearing

While the hearing process is going on, the recipient has no alternative but to suffer the consequences of an adverse decision. For this reason, unit attorneys frequently seek relief under Article 78 of the Code of Civil Procedure which incorporates several common law principles. An Article 78 Proceeding requires public agencies to perform their legal duties and to conform to the

legislative requirements of their programs. The court orders are binding upon the state agency and may have precedent value if written opinions are obtained or if appealed. An Article 78 requires a ruling on the basis of the law; the central question is whether the practice at issue is in conformity with the law as written and does not apply to cases where the law itself is challenged. The value of an Article 78 determination lies not only in the relative speed of securing results (20 days), but also in the fact that it extends judicial scrutiny into areas of public administrative practice which have received little review by the courts. Such court actions also exert pressure on the Department of Welfare to clarify the relationship between administrative practice and welfare legislation.[1]

In contrast to Article 78 proceedings, Fair Hearings take a minimum of four months for completion and have little precedence value without formal acknowledgement of administrative policies is a condition of settling the case.

3. The Failure of the Fair Hearing

Prior to the Legal Unit's intervention in welfare law, the Fair Hearing, a federally required procedural remedy for welfare client grievances, was rarely used.[2] In 1961 more than 250,000 applications for assistance were

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[1]The Article 78 court is also an invaluable tool in other areas of the law which involve public institutions (public housing, the courts, the school system).

[2]"A request to the State for a hearing is rare, indeed, in my experience. Almost no one knows that the procedure really exists. Welfare Department workers may be as uninformed as their clients because they never suggest the procedure. I have spent more years than I care to admit helping welfare clients with their welfare-connected problems and assisting applicants through In-Take. Not once in my quite literally thousands of encounters with welfare personnel--many of which dealt with eligibility questions covered by fair hearings--did (cont.)

received by the New York Department of Public Welfare. Of these, 39% were rejected. Despite the large number of rejections and the fact the fair hearings must be held if requested by an applicant, adverse rulings on eligibility were rarely challenged.[1] The Moreland Commission investigation provides figures on the rarity of Fair Hearing proceedings in the following: "Among active cases only two recipients had taken advantage of a fair hearing--in closed cases only one--in denials again only one."[2]

Arbitrary or illegal practices in the New York Welfare system have many sources of origin: political pressures for economy of a conservative state legislature; the uncertainties of city politics; the absence of sufficient funds to provide adequately for a large and growing number of applicants; institutionalized conflict between welfare worker and welfare client; the absence of an informed clientele or militant advocates for the recipients' cases; the structured dependency of the recipient; the bureaucracy, red tape and paperwork are a few.

These practices are perpetuated because the decisions of welfare workers go unchallenged. The absence of effective challenge has meant that a variety

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(cont.) anyone mention those all-important two words. Often the client accepted a decision which should have been appealed, and did not appeal because neither he nor those of us who were supposedly helping him recognized his right." (Mrs. Juliet Brudney, for United Neighborhood Houses; Record, p. 176) "Metropolitan Area Research Council Welfare Hearings Report" (New York: September 1967, unpublished), Report of State Board of Social Welfare on Fair Hearings, p. 11.

[1]New York State Department of Social Welfare, Public Welfare in New York State in 1961, February 15, 1962, p. 32; as quoted in Sparer "New Public Law. . .," op. cit., p. 29.

[2]Moreland Commission, op. cit., p. 68.

of irrational, unlawful, arbitrary abuses of bureaucratic prerogatives has grown up in the welfare system. Patricia Wald, a student of law and poverty, neatly points up some of the typical abuses:

> Rulings have not always appeared humane or rational: aid is denied to families with more than one illegitimate child; homes are classified as unsuitable where an illegitimate child has been born after assistance began; employable mothers are required to leave their children to the care of others and go to work; benefits are terminated upon finding a 'man in the house' regardless of his status or contribution to the support of the family; aid is refused to newcomers who have immigrated from other states without a definite plan of support.[1]

Such practices have developed and have been perpetuated over time for two major reasons.

(1) Welfare clients do not know their procedural rights or the scales of benefits they are entitled to. Welfare departments do not take the trouble of informing their clients of such rights.[2]

(2) The legal resources necessary to assert welfare recipients' rights has not been available. Welfare clients often require the assistance of an attorney when dealing with a welfare department. In welfare, as in other areas of the law, individual rights and their protections have little meaning when the resources required to enforce them are absent.

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[1]Patricia Wald, op. cit., pp. 30-31.

[2]A good illustration of this problem is the following quote from a welfare worker: "Clients, I was told by Mrs. Smith, must ask for the things they need. The Welfare Department, however, does not do the simple right thing by its clients; that is put a leaflet or explanatory booklet that would make clear to clients their rights and what they are entitled to in the way of aid. 'They can't be trusted' is the general attitude. . ." Thomas R. Brooks, op. cit., p. 27.

The welfare client without any knowledge of the rules or procedures was unlikely to set about appealing the decisions of a caseworker without the assistance of an articulate, informed professional. There is evidence that it was in fact the policy of the New York City Department of Welfare to withhold information about the right of appeal from its clients. In this connection, the former Director of the Unit recalls that in drawing up the appeals on the Welfare Abuse Law, he requested a copy of the regulations pertaining to the fair hearing process. At first he received no answer; after repeated requests he received a partial copy of the rules, and finally had a full copy smuggled out of the Department of Welfare. Morever, there is no provision for legal representation for an appellant at the Fair Hearing. Therefore, the few clients who had the knowledge, courage and persistence to carry through a Fair Hearing request were placed in a highly disadvantageous position: they had to present and defend their cases unassisted against the supervisory staff of the Department of Welfare. With the exception of the cases handled by the Legal Aid Society, the large majority of welfare clients had not effective means of enforcing their right to appeal. As a consequence, recipients were at a serious disadvantage: the welfare representatives had highly detailed knowledge of the agency's regulations and were easily able to discredit the appeal.

Activation of the Fair Hearing System

By providing legal representation to welfare clients, the Legal Unit has given the formal procedural rights and legal entitlements meaning. Aside from activating the welfare appeal process, the Unit has been remarkably successful

in winning modification of welfare administrative practice. By spring 1967, over 300 Fair Hearing requests (not including those associated with a welfare recipients minimum standards campaign) had been filed by the Unit. It is estimated that 95% of these have been settled in favor of the client, before a Fair Hearing was held, and another 4% of the cases have been dropped before the hearings were held because of changes in the client's circumstances.

Welfare recipients organizations also utilize Fair Hearing requests to enforce demands that their members be brought up to state and federal welfare standards for clothing and household effects. Form letters requesting that a client's household needs be met according to the established standards have been drawn up and are sent out by the welfare groups. If there is no response to the minimum standards request, a Unit attorney is contacted, and a letter supporting the recipient's demands is sent to the Department of Welfare. If results are still not forthcoming or if the supplementary grant falls short of what the client is entitled to according to the state list of clothing and household goods, a fair hearing is requested. As of February 1967, over 1500 minimum standard letters and 650 lawyer's back-up letters have been written, and between 90-100 fair hearings have been requested by members of the welfare action organizations. Another 320 minimum standards letters were still pending, the back-up letters yet to be written.[1]

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[1] Mobilization for Youth Legal Services Unit, "Winter Newsletter, 1966-67" (New York: Winter 1966-67, unpublished report), p. 3.

E. Representation of Welfare Cases Negotiation

MFY Neighborhood Service Centers are a major source of welfare case referrals for the Legal Unit. When a welfare problem is brought to a center, a NSC worker first negotiates with the Department of Welfare in the client's behalf. If results are not forthcoming, the matter is taken up with a retired Welfare Supervisor who serves as a consultant to MFY on Department of Welfare regulations. If a violation of welfare law is present and if the consultant cannot resolve the issue, the client will be referred to the Legal Unit for assistance. It will be recalled that the inability of NSC workers to assert welfare recipients' rights by persuasion or negotiation was one of the origins of the Legal Unit itself.

Unit lawyers are becoming less willing to spend much time in negotiation with a welfare worker before filing a Fair Hearing request. It has been their experience that by the time the case has reached the Unit, such negotiations are usually fruitless and will prolong a settlement while in the meantime the client remains in a deprived state. Moreover, in cases where negotiations fail, an additional wait is incurred while the hearing request is processed, implemented and the resulting decision enforced. In the estimated 20% of cases which involve negotiation in advance of the hearing request, Unit attorneys attempt to inform the welfare worker of the law, and to persuade him of the legality of the client's position. One attorney simply outlines by letter the legal issues of a case and informs the case worker and supervisor involved that a fair hearing request will be filed within one day if the case is not satisfactorily settled.

II. The Impact of Legal Advocacy for Welfare Recipients

The intent of the foregoing discussion has been to provide a meaningful context within which to review the experience of the Legal Unit. What follows here is a brief categorization of typical cases encountered by the Legal Unit. The problems raised by the case types described here are nothing new in welfare history; they have been long-term problems of welfare recipient and applicant alike. While some of the practices described here may have differing legislative histories, dates of origin, etc., they all in some combination represent the same process: the exertion of political pressures on the administrative agency, restrictive policies arising to blunt such pressures, gradual development of presumptions and practices which deprive recipients and applicants of individual rights and benefits rightfully theirs by law. All of this has taken place without challenge from the poor who have lacked the information and resources to defend their interests adequately.

A. Categories of Welfare Cases

The unit attorney responsible for most of the welfare appeals (aside from those associated with the minimum standards campaigns), divides the cases into four categories based upon the administrative issues involved.[1] The categories are as follows:

Eligibility: The issue here involves a client establishing eligibility for welfare benefits by proving need, residence, purpose of coming to New York, etc. Despite the fact that several practices which denied benefits to a large number of applicants have been successfully challenged, cases involving eligibility issues

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[1]Interview: Steven J. Antler, January 13, 1967.

are the second most common type of case encountered at the present time.

Delay: The Department of Welfare has thirty days on which to rule on issues of eligibility, adequacy, etc. Delay issues are rare and are usually associated with other questions.

Adequacy: The most common issue in welfare cases involves claims for minimum standards, permission to change apartments, winter clothing, etc. A campaign to obtain these standards is sponsored by local welfare action groups.

Suspension: Cases here involve arbitrary or legally unsupported termination of welfare benefits. Although the number of cases where suspension is at issue is small, several important rulings have resulted from their prosecution.[1]

B. Welfare Policies Affected by Legal Action

1. Introduction

The influence of the Legal Unit upon the interaction of the Department of Welfare and its clientele, can be measured in two ways: (1) in terms of substantive changes in welfare law in the form of administrative procedures or policies and (2) in terms of services provided the welfare recipient--assertion of procedural rights, prevention and control of unwarranted invasion of privacy or harassment, and enforcement of state and federal minimum standards.

What follows here is a review of the welfare policies affected, the issues they raise and the individual cases which precipitated the successful legal action. At the outset it should be remembered that according to an informal Unit estimate the cases which generated policy change represent only an estimated 1-2% of the

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[1]Records of welfare cases handled by the Unit have not been broken down according to this classification and therefore a percentage breakdown is not possible. It should be remembered, however, that the number of cases actually reaching a Fair Hearing is quite small, and that "Adequacy" is the only category which represents substantial numbers of cases related to the welfare recipient campaigns.

Fair Hearing requests. Of the others, 95% were settled in advance of the hearing and 4% of the requests were dropped due to changes in the client's circumstances. Nearly all the cases settled in advance of a hearing involve an arbitrary decision which is clearly in violation of the law and no policy issue is at stake. Other cases are often not clear as to what issues are affected. Clear test cases are relatively uncommon. While some cases do not affect broad issues, in others, a client is offered such a good settlement that it is his interest to forego the opportunity to win a general policy change, or the client loses interest and drops out. Still other cases simply enforce changes won in previous actions of the Unit.

The analysis of each policy change will be composed of three parts: (A) A presentation of the policy at issue and the effect of its implementation on welfare clients; (B) a consideration of the broad issues brought into play by such a policy; (C) a description of the successful test cases and the resultant policy changes.

2. Applications of the Welfare Abuse Act

The "Welfare Abuse Act of New York" is a modern expression of the old myth that the poor move in search of the most generous welfare benefits.[1] In 1960 when large numbers of southern Negroes and Puerto Ricans were coming to New York City, after an intense public controversy, a bill restricting welfare eligibility to New York residents (1 year minimum) was passed by the state legislature

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[1]A unit attorney who has been in contact with hundreds of welfare clients commented that in his experience he had never met a welfare applicant or recipient whom he suspected of coming to New York for superior welfare benefits.

and vetoed by Governor Rockefeller.[1] Had this bill passed, immigrants would have to wait a minimum of one year before they had any hope of receiving assistance. The result for the major cities of New York would have been chaos. In the following year despite the opposition of the governor, state and city welfare agencies and humanitarian groups,[2] a compromise bill was passed. The "Welfare Abuses Act," as it came to be known, did not require a welfare applicant to be a state resident to acquire eligibility; instead, applicants were to show that they had not come to New York "for the purpose of receiving such public assistance and/or care." Humanitarian pressure elicited the provision in the bill providing temporary emergency assistance for all applicants regardless of motivation in coming to New York. Welfare groups which had obtained the compromise bill were confident that few, if any, applicants would be barred from some kind of assistance by Sec. 139a.[3]

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[1]For a full account of the Welfare Abuse Act, its passage, administration and the test cases, see Edward V. Sparer, "The New Public Law: Relation of Indigents to State Administration" in The Extension of Legal Services to the Poor (Washington, D.C.: U.S. Department of Health, Education and Welfare, November 1964), pp. 23-40.

[2]Foremost in opposition to the bill was then-Commissioner for Welfare in New York City, James R. Dumpson, who made the following statement regarding the bill's premise that the poor migrate to New York for higher welfare benefits:

"/Southern Negroes and Puerto Ricans/. . .migrate to New York in search of a 'better life.' They are seeking employment opportunities, a better employment experience, better housing, better education, opportunities for their children, for health reasons, and to join friends and relatives. . . . People do not move to New York to receive public assistance.. . Indeed our state and local economy, in part, is dependent on this migration of workers." (From a statement on a Proposal to Enact a Residence Law for Public Assistance in 'Here it Comes Again,' State Charter Aid Association, as quoted in Sparer, "The New Public Law," op. cit., p. 31.

[3]A review of the case can be found in: The Welfare Bulletin, No. 2, February 1966, p. 8.

Despite such expectations, it soon became apparent that the law was being applied more strictly than anticipated. One study found that in the first ten months of Section 139a, 2730 applicants had been ruled ineligible and of whom 387 of this number had also been denied emergency assistance as provided under the same section of welfare law. One observer wonders how many of these rejections would have survived fair hearing appeal had legal representation been available to the applicants.[1] At the time the Legal Unit began its work, rejection of welfare applicants on the basis of Section 139a was so serious a problem that it became the focus of the Unit's first test case in welfare law.

In the course of exploratory consultations with MFY social workers, it had become clear the administration of "the Welfare Abuse Act" constituted a major problem facing MFY clients; that the legal and moral issues were clearly defined; and that because the persuasive efforts of MFY social workers had been to no avail, there was no alternative but to initiate legal action.

An analysis of the administration of the law made it apparent that large numbers of applicants were being disqualified and denied emergency aid under Section 139a on the basis of two presumptions. These presumptions were:

> "(1) That a person who comes to New York without an adequate plan of support, and possibly knowing that he will need welfare help, therefore comes for the purpose of obtaining welfare help.
>
> (2) That emergency aid under the welfare abuses law should only be given to those who agree to leave the state."[2]

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[1]See Edward Sparer, "Role of Welfare Clients Lawyer," op. cit., pp. 369-372.

[3]Sparer, "New Public Law. . .," op. cit., p. 33.
Pressure has been put on welfare applicants to return to their home (cont.)

The error in these two presumptions is obvious. As already noted, the poor move for a variety of reasons--in search of better work, to be near relatives, to better their way of life, etc. Most of the poor are unskilled, most are poorly educated, and few are well-informed about the new environment they will encounter. Aside from the issue of motivation, it is unreasonable to demand that such individuals formulate a plan of support in advance of their arrival. While most immigrants come with some vague notions of what they expect to do, the absence of information, and their lack of experience in the city, clearly preclude the formulation of a plan in any normal sense of the word. More importantly, the first presumption denies the validity of the point on which there is overwhelming agreement among the social work profession, students of migration patterns and urban historians alike, that the search for better social and economic opportunities underlies the movement to the city.[1]

The practice of granting emergency aid on the basis of the applicant's agreement to return to his state of origin conflicts with the Welfare Abuse Law

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(cont.) states well before the passage of the Welfare Abuses Act. A New York State Welfare report noted that in a 20-month period preceding Agusut 31, 1961, some 1347 applicants were denied aid on the grounds that they should live in another state. New York Department of Social Welfare, Public Welfare in New York State in 1961, p. 25, as quoted in Sparer, "Role of Welfare Clients Laywer," op. cit., p. 369.

[1]The literature supporting this point of view is almost endless. See, for example: Silberman, Charles E., Crisis in Black and White (New York: Random House, 1964), 358 pp. /for the American Negro/; Moynihan, Daniel P., Glazer, Nathan, Beyond the Melting Pot (Cambridge, Mass.: M.I.T. Press, 1964), 360 pp. /for a discussion of ethnic migration patterns in New York/; Abrams, Charles, Man's Struggle for Shelter (Cambridge, Mass.: M.I.T. Press, 1964), 307 pp. /Urban Migration in Developing Areas/.

itself, and Department of Welfare procedural regulations (#60-61) which specify no limitation on eligibility for emergency assistance. Moreover, such a practice raises more fundamental issues. The pressure exerted upon an applicant to return to his point of origin in combination with a one year residency requirement, constituted an effective state-enforced restriction of the freedom movement. Moreover, the enforcement of a de facto emergency aid eligibility requirement violated a recent Supreme Court decision which held that the state cannot demand the abandonment of a constitutional right (free choice of movement) as a condition of eligibility for a public program.[1]

After extensive interviews of Mobilization For Youth social workers and welfare clients, several cases were selected for appeal. Each case involved both a clear cut violation of the intent of the law and extremely serious deprivations for the families concerned. Among the cases were the following:

> (1) A young man had become a drug addict soon after marriage. His mother sent the young couple to St. Louis to escape the drug environment, but within a year he was back on drugs. The mother then had the couple and their two children return to live with her so she could try to combat the drug problem. The family was denied assistance and was offered return transportation to St. Louis.
>
> (2) A young woman with a 2-months old child, had come to New York to live with her grandparents who were her only living relatives. She had refused to marry a suitor who had taken her by force, and had been left alone in Puerto Rico with her baby and a 5-year old god-child. The welfare department refused to grant emergency assistance unless she left her children with the grandmother, a fragile, senile woman, and seek work. When she refused, she was rejected for any kind of assistance.

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[1] Sherbert vs. Verner, 1374 U.S. 398 (1963) as noted in Sparer, "Role of Welfare Clients Lawyer", op. cit. p. 369.

(3) A young mother and her six children came to New York in search of her husband who had preceded her. When she first arrived in New York with her parents, she was able to stay with a cousin in a public housing apartment. Because of the size of her family, she and her family had to leave public housing, and were forced to live in tenement hallways. When the family came to the attention of Mobilization For Youth, it was on the verge of starvation, and was living in a dank basement without lights or toilet facilities. The mother and six children had been repeatedly denied emergency assistance under Section 139a.[1]

Several of the cases were settled by the Department of Welfare in advance of a Fair Hearing. The case last described was the first to be heard before a state Fair Hearing referee. The State Department of Social Welfare explicitly rejected (July 1964) the city's presumption that Senora R. had come to New York to receive public assistance. The State argued that even though "the appellant may not have had a reasonable plan to support herself and her children, and may even have realized, prior to coming to New York, that she might need public assistance," that her motivation for coming to New York was to be with her parents, not to obtain public assistance.[2] The State decision was also critical of the Department of Welfare for not properly administering the emergency aid provisions of the law which were intended to benefit all newcomers regardless of purpose in coming to New York.

According to the attorney who prepared the appeal, the State decision was not enough to eliminate improper applications of the welfare abuse law. Throughout the fall of 1964, approximately 100 similar cases were appealed before the Department of Welfare formulated a set of guidelines for the administration of emergency aid. These new regulations have largely eliminated the problem of the Welfare Abuses Act.

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[1] Interview with Edward Sparer, January 20, 1967 and February 10, 1967.

[2] New York University School of Law, Welfare Law Bulletin, No. 2, February 1966, p. 8.

The new policy contains the following important points:

> No rejection at intake because of Section 139a; emergency aid to be granted at intake or during investigations where need is indicated; where Section 139a is applicable emergency aid and return transportation will be offered, and aid continued if transportation is refused; emergency aid is to continue as long as needed; regular assistance to be given even if Section 139a is applicable in cases where it is judged in the client's best interest not to return to point of origin; after one year a client will have gained residency even if Section 139a was applicable.[1]

While this new policy essentially gutted the Welfare Abuses Act, there still remains the problem of defining what, in fact, constitutes an emergency. The worker still has to evaluate the need of an applicant and Unit attorneys report the attitude of some welfare workers is that if an applicant makes it to the welfare office on his own, the emergency is not that serious. This discretion is almost always exercised in a negative way. Definition of need remains a source of cases.

The legal contribution in this case was "To establish the right to entitlement, puncture slipshod evaluations and make more possible the humane policy urged from the first by the administrator of the agency."[2]

3. Psychiatric Commitment Procedures

In spring and summer 1966, the Legal Unit represented several welfare clients who had been involuntarily committed to Bellevue Hospital for psychiatric observation. In each of the cases it appeared that the welfare recipient had been committed "without proper examination and apparently as an act of retaliation

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[1] Ibid., p. 8.

[2] Edward V. Sparer, "The New Public Law. . ." op. cit., p. 34.

for her 'troublemaking.'[1] The cases brought to the attention of the Welfare Department were discredited as isolated incidents. However, during the summer, several more clients were represented in such commitment proceedings.[2]

As a group, cases involving involuntary psychiatric commitment of welfare recipients by the Welfare Department presented the following number of common characteristics:

> "(1) There is a troubled and difficult relationship between client and case worker;
> (2) There is no notice to the client of the visit or intended examination;
> (3) The welfare psychiatrist either fails to identify himself or is falsely identified at the home visit;
> (4) The psychiatric examination is brief, cursory, and inadequate; the doctor relies almost totally on the caseworker and his reports;
> (5) In almost every instance, the grounds for commitment are subsequently contradicted, after a more thorough examination by hospital or independent psychiatrists, and
> (6) The welfare psychiatric examination is often related to department initiated neglect (child) proceedings, the commitment being the occasion to obtain custody of the children."[3]

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[1]Letter from Harold Rothwax, Director of the Legal Service Unit to the Honorable Mitchell Ginsberg, Commissioner of Welfare, August 8, 1966, p. 1.

[2]"I had a very sad case a year ago where one woman was sent out to Bellevue. . .this was a very intelligent welfare client, she knew about fair hearings. And she wrote in for a fair hearing and the worker said, 'You better not do that because you are going to get me into trouble,' and when he said that, she went to the unit supervisor and said, 'This man is trying to intimidate me.'

"The worker came back and said, 'You are causing me a lot of trouble. My unit supervisor called me down on the carpet. You just keep this up and we will take care of you.'

"The next day seven cops came into her apartment, whisked her down into Bellevue for observation. She was released after ten days." (David Gilman, Attorney, Record, p. 129) Metropolitan Area Research Council, "Welfare Hearings Report," op. cit., p. 17.

[3]Ibid., p. 4.

(See Appendix for illustrative cases.)

In August 1966, the Legal Unit sent Commissioner of Welfare a detailed presentation of the problem which included illustrative cases, a definition of the pattern in the cases, and proposals to remedy the situation.[1] In that same month the Legal Unit was contacted by the Director of Psychiatry of the Department of Welfare. A meeting was scheduled and held in October. The Unit was not able to bring the matter up in a fair hearing appeal because no cash benefits were at issue. (Fair hearing appeals are limited to decisions involving money.)

In the course of the meeting the Director of Psychiatric Services made the following important points:[2]

(1) He was new to the job and a reorganization of Welfare Psychiatric procedures was underway.
(2) The psychiatric services were performed by psychiatrists selected from panels attached to each welfare center and paid by the visit. It was his opinion that these psychiatrists were probably incompetent, and were incapable of surviving in private practice, and that payment by the visit created the incentive to minimize the time in each analytic interview.
(3) The panels were to be replaced by consulting psychiatrists, paid on a monthly basis, who would be responsible for approving all psychiatric visits, interpreting client behavior to caseworkers, and mediating worker client conflicts. Such mediation might eliminate the need for 80-95% of the home visits presently made.
(4) All psychiatric problems with clients were to be taken up with the consulting psychiatrist; possible action was to be a joint decision of the consultant, a medical social worker, the case worker, and investigator. Consideration was to be given to how the client was to be prepared for the visit.

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[1] Ibid., p. 4.

[2] Memorandum, from Harold Rothwax to Betram Beck on the subject of the October 24, 1966 meeting with Dr. Karl Easten, Director of Psychiatry, Department of Welfare.

The unit proposed that the Department adopt a written notice of time, place, purpose of the visit, and the right to be examined by a psychiatrist of the client's own choosing. It was agreed that prior notice would be given, and noted that the choice of an alternate psychiatrist was made possible by the State Medicaid Program. There was a point of disagreement over whether a client could be compelled to submit to an interview or go to Bellevue for observation. Unit attorneys stressed the dangers of personality differences between welfare worker and client, and questioned how the client was to be protected against the false or malicious reports of a vengeful investigator.

While issues of compulsory interviews, observation periods, and the protection of recipients against welfare workers who had taken a dislike to them were left unresolved, the new psychiatric procedures met unit demands in the following ways:

(1) The economic incentive underlying short interviews and inadequate analysis was eliminated.
(2) Approval of a psychiatrist was required before an interview could be scheduled.
(3) Psychiatrists were to help with difficult worker-client relationships by interpreting the client's behavior for the worker.
(4) Clients were to be given prior notice of a visit, and clients were to be allowed to choose their own psychiatrists.
(5) The involvement of other staff provided safeguards against the arbitrary use of psychiatric commitment proceedings as a weapon against uncooperative clients.

The Unit Director reports that since the agreement, not one case of improper psychiatric commitment of welfare clients has been brought to his attention. In this case, the Legal Unit pressure supported a new director's efforts to

improve his program.[1] The intervention of the Legal Unit probably ensured that the revised procedure was implemented more quickly, and that a procedure which was more protective of the welfare recipient was enacted. Part of the resulting psychiatric procedure can be attributed to the presence of a legal orientation in the policy discussion. Unit attorneys, sensitive to difficulties of protecting against arbitrary or unfair treatment of the welfare client, raised procedural points (prior notice, free choice of the examining analyst by the client) which might have otherwise been overlooked by the best intentioned decision-maker who would approach the problem from a different professional point of view.

4. The "Man in the House Rule"

The Legal Unit has won two fair hearing appeals which have bearing on the application of the "Man in the House Rule" by the New York Department of Welfare. Although there are various definitions of the rule in different states, the "Man in the House Rule" is normally enforced with regard to AFDC (Aid to Families with Dependent Children) programs which provide payments to families deprived of parental support by reason of the death, absence of or incapacity of a parent. The rule represents, in effect, a legislative decision not to allow welfare benefits to go to an unemployed father.[2] The "Man in the House Rule" is

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[1] Two civil suits for $10,000 in damages for malpractice and false imprisonment were initiated against the city and the psychiatrists immediately before the Legal Unit became involved. A unit attorney suggests that this may have established the basis for the quick modification of the procedure.

[2] For a concise discussion of the "Man in House Rule" in a national context, see: Edward V. Sparer, "Social Welfare Testing," op. cit., pp. 15-17.

designed by some states to deny aid to families with the father in the house regardless whether the family's deprived of an adequate income by virtue of his unemployment, ill-pay, etc.; in some states the rule is broadened to deny aid to families where there is an alleged "substitute" father who is defined "more in terms of the man's sexual relationship with the mother than in terms of her support or guardianship of the children.[1]

New York is among a group of states which does not deny aid on the basis that a father or father "substitute" lives in the home. While the presence of a man in the home does not affect the family's welfare elibility, the state "presumes" that he contributes to the support of the family, and directs that his income be applied to the needs of the recipient and all of her children. The inclusion of this income inthe family's welfare budget is required even though there is no legal marriage (if the adults are generally regarded as man and wife). One of the most important of the unit's cases bears on the issue of a man's responsibility for children not legally his own.[2] The Matter of C is summarized as follows:

> In figuring the budget of the C family, the New York City Department of Welfare applied the income of Mr. G to the needs of Mrs. C, her two children and her unborn child. Mr. G, while living in the home of Mrs. C, was not legally married to her and was the father only of the unborn child. He refused to support the other children and could not be legally compelled to do so. Since he was not actually contributing to the support of the other children, Mrs. C protested the application of Mr. G's income in the planned budget to the needs of the two living children.[3]

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[1] Ibid., p. 16.

[2] New York University School of Law, The Welfare Law Bulletin, #5, October 1966.

[3] Ibid., p. 3.

The case came to the attention of the Unit through an MFY social worker and a Fair Hearing request was filed. An initial investigatory hearing was held, the case records examined, and the case was adjourned. Prior to the formal hearing, the State Department of Social Welfare notified the Legal Unit that the City Department of Welfare had admitted the misinterpretation of the policy outlined in Section 353.3 and agreed to correct the error. The reformulation of the policy turns on the phrase: "if the adults are generally regarded as man and wife." Later, the Department of Welfare issued a clarification of the new policy which in relevant part stated:

> The State Department of Social Welfare has advised us ...that of this is a normal family unit in which the parents and children consider themselves as one family, this (the regular) budgetary method would be applied. If however, the family does not consider itself to be one family unit and refuses to be so considered, an alternate method of budgeting can be used. This method would hold in such cases where the man in the household is willing to have his income budgeted for the needs of the woman and their children, if any, but not applied to the needs of the woman's other children in the household.[1] (Underlining added.)

The Matter of C represents an important liberalization of the man-in-the-house rule as applied in New York City. Under the new policy, the original presumption that the resident male's income is to be applied to all the children of a common-law household no longer holds. A man can now only be held responsible for contributing to the support of those children he acknowledges as his

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[1]The City of New York Department of Welfare, Informational No. 66-23, "Clarification of Departmental Policies: Budget Computation" (New York: July, 1966, unpublished memorandum), p. 1.

own, and the practice of reducing a family's welfare budget by an amount calculated on the basis of the man contributing to the support of all the children regardless of whether such support was actually provided is no longer legitimate. Nevertheless, it is up to the individual family to assert its right to be budgeted according to the new policy. One experienced attorney is of the opinion that a large number of families eligible for increased benefits under the new policy are unaware of the change, and continue to be budgeted in the old way.

The second case involving the "Man in the House Rule" represents an attempt to apply the principle established in the Matter of C to the woman of the household. The appeal of Mrs. Alma Reed attempted to defeat the presumption that a resident man in the household necessarily contributes to the household expenses and therefore must be included in the budget as a source of income. The intent of the appeal was to develop the principle that the man's income can be included in the recipient's budget only if the couple agree that they constitute a household and support is actually provided. The state regulation of relevance to the case provides that a friend residing in a recipient's household was to be treated as a non-legally responsible relative and defines income standards for support contributions to the recipient. If the friend is unwilling to make the contribution the recipient's budget is to be reduced by an amount equal to the difference between the rent at prevailing commercial rates and the cost of his living in the house.

5. The Matter of Mrs. Reed: A Summary

Mrs. Reed is 66 years old; she lives on semi-monthly payments of $29 in Old Age Assistance (OAA) and $36 in Social Security benefits. Her Old Age Assistance was abruptly terminated on the allegation that a Mr. Brown was living in the apartment. Subsequently, her assistance was formally discontinued because she refused to explain the arrangement adequately.[1]

Following the termination of Mrs. Reed's benefits, the case worker continued an intensive investigation to prove the original allegation. Six months later the investigator was satisfied that Mr. Brown was no longer in the household and reinstated Mrs. Reed on OAA. (The case of Mrs. Reed will be reviewed in greater detail at the conclusion of the Welfare discussion as her experience illustrates a variety of issues in Welfare Law.)

A Fair Hearing decision favorable to Mrs. Reed was obtained. The ruling focused upon the question of where Mr. Brown was in fact living with Mrs. Reed as a spouse. It did not, as hoped, produce an answer to the question of whether a man's income could be deducted from a welfare budget despite his refusal to acknowledge a domestic relationship or an obligation to contribute to the household. The state ruled that that city had to prove the actual contribution to the budget, and could not reduce the budget on the basis of a presumption. Thus, while in the Reed case the city could establish that a man was living in the household, it was not sufficient evidence to justify a reduction in Alma Reed's

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[1]Brief For the Appellant, Fair Hearing State Department of Social Welfare. Presented Nov. 18, 1966 before John J. O'Mally, Esq., State Referee.

budget, let alone a termination of her benefits altogether. While the Reed case placed the burden of proof on the city to show a contribution, it did not reach the issue of a man residing in the house without having such an obligation.

6. The Right to a Telephone

A good illustration of illegal, arbitrary policies which evolve unchallenged in the administration of public welfare, was the practice of denying the welfare recipient the right to a telephone. In some cases, the discovery of a telephone in a recipient's home became a condition for the termination of benefits. Such a policy was also the occasion for serious invasions of recipients' privacy and frequent harassment. Caseworkers frequently would arrive unannounced; make an intensive search of the client's home and utilize various subterfuges to expose a concealed telephone. The all-too-familiar stories of recipients keeping their phones secreted in closets or under the floor and fearing that the phone might ring during a welfare worker's visit find their basis of fact in such practices.

Of course, as with other policies, the degree of enforcement of the telephone ban was a function of the individual welfare worker. Some case workers would take a permissive attitude toward telephones and would support a client's request for one; others would constantly ferret out "unauthorized" telephones, and use the discovery of a telephone as a condition of discontinuing assistance. The worst effects of such a policy could be spelled out in terms of human isolation of aged parents cut off from their children, mothers with large numbers of children cut off from community services or fire and police protection;

encapsulation of those who for various reasons are unable to go out of their apartments. The telephone has become a standard feature of the American way of life; to deny it to the Welfare recipient was another reminder of his status as a second-class citizen.

The telephone policy was based upon Section 215 of Policies Governing the Administration of Public Assistance which prohibits welfare recipients from receiving grants for telephones without demonstrated medical, employment or social reasons.[1] This restriction upon paying for a client's telephone except under certain conditions, had been distorted by some caseworkers into a general prohibition upon the possession of a telephone for any reason. The initial issue was whether a recipient could have a telephone without being penalized.

A Unit attorney took up the issue in behalf of Mrs. P who was threatened with loss of AFDC welfare benefits for the possession of a telephone. A Fair Hearing request was filed and an initial hearing held. The Unit simply pointed out that the Social Security Act requires that AFDC benefits be extended in the form of "money payments" and that money payments as defined by Section 5120 of the Federal Handbook of Public Assistance Administration meant that the welfare recipient, without interference from the welfare agency, is to decide how the money is to be spent. The Handbook states this explicitly in these terms:

> Payment must be accomplished without direction on the check or by letter or by agreement as a condition of

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[1] For a discussion of this case see: Welfare Law Bulletin, No. 4 (June, 1966), p. 7, and No. 5 (Oct., 1966), p. 6.

> receiving the payment or by other notification that the recipient must use his money in a specified way or for a specified purpose. Paragraph 5132.[1]

The Department of Welfare abandoned its defense in the case before a Fair Hearing was held, and a statement of revised policy was issued in July, 1966. It said in part:

> ...the family has the right of self-determination as to how this grant should be spent. As long as the family's expenditures do not involve the provision of additional funds by the Department, there should be no restriction as to the use of the funds granted... This therefore applies to the family's decision to have a telephone.[2]

In the Mobilization Area the right to a phone is no longer a problem; whether, the revised policy is being observed in areas where a militant advocacy of welfare recipient's legal rights does not exist is an open question.

Since the revised policy went into effect, the issue shifted to the definition of the circumstances under which a recipient would be eligible for a special telephone grant. A recipient may receive a telephone grant when such service is essential to the production of income, health and safety or as a part of a plan for service maintaining contact with community agencies, relatives or other persons essential for the implementation of such a plan.

Throughout the fall and spring of this year the Legal Unit has conducted a campaign to obtain telephones for welfare clients. The intent has been to

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[1] As quoted in Welfare Law Bulletin, No. 4 (June, 1966), p. 8.

[2] New York City Department of Welfare Informational No. 66-23, "Clarification of Departmental Policies" (July 6, 1966), op. cit., p. 1.

establish that every "slum family must have a phone to implement their own plan for contact with social agencies, friends, etc."[1] As of March 1967, 86 clients had sought the assistance of the Legal Unit. Of these, 43 clients were clearly ineligible for a special telephone grant. The March 1967 status of the 43 eligible clients is as follows:

Telephone Campaign October 1966-March 1967

	Number
Eligible Clients	43
Telephone grants obtained	14
Telephone grants denied	3
Fair Hearing request pending	21
No notification of receipt of hearing request	5
Ineligible Clients	43
Total Clients	86

The ineligible clients were those who did not have a serious medical problem or a strong social justification (large number of children, etc.) for a telephone. Where a client clearly did not meet the legislative standards there was little that could be done.[2] In addition to clients found to be ineligible, three clients changed

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[1] Legal Services Unit, 'Re: Telephone Campaign" (New York: Steven J. Antler, Aug. 1966, unpublished memorandum), p. 1.

[2] By Sept. 1965, the Unit had contested five Fair Hearings on telephone issues, and lost in every one. The Unit's experience here illustrates the need to go beyond the legal structure to elicit the legislation of new, more favorable standards.

their minds about having a telephone. In each of these cases, after a Fair Hearing request had been filed, a letter from the Department of Welfare was received which indicated a welfare worker had spoken to the client and found that a telephone was no longer wanted. In such cases where harassments and threats to the client appear evident, the Unit attempts by letter or phone to reassure client of the validity of his application, his right to have a phone, and convince him that he has nothing to fear from his caseworker.[1] If no response is forthcoming, the case is dropped.

7. Minimum Standards

In November 1966, after nearly a year of activity by welfare recipient organizations and the Legal Unit, the Department of Welfare revised its minimum standards policy. Where previously the Department did not accept the responsibility of informing clients of what they were entitled to by federal and state law, the Department now accepts the responsibility for initiating an assessment of clients' needs in winter clothing and household effects. Department of Welfare

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[1] "In one of our cases we had requested a fair hearing because our client was denied a special allowance for a telephone. The social worker from the State Department of Social Services said that she believed the local agency had erroneously denied the phone, and that after a hearing a grant would be authorized. However, our client insisted we withdraw the hearing because of her justifiable fear of reprisal by the caseworker." From the Unit testimony presented before the State Department of Social Service public hearings on the revision of Fair Hearings. Legal Services Unit, "Testimony" (New York: Mobilization For Youth, July 1967, unpublished report), p. 6.

Informational No. 66-48 states simply:

> The Department is committed to the principle that that clients should be brought up to minimum standards, as defined in the manual. If this was not done when the client's case was opened, the client's needs in relation to minimum standards should be discussed on the initiative of the worker during statutory visits. Achieving minimum standards should be a regular part of accepting a new case for public assistance.[1]

Although the clarification of minimum standards policy is a likely response to the continued acitivities of the welfare recipients' organizations, the Legal Unit attorneys have played an important role in the formulation of strategy drawing up appeals, writing letters of support. Demonstrations, mass requests to be brought up to standard in conjunction with the utilization of legal forms of pressure (fair hearing requests,) have resulted in a clear liberalization of the administration of minimum standards.

C. Procedural Issues

Cases represented by the Legal Units have also effected changes in the procedural rights accorded to clients by the Department of Welfare. The two important instances of change involve the establishment of: (1) The right to have a third person participate in welfare interviews; and (2) the right of a client or his representatives to consult Department of Welfare records in advance of a fair hearing.

1. Right of Third Party Participation in Welfare Interviews

In the case of Mrs. Silva, the Legal Unit won a declaration of a

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[1]New York City Department of Welfare, "Informational No. 66-48", (New York: November 17, 1966, unpublished memorandum), p. 1.

client's right to third party assistance in dealings with the Department of Welfare. Her case is summarized as follows:

> Mrs. Silva is 58 years old, and does not speak or understand English. At the time she came to MFY for assistance Senzia Silva was living with her daughter, two grandchildren and one great grandchild. The family was existing on $50 a week earned by a granddaughter, and was in dire economic straits. Mrs. Silva sought the assistance of MFY in applying for public welfare. Subsequently, the Department refused to accept or process an application in the presence of the MFY worker who had accompanied Mrs. Silva to act as interpreter and to assist with the application forms.

After negotiations with the Department failed to produce results, and intervention by the State Department of Social Welfare was inconclusive, Unit attorneys prepared to initiate an Article 78 Petition to the New York Supreme Court; the petition asked the court to direct the Commissioner of Welfare to fulfill his legal responsibility by processing the application. Despite the fact that by this time the Department of Welfare was prepared to accept Mrs. Silva's application, the Legal Unit was determined to carry through the Article 78 proceedings unless the Department would agree to spell out a change in policy. Under the threat of court action, a memorandum of understanding was drawn up in which the Department accepted the principle of third party help in return for MFY dropping the case. In January, 1967, the Department of Welfare issued a policy statement which confirmed a client's right to third party assistance. The passage of relevance is as follows:

> An applicant for or recipient of public assistance has the right to have another person with him at the time of his application for assistance in the Welfare Center or at other contacts in the Welfare Center or in his home.

> The presence of a third person....is permitted as long as it is the desire of the applicant or recipient...[and]...shall in no way affect the determination of initial or continuing eligibility, nor shall it affect the processing for care or service.[1]

The above policy was made possible because the Legal Unit insisted upon a general solution to the issue rather than accepting an immediate settlement of Mrs. Silva's problems.

2. Pre-Hearing Discovery

Several times during the preparation of the Alma Reed case (see "Man in the House" Rule), Unit attorneys requested to see the Department of Welfare case records. The Unit received no answer to the requests, and subsequently brought an Article 78 proceeding for the purpose of securing fair hearing procedural rights as set forth in the federal Handbook of Public Assistance Administration. At issue was the "federal requirement that state fair hearing proceedings allow the appellant an opportunity to examine written evidence prior to the hearing." This right had been repeatedly denied.[2] Such a practice violated the New York statutory requirement that state regulations conform to federal regulations.

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[1]New York City Department of Welfare, Informational No. 67-68, "The Right of a Third Party to Participate in Interviews With Applicants or Recipients", (New York: January 19, 1967, unpublished memorandum), p. 1.

[2]Legal Services Unit, Affidavit, Re: Article 78 Proceeding, New York Supreme Court, (New York: Steven J. Antler, October 6, 1966, unpublished legal document), p. 1.

Prior to the Article 78 hearing, the New York Department of Welfare agreed to revise its rules in accordance with the federal requirements. State Fair Hearing regulations were amended so as to establish a procedure by which the attorney of welfare client could obtain copies of all documents to be introduced by the local Welfare Department in the fair hearings. The following is a key paragraph of the revisions:

> (IV) Any document or written record which has not been made available for examination after demand has been made therefore, shall not be admitted as evidence at the fair hearing until such time as the appellant has had a reasonable opportunity to examine the same and prepare for his rebuttal if any.[1]

The definition of this right with its implications for the justice of the appeal process itself is perhaps one of the Legal Unit's most important contributions to the administration of Welfare law in the City of New York.

D. The Role of Legal Counsel In Welfare Matters: The Reed Case

Aside from its importance as a successful test, (pre-hearing discovery and amplification of the Man in the House Rule), the Alma Reed case illustrates a number of problems in welfare administrative practice.

The case involves, as it will be recalled, the abrupt termination of Mrs. Reed's Old Age Assistance (OAA) benefits because it was alleged that a man (Mr. Brown) was living with her. Subsequently, her assistance was formally discontinued because she had refused "to explain management adequately." (100) Her monthly OAA payment of $59.70 was not resumed until six months later when the welfare worker was satisfied that Mr. Brown no

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[1] Ibid., Sec. 356.4(d)(IV).

longer lived in the household.[1]

The caseworker surmised that Mr. Brown lived in Mrs. Reed's home and after the suspension, gathered evidence in support of his thesis. In the course of an intensive investigation, the following "incriminating" facts were uncovered: The presence of Mr. Brown's name on the mailbox; a phone under his name in the apartment; the presence of men's clothing in the closets, and men's underwear in the dresser; the presence of Mr. Brown in the apartment on two occasions; a portable T.V.; and the landlady's word that Mr. Brown had resided in the apartment for a period in 1965. The caseworker suspended Mrs. Reed in December 1965 and spent a considerable amount of time over a period of months bringing to light the above facts.

The suspension is shown to be "irrational and capricious" by the fact that Mrs. Reed's recertification of eligibility was approved at the supervisional level on the same day the suspension notice went out. It seems clear that the investigative work occurred after the suspension was an effort to justify the decision already made or to obscure the essential error of the decision.[2]

Mrs. Reed did not attempt to conceal the relationship, and could justify each of the "compromising" facts observed by the caseworker: the telephone and T.V. were gifts of Mr. Brown's, the name on the mailbox was to receive telephone bills, the men's clothing belonged to Mrs. Reed's deceased brother, the men's underwear were for her own use. Nevertheless, the caseworker refused to

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[1]Legal Services Unit, Mobilization For Youth, "Fair Hearing Brief For The Appellant", (New York: Harold J. Rothwax, Steven J. Antler, of Counsel, November 1966), p. 26.

[2]Ibid., p. 13.

accept these explanations and set out upon an intensive investigation which included: questioning of Mrs. Reed's neighbors, landlord and superintendent; traveling to Queens to verify Mr. Brown's address; impersonating a magazine representative in a call to verify Mr. Brown's Queens telephone; eavesdropping outside the Reed apartment while another worker called Mrs. Reed to verify the removal of the phone; repeated search of Mrs. Reed's apartment; and questioning Mrs. Reed's personal relations with Mr. Brown, her smoking habits and the arrangement and use of the couch and bed in the apartment. Despite the amount of investigative work accorded to this case, the worker never asked Mrs. Reed whether Mr. Brown was supporting her or contributing to the household.[1] Mrs. Reed was told that to qualify for a resumption of welfare payments she had to disconnect the phone, have a receipt from a charity organization for the men's clothes and underwear, a receipt for the T.V. set, and bring Mr. Brown to the welfare center with proof of his Queens residence. Mrs. Reed met these conditions and submitted to numerous searches and invasions of her privacy. In May 1966 after six months of deprivation, her assistance was resumed.

Alma Reed's experience with the Department of Welfare illustrates the following problems typically encountered by welfare recipients:

(1) Illegal Administrative Practices - (a) Removal of telephone as a condition of eligibility; (b) Suspension by reason of "failure to explain management adequately" is not an eligibility criterion of OAA (210 N. Y. Soc. Welfare Law) and violates the money principle (Para. Sec. 5100 Fed. Handbook of Public Assistance Administration) . Mr. Brown's presence in the house also does not

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[1] Ibid., p. 11

affect Mrs. Reed's ineligibility according to statutory criteria; the termination of assistance on these grounds was therefore unlawful. Only the prevailing commercial rates and the cost of living in the home which in this case amounted to $38, an amount less than that lost because of the suspension, could be deducted. Thus, the sanction imposed by the worker exceeded that provided by the law. Moreover, the implications of the investigation violated Mrs. Reed's right to have a guest visit her apartment when and for as long as she wished.

(2) Search and Seizure Issues - The searches of Mrs. Reed's closets, her dresser drawers, the eavesdropping and inquiries into Mrs. Reed's private life constitute improper invasions of her privacy, raise search and seizure issues, and illustrate improper administrative practices.

(3) Ha rassment and Humiliation - The persistent efforts of the worker to prove Mr. Brown's residence was a form of harassment and intimidation of Mrs. Reed. The questioning of the men's underwear prompted her at one point to raise her skirts to prove the claim that she was using the underwear herself. The interviews with Mrs. Reed's neighbors, the requirements to prove ownership of the T.V., get rid of the underwear, justify her furniture arrangement, explain her smoking habits and repetitive visits to the apartment to catch Mr. Brown there are clear abuses of the caseworker's discretion.

(4) Preoccupation with the Verification of Eligibility - The amount of effort invested in supporting a determination of Mrs. Reed's eligibility reflects a neglect of other important needs of welfare clients.

(5) The Role of Worker Discretion in Case Determination - The worker took it upon himself to gather evidence to support his own decision after the fact; he defined his own terms of suspension and conditions of regaining eligibility. The case itself is the result of the improper use of a welfare worker's discretionary powers.

(6) Proper Notice and Explanation of Cause; Welfare Rulings - Mrs. Reed's assistance was suddenly cut off without prior warning. An opportunity to meet the allegation that Mr. Brown was living in the apartment was not made clear before the suspension of aid. The reason given for the formal discontinuance two weeks later ("refused to explain management adequately"), obscured the fact that Mr. Brown's relationship to the household was the motivating cause of the suspension.

(7) Delay - The issues raised by Alma Reed's case took nearly one year to resolve--via the Fair Hearing process; it took until November 1966 to reverse the suspension which occurred in December 1965. Such delay in the resolution of an issue diminishes the value of the appeal process in cases where serious deprivation of a client is involved.

The Alma Reed case also illustrates several important general results of providing legal counsel to welfare recipients.

2. Impact on Worker-Client Relationships

The relationship between the welfare worker and his client is characterized by client dependence upon the goodwill of the worker, the exercise of a worker's unchecked discretion in disposing of a matter, and a client's lack of knowledge of his rights, sources of remedy, or the confidence to assert them. A major contribution of the Legal Unit in providing representation to welfare clients has been to make the client less vulnerable in his dealings with the Department of Welfare, to guard against the abuse of discretionary power, and to hold a worker responsible for his actions. Militant advocacy of a client's rights has led to the defeat of several illegal administrative practices (Telephones, Welfare Abuse Law, etc.). The continuing presence of legal advocates is a guarantee that such practices are less likely to continue in the future. In the past, illegal administrative practices have evolved unhindered because the resources necessary to challenge welfare decisions were lacking, and appeal process itself was largely unused. Such representation also exerts pressure on welfare departments to formulate more specific guidelines for their workers.

The personal relationship between a caseworker and a recipient often determines whether a client is harassed and denied his entitlements. The availability of Legal representation does not, in itself, preclude ha rassment such as that which occurred

in the Alma Reed case, it does, however, encourage welfare workers to be more cautious, less peremptory, and, according to several MFY social workers, less abusive of their clients. The threat of suspension from welfare rolls is frequently encountered by clients seeking benefits to which they are entitled. Moreover, in situations where a worker dislikes his client for some reason, threats are employed to keep the client "in line." A major impact of welfare representation has been to make welfare clients less threatened by the unlawful pressures of antagonistic welfare workers. In most cases where the assertion of a client's rights has led to threats and harassment, the intervention of an attorney has put an end to such problems. More importantly, the very existence of such a support has made welfare clients more willing to pursue issues of entitlement and assert their procedural rights. In effect, the Legal Unit, by protecting the welfare recipient against retaliation, has helped to create the climate in which they can begin to assert their interests without fear. Thus, the organization of the welfare clients organizations is made that much more effective. Recipients are more willing to participate in welfare campaigns when they are assured of legal support.

The Unit has also had the impact of making welfare workers more accountable for their decisions. In this way, arbitrary or unfair rulings risk being challenged in a fair hearing or being subjected to judicial scrutiny in an Article 78 proceeding. Representation of welfare clients has given meaning to the statutory remedies designed to protect the welfare recipient against the possible abuse of bureaucratic prerogative. Welfare recipients now have some recourse for dealing with arbitrary and unreasonable treatment. The existence of a Legal resource with which to operate appeal procedures has the potential for achieving an important reduction of arbitrary decision-making in

in the administration of public welfare in New York City.

3. Activating the Welfare Appeals System

Closely related to the challenge of arbitrary welfare practices is the activation of appeal procedures in the New York Welfare system. As already shown, before the Unit began its work, the use of a fair hearing appeal was rare. Since 1964, fair hearing requests have become one of the most important instruments for making welfare practice conform with the law. The Legal Unit pioneered in the use of the fair hearing appeal to protect client rights and interest is widespread in the New York area. One of the most important by-products of the Unit's work in welfare law has been the growing incidence of welfare appeals. Use of the Article 78 proceeding to ensure that the Department of Welfare abides by its legal requirements, is an additional legal protection of the welfare client brought into active use.

E. Issues in Welfare Law (Sept. 1967)

While the Legal Unit has shown legal advocacy to be an effective strategy for change in welfare administrative practice, considerable work remains before adequate safeguards for welfare recipients are established and elements of a rule of law are extended into the Fair Hearing process. In July and August 1967, the State Department of Social Services (formerly Welfare) held a series of public hearings to consider a set of proposed revisions of fair hearing procedures. Testimony was taken from a wide range of organizations concerned with problems of the welfare recipient. A summary of the hearings, published at their conclusion, identifies the following issues as ones which were not remedied by the new rules as suggested by the State:

(1) Information - Welfare recipients still do not have access to the rules and regulations "which would permit them to find out if an agency official is violating department policy."[1]

(2) Delay - Hearings are not held until long after the suspension, reduction, or special need has occurred. The recipients often face up to four months of deprivation "with their right to reimbursement limited to payment for proven debts incurred within two months prior to final correction."[2]

(3) Procedural Disadvantage of the Client - Clients who appear unassisted at the hearings are at a tremendous disadvantage with respect to knowledge of the rules affecting their case, and face an array of specialized and knowledgable officials.

(4) Limited Pre-Hearing Discovery - Appellant recipients are only permitted to examine that part of a case which is presented at the hearing. Often the "confidential" parts of the record which are not introduced are precisely the kinds of evidence which would support the client's case. Confidentiality is thus used against a client rather than to protect his best interest.

(5) Precedence - Hearing decisions are not made public and consequently have no effect on other cases.

(6) Due Process Protections - Recipients cannot confront informants or welfare officials directly involved in the decision, there are no explanations offerred of the basis of agency decisions, nor is illegally obtained evidence excluded from the hearing.

(7) Independence of the Hearing System - The fact that the hearing officer is an employee of the State Department of Social Services means that he may be unwilling to jeopardize relations with the local agency.[3]

Proposals to remedy the problems not touched upon by the State Department of Social Services suggested revisions which included: hearings prior to suspension or reduction of benefits, requirement of local agencies to inform clients of their rights, the

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[1]Metropolitan Area Research Council, Inc., op. cit., p. 4.

[2]New York University School of Law, Welfare Law Bulletin, 8, (May 1967), p. 10.

[3]The above summary is based on the hearing report of Metropolitan Area Research Council, Inc., op. cit., p. 47.

the provision of advocate attorneys for fair hearing appellants, pre-hearing examination of all records of a recipient, publication and distribution of hearing decisions, definition of standards of evidence acceptable in the hearing, and the establishment of a hearing system independent of the agencies responsible for the administration of welfare assistance.[1] Outside of the hearing context, other issues persist. There is a need to define new grants for special needs not presently included in the welfare budget. Examples of such special needs for which grants are not available would be expenses for travel to a parent's funeral, or reimbursement for legal fees where a lawyer has to be paid.

Finally, there is a need to extend the coverage of appeal procedures to protect the recipient in matters where money is not involved. Unless instances of harassment or the improper search of a recipient's home can be challenged, practices such as those raised by the Reed case cannot be effectively discouraged. Search and seizure issues involving prior notice of home visits, and the establishment of standards for home investigation cannot otherwise be resolved except at the cost of lengthy and highly vulnerable adjudication in the courts. Moreover, clients have at present few protections against harassment or reprisals which although reversible, in the absence of a prior hearing, entail long periods of deprivation before being resolved. Until appeal processes are made relevant to such issues, the welfare recipient will be subject to the violation of important constitutional rights. The work of the Legal Unit is therefore a small contribution to the "rule of law" in the administration of public assistance. Clearly, considerable legal development must occur before the welfare recipient can acquire first-class citizenship.

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[1] Ibid., p. 4-7.

CHAPTER V

The Practice of Public Housing Law

Introduction

The representation of public housing tenants and applicants comprises an important area of Unit experience in the practice of poverty law. Although such cases comprise only a small percent of the unit caseload, they raise broad legal issues in the administration of public housing, and are of special interest because they illustrate common administrative practices across the country.

The Unit's public housing clients can be divided into two classes: applicants who seek possession of public housing units and tenants who are trying to retain their possession of units. Each type of case involves different issues and will be discussed separately. There is, however, one overriding factor which affects tenant and applicant alike. It is the simple fact that the number of families which seek public housing units overwhelmingly outnumber the number of units available each year. According to estimates of the New York Housing Authority, 85,000 to 100,000 applications are received annually for the 8,000-10,000 vacancies for the same period.[1] It is the extreme disparity between

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[1] Public and Community Relations Department, New York City Housing Authority as quoted in Rosen, Michael B.,"Tenant Rights in Public Housing", (New York: New York University School of Law, Projection Social Welfare Law, 1967) p. 6 and from information supplied by Mr. Irving Weiss of NYCHA on March 6, 1967 at a meeting between a committee of housing applicants MFY Legal staff and representatives of the NYCHA.

housing need and present resources which underlies a variety of questionable administrative practices brought to light by the Unit in the course of providing legal representation to public housing applicants and tenants.

I. The Representation of Public Housing Applicants

The extreme pressure on a limited number of units has led to procedures which reduce to a minimum the consideration given to any applicant and restrictive regulations which make tenancy tenuous and insecure for some families. The disparity between demand and supply has also given rise to the attitude "on the part of those establishing standards for eviction from public housing in New York City that whatever rules they establish are merely a favor to tenants and the tenants have no right to fair standards of eviction."[1] Tangible expressions of such attitudes are found in the admission and eviction procedures of the Housing Authority. Legal Unit activities represent an effort to extend concepts of due process of law into public housing administrative practice. The intent is to define tenant rights, delineate admission, eviction criteria and procedure so that administrative areas where the exercise of subjective judgment is required,

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[1] Springs, Kenneth Q., " Eviction from Public Housing on the Basis of Non-Desirability", (New York: New York University Law School, Spring 1965 unpublished student paper), P. 1.

will be clearly recognized and subject to question with the right of appeal guaranteed.

A. Tenant Selection Procedures in Public Low Income Housing

In 1937 the federal government began a public housing program:

> To remedy the unsafe and insanitary housing conditions and the acute shortage of decent safe and sanitary dwellings for families of low income, in urban and rural nonfarm areas, that are injurious to the health, safety and morals of the citizens of the nation.[1]

The Housing Act of 1949 broadened the scope of federal intervention and set as a goal for the nation the "realization as soon as feasible:...of a decent home and suitable living environment for every American family..."[2] The early programs defined tenant selection criteria in quite specific terms: such as giving priority to veterans' families displaced by urban renewal.

The Housing Act of 1961, however, by eliminating Federally required admission priorities vested greater discretion in local housing authorities to establish admission criteria. One observer summarizes the present situation in the following terms:

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[1] 42 U.S. code Sec. 1401 as quoted in Michael B. Rosen, op.cit., p.3.

[2] 42 U.S. Code Sec. 1442 Ibid., same page.

> Discretion is granted to local authorities to determine eligibility criteria, yet it is clear that the federal statutes are silent as to ineligibility on any grounds other than overincome and the statutory definition of what constitutes a family. The admission criteria of a local authority may be drawn in terms which parallel the federal requirements or they may list a vast aggregate which faces an applicant for admission. The actual criteria used will rarely be made public, least of all to the applicant.(1)

The local authority is required by federal contract to make eligibility criteria public:

> The local authority shall duly adopt and promulgate by publication or posting in a conspicuous place for examination by prospective tenants regulations establishing its admission policies.
>
> Public Housing Administration, Consolidated Annual Contributions Contract, Part I Sec. 20, Admission Policies PHA 3010, p.8, Oct. 1964.(2)

Despite this requirement, the Housing Authority considers eligibility criteria to be a matter of internal administration, and publicizes only those relating to income and residence in substandard housing.(3) Applicants have had little idea of the numerous criteria other

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[1] Michael B. Rosen, op.cit., p. 4.

[2] Ibid.

[3] Moreover, the NYCHA claims that only the federal government, not an applicant can enforce the terms of the contract. See Rosen, Ibid., p. 4.

than income and housing conditions which determine their chances of obtaining an apartment. Even the efforts of Legal Unit and other attorneys to obtain the criteria have, until recently, been obstructed by housing authority personnel who have claimed repeatedly that no admission criteria which have not been made public exist. Through the efforts of a sympathetic employee of the Housing Authority, the Unit was able to obtain a copy of an additional set of criteria. They are central to this discussion.

First it should be noted that the objective of the admission policy of the New York City Housing Authority is:

> To create for its tenants an environment conducive to healthful living, family stability, sound family and community relations and proper upbringing of children.
>
> Management Directive GM-1287
> Nov. 29, 1961[1]

The Authority sets forth a policy designed to identify families which might detract from this goal. A family will be considered eligible if it does not constitute:

> (1) a detriment to the health, safety or morals of its neighbors or of the community; (2) an adverse influence upon sound family and community; (3) a source of danger to the peaceful occupation of the other tenants; (4) a source of danger or a cause of damage to premises or property of the authority or (5) a nuisance[2].

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[1] Ibid., p. 5.

[2] Ibid., p. 6

In arriving at such a determination the same resolution directs Housing authorities to consider:

> family composition, parental control over children, family stability, medical or other past history, reputation, conduct and behavior, criminal behavior if any, occupation of wage earners, and any other family data or information with respect to the family that has a bearing upon its desirability including its conduct or behavior while residing in a project...
>
> Resolution #62-9-683, Sec. 2, p. 1(1)

Obviously such standards are vague and pervasive. As such they require additional specifications of eligibility and permit extensive investigation of applicants.

The non-specificity of the standards gives rise to investigative evaluations of tenants on the following grounds: alcoholism, use of narcotics, criminal records, teenage gang activity, a record of past non-payment of rent, highly irregular work habits, a husband or wife under the age of eighteen, out of wedlock children, a history of mental illness, lack of furniture, being elderly, homosexuality and obnoxious behavior in applying.(2) Clearly, the breadth of factors which could make a family ineligible is so wide as to permit extensive abuse of investigatory power.

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[1] Ibid., p. 6

[2] Lowe, Urban Renewal in Flux, The New York View. A report of The Center for NYC Affairs New School for Social Research, p. 98.

Such criteria are also highly valuative and militate against the lowest income groups who experience the highest rates of unemployment or irregular employment, who make up more than their share of arrests, who show the highest rates of marital breaks or common-law relations, etc. These grounds preclude applicants who frequently are in the most serious need of public housing, applicants who by virtue of their extremely low incomes are forced to accept the least adequate housing available. Moreover, many of the categories, such as those discriminating against broken families, find little basis in either state or Federal Law, and yet have found little legal challenge. Applicants have had little chance to contest rejection because the criteria and the evidence supporting the ruling are normally unavailable; they are often uncertain of their rights; and legal counsel has been absent. Aside from the inequities inherently bound up in the eligibility criteria and the standards of investigation, the procedures for processing applications present additional problems to the applicant.

To their serious disadvantage applicants are never appraised of the fact that these standards are being applied to them, there is no possibility of refuting any evidence gathered by the authority. A family may be rejected on the basis of 'anti-social behavior' reported by a landlord, neighbors, schools or social agency. The absence of protections for the applicant are revealed in the following:

> Information may be received from any source without verification and the authority's staff 'during all preadmission contacts is to be on the alert with the applicant for any potential problems which were not previously uncovered.' No provision is made for informing the applicant of adverse information and the applicant does not know what information has been obtained and what will defeat his application. There is no hearing on his application and the applicant's only safeguard is the conscientiousness of the Authority's employees that the information will be carefully screened to determine reliability and relevance. But the safeguard is illusory for the Authority has not an evidentiary standard and an applicant who has incurred the disapprobation of a landlord, neighbor or social worker or even of Authority personnel with whom he has had contact may be rejected without an opportunity to contest the determination.[1]

This disadvantaged status continues throughout the process of evaluating applicants.

B. The Determination of Eligibility

After filling out an application, the prospective tenant is interviewed by a member of the tenant selection division. In addition to coding the application and determining the priority of the applicant, the interviewer carefully observes the client for any clues of a potential problem family as defined according to the criteria outlined above. Applicants are divided into three categories: (1) Those thought at the out-

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[1] Rosen, op.cit., p. 7.

set to present a clear and present danger are automatically ruled ineligible and processed no further; (2) those families considered eligible which require further evaluation; (3) those families which are believed to conform with the Authority's objective and are declared eligible.[1]

The eligible group is coded according to priority, borough of residence, and preferred number of rooms. The second group is investigated to determine whether indicators of a potential problem family are accurate. The families of this group which are determined to be eligible join the first group for the remainder of the processing. All the applicants who receive an adverse ruling on the basis of overincome or adequate residence are promptly notified; applicants rejected for other reasons receive no notification.

The processing of an application is suspended once a serious indication of ineligibility is encountered. Moreover because of the intense demand for public housing, many families who are otherwise eligible but belong to a low priority category receive no continuing review once the low priority status has been ascertained.

Families which have been investigated by the Social Consultation Unit are informed of a negative determination and are allowed on request to discuss

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[1] Management Resolution GM1287, p. 1, as quoted in Rosen, Ibid.

the reasons at an interview. There is some doubt at the frequency and efficacy of such interviews.[1] The Authority can effectively deny admission by ignoring an application beyond a certain point in processing it. The result of these practices is a large number of applicants are declared ineligible without their knowledge and without an opportunity to explain their side of the evidence held against them. For example in a meeting with a Puerto Rican group on the Lower East Side, Unit attorneys found many who, though eligible on the basis of income, state residency and substandard housing conditons, had not received a determination of eligibility or ineligibility over periods of as much as six and ten years of waiting. Many such applicants continue to hope for admission to public housing long after being dropped from consideration. Others are mystified at seeing friends apply and be accepted while their own application goes unanswered.

C. Unit Tests Cases Related to Applicants

Three of the Legal Unit's most important cases in public housing law are related to admission procedures and eligibility standards. The first case to be discussed here is a group action taken against the Housing Authority on the behalf of thirty-one applicants.

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[1] See Committee on Housing and Urban Development, Community Service Society of New York, Memorandum on Housing Legislation (New York: Jan. 1967, unpublished report).

The case, Holmes vs. New York City Housing Authority attacks the legality of the admission procedure itself.

The Holmes case is the end product of a joint venture of the MFY Community Development program and the Legal Unit. Although the problems of public housing applicants were known as early as August 1965, it took a year to organize a sufficient number of applicants to begin a group. Thus in the fall of 1966 the MFY Community Development program undertook to bring long-time applicants together to consider how to exert pressure on Housing Authority for the clarification of their applications and broad changes in admission procedures. Over 125 people responded to the initial publicity; a committee of applicants was elected and, with the aid of a Unit attorney, a series of demands were drawn up. The Ad Hoc Public Housing Authority Applicants Association as it was called, offered the Authority a set of proposals which included:

(1) immediate determinations of eligibility and explicit reasons for adverse rulings be offered to applicants concerned;

(2) Immediate admission of those ruled eligible who applied 1 year or more ago;

(3) Immediate admission of eligible applicants of 6 months who live in emergency conditions;

(4) Large families be given priority for large units or doubling of adjacent units where necessary.

(5) The publication of exact admission standards and requirements;

(6) A process of determination of eligibility within one month of receipt of an application which includes informing ineligible applicants of the basis of their ineligibility, and placement of eligible applicants on a waiting list.

(7) The establishment of a procedure whereby applicants may appeal any denial of eligibility.(1)

A meeting for the presentation of these proposals to Housing Authority representatives was arranged and held March 6, 1967. Present at the meetings were 8 members of the Ad hoc Applicants Association, three MFY Community workers, a Legal Unit attorney and several officials of the Authority.

The applicants outlined the proposals and outlined several cases which illustrated the seriousness of their problem.

-- An applicant of 13 years

-- A member of a job training program who had been told he must have a job to be considered.

-- a family with 11 children

-- a welfare recipient ruled eligible, never admitted.

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[1]Statement: Proposals to be made to the New York City Housing Authority by the Ad Hoc Public Housing Authority Applicants Association, Feb. 1967.

-- An unemployed applicant who was told he must have a job.

Committee members also complained of an apparent bias against the admission of welfare recipients.

In response, the Housing Authority officials explained the extreme limitation of space, the large number of applicants, and the system of priorities. They described the scarcity of large apartments, and categorically denied that any systematic exclusion of welfare recipients existed. The Authority representatives agreed to review the applications of each of the association members, to write personal letters to each explaining the status of their applications, and to interview applicants whose application lacked needed information. However, they refused to notify applicants of eligibility or ineligibility except those interviewed; they would not agree to make the admission regulations public; or to make a determination for applicants other than those for whom apartments were available. It was argued that there was little utility in processing applications when vacant apartments did not exist. Although the committee did obtain promises for a review of their members' applications, they were unable to win any broad changes in present admission procedure.

When it was clear that satisfaction on the general procedural issues was not to be obtained through direct negotiation with the Housing Authority, a class suit challenging the legality of admission procedures was instituted in the Federal District Court. The court was petitioned to grant an injunction to prevent

the NYCHA from continuing its admission procedures. The petition asserted:

> that the procedures established by the defendant in fact do not permit applicants to fairly compete for the few available apartments and therefore the plaintiffs are denied equal protection and due process of law...(1)

The Holmes brief attacks the NYCHA admission procedures in the following way:

> defendant publishes rules, makes rapid adjudications and informs applicants of decisions and the reasons for them when the applicants are found ineligible for failure to meet the income or residency standards. Defendant does none of these things for applicants not ineligible for these reasons, but possibly ineligible for other reasons.(2)

The significance of this for equal protection is made clear in the following paragraph:

> Moreover this deliberate discrimination means that those who are allegedly overincome or lack residence may immediately challenge the determination if they believe it to be in error, while those who are otherwise ineligible are not told and therefore cannot challenge the determination if they believe it to be in error.(3)

and in the subsequent passage:

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[1] James Holmes et al. vs. New York City Housing Authority. United States District Court for the Southern District of New York 1966 Civil Action File 2897 p. 2.

[2] Ibid., p. 5

[3] Ibid., p. 4

Due to the large number of applications it is possible that applicants will not have theirs determined within the two year period and may never have such a determination within any two year period. Defendant may avoid legal challenge to any of its standards by avoiding determination of the status of those applicants who fail to meet a given standard which might be questionable. Such applicants are discriminated against by the two-year limitations on applications as opposed to all applicants who are informed of their status.(1)

Of equal importance to the attack on the NYCHA admission procedures is the argument that they deny applicants due process. The brief cites several precedents which establish that public housing authorities are subject to the requirements of due process of law.(2) The brief asserts that aspects of NYCHA procedure which deny due process:

> They (procedures) include defendant's failure to publish its regulations, defendant's failure to make rapid determinations of eligibility, failure to notify applicants found ineligible that such a decision has been made or the reasons for that decision, defendant's failure to employ a system of priority governing the order of admission to public housing among those applicants not eligible for certain statutory priorities and defendant's failure to treat reapplication as renewals of previous applications.(3)

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1 Ibid. p. 4.

2 Ibid., p. 9. "The Government as landlord is still the government. It must not act arbitrarily for, unlike private landlords, it is subject to the requirement of due process of law." Rudder vs. United States 226 F. 2d 51 at 53 (DC Cir.,1955).

3 Ibid., p. 11.

In concluding paragraphs of the argument this statement appears:

> In Hornsby vs. Allen, supra, dealing with denial of an application for a liquor license by the Board of Alderman of Atlanta... The court by Tuttle, Chief Judge held, that 'ascertainable standards' had to be developed 'such as order of application which would determine in what order a benefit would be granted to equally qualified applicants. It would certainly be ironic if the court was more protective when applying for a liquor license than when applying for public housing, probably the only decent place to live available to the applicants.[1]

Aside from the constitutional questions raised by the procedure the brief endeavors to show how such procedures violate obligatory regulations of the Public Housing Administration, the federal agency responsible for overseeing federally supported public housing. Other important arguments deal with questions of whether the federal court should abstain from considering the case on the grounds that the case is more properly brought in a state court. The importance of this case lies in the broad legal confrontation of the admission process: the issues raised by the Holmes case are fundamental; the impact, if the action is successful, will involve extensive change of the NYCHA application procedures. At the writing, the Holmes case is pending trial.

A second important case involving admission to public housing is MANIGO vs. NYCHA. in which the Legal

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[1] Ibid., p. 12-13.

Services Unit filed an Article 78 proceeding to compel the Housing Authority to admit a family who:

> claimed that it was found ineligible on account of a prior record of the husband as a juvenile delinquent. The Petitioner alleged that although initially informed that her family would be admitted to tenancy she was subsequently told 'off the record' by Housing Authority Personnel that because of her husband's record involving three minor offenses at age ten, fifteen, and eighteen, she would not receive an apartment although no formal denial of her application for admission would ever be made and her application would be allowed to expire.[1]

The following major points are made in the Manigo brief:

> (1) That by failing to provide notice, appeal, etc., the NYCHA procedures fail to meet due process requirements of the 14th amendment.[2]
>
> (2) That records of juvenile or youthful offenders cannot by law be utilized to deny any public right or privilege.[3]
>
> (3) That denial of a public right or privilege because of an arrest followed by a dismissal of the charges is a denial of equal protection and due process, as protected by the 14th amendment.[4]
>
> (4) That the decision was arbitrary and unreasonable in light of known sociological experience that

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[1] New York University Law School, Welfare Law Bulletin No. 3, April 1966, p. 4.

[2] Gilda Manigo vs. New York City Housing Authority, Brief of Petitioner-Appellant. Supreme Court of the State of New York No. 2197/66, p. 12.

[3] Ibid., p. 13.

[4] Ibid., p. 22.

> few juvenile delinquents become adult criminals.(1)
>
> (5) That the Authority failed to factually show that the applicant's family 'would be a danger' to other tenants or property.(2)

Manigo is important in that is one of the rare cases where the Housing Authority has contested an Article 78 proceeding and thereby risked a court test of eligibility standards and judicial scrutiny of admissions procedures. In all the previous cases, the Authority has, after some delay, avoided a court test by admitting the applicant in question. More important, however, is the fact that, if successful, Manigo will provide the appellant relief, strike down this particular eligibility standard, and provide the basis for later legal challenge to the NYCHA admission procedures.(3)

Strawder vs. New York City Housing Authority, a third case of interest here, is less important for its legal impact than it is for its illustration of the typical course of an Article 78 proceeding made in behalf of an applicant. The applicant had been rejected by the Housing Authority on the ground that:

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[1] Ibid., p. 26.

[2] Ibid., p. 29.

[3] Manigo subsequently lost in all state counts and is on appeal to the United States Supreme Court. (March 1968)

> one of the applicant's children was having adjustment difficulties in school. Investigation by an attorney revealed the charge to be without foundation; school authorities gave the child an excellent report. It was suspected by counsel, however, that the real reason for rejection was the presence in the family of out-of-wedlock children who had been legitimized by applicant's subsequent marriage to their father.(1)

An Article 78 proceeding was instituted which attacked the eligibility standards and admission procedures of the Authority as violating the due process and equal protection requirements of the 14th amendment. In order to avoid a test of its standards and procedures, the Authority reversed its holding, and found the applicant eligible.

The Strawder case is representative of the process by which the Housing Authority avoids meeting the issue in court.(2) In such cases, when the ruling of an applicant as ineligible is challenged by an attorney, the Authority may decide to re-investigate the case. The experience of the Unit has been that the applicant

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1 Welfare Law Bulletin, # 8, May 1967, p. 3.

2 Rosen, Op.Cit., p. 35. Note 21. "In a recent case handled by Mobilization for Youth a mother living on a site about to be condemned was denied admission because she had a "strange personality" and was "belligerent". Her belligerency consisted in refusing to accept sub-standard relocation housing offered to her by the Department of Welfare and in stating she had a right to be admitted to public housing. When the Legal Services Unit brought an Article 78 proceeding to contest the Authority's determination, the Authority immediately re-examined her application and found her eligible."

is investigated, and, after an Article 78 proceeding is initiated, is found eligible as the court hearing date approaches. The Authority usually changes its determination just prior to going to court. However, it should be noted that the scarcity of vacancies, the huge volume of applications, and the lack of large apartments required by many low income families, pose an eventual limit to the number of successful challenges of improper determination of ineligibility for housing. A Unit attorney reports that with few exceptions, only those applicants who face serious emergency situations can win admission to public housing. Applicants of lower priority, though eligible, are unlikely to obtain relief despite legal assistance. In general, however, the lack of vacancies limits successful legal action to high priority applicants.

II. Representation of Tenants in Public Housing

An important dimension of legal unit experience with public housing law relates to the eviction procedures employed by the Housing Authority. It is well established that "the actions of local housing authorities as state action" must conform to the due process and equal protection requirements of the 14th Amendment.(2) Nevertheless, the eviction procedures of many public housing authorities leave much to be desired. According to one observer:

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[1] Rosen, op.cit., p. 11.

[2] Ibid., p. 15.

> ...the establishment of due process respecting the termination of tenancy is the most important right which must be established in order to protect tenants in public housing from arbitrary or unconstitutional action by a local housing authority. Without basic guarantees of due process, a set of standards, regardless of how reasonable it may appear, is meaningless.[1]

Despite measures such as a month-to-month lease designed to facilitate the quick removal of tenants, state and federal public housing legislation, (with the exception of federal limits on income) is largely silent on the issue of eviction. According to NYCHA regulations, a tenant may be evicted on any one of ten grounds. Only in cases which involve criteria of "non-desirability" is an appeal procedure provided where a determination of facts can be made. The standards of "undesirability" are defined in such a way as to protect other public housing tenants by removing tenants whose conduct and behavior constitutes:

(1) A detriment to the health, safety and morals of neighbors or the community;

(2) An adverse influence upon sound family and community life;

(3) A source of danger or cause of damage to the premises or the property of the Authority

(4) A source of danger to the peaceful occupation of other tenants;

(5) A nuisance.[2]

While the protection of other tenants is clearly a

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[1] Ibid., p. 15.

[2] Ibid.p. 16., New York City Housing Authority Form 065.004 1964.

legitimate function of the Housing Authority, it is equally clear that the non-specificity of the above criteria is conducive to the initiation of arbitrary, unreasonable, or unconstitutional eviction proceedings. Nevertheless, within the eviction process, the tenant is provided an opportunity to refute the charges of "undesirability" in a hearing before members of the Housing Authority's Tenant Review Board. It is this hearing which raises important due process issues and which is the primary focus of Unit activity in the representation of public housing tenants.

A. Eviction Procedures

An eviction proceeding on the basis of "undesirability" is initiated by the manager of the project in which the tenant resides. The manager interviews the tenant and decides whether or not an eviction is in order. If the decision is to proceed with an eviction, the manager notifies the Tenant Review Board, and begins to compile a record of all the infractions of project rules, neighbors' complaints, and incidents with Authority police. On the basis of the tenant's dossier, the Tenant Review Board (TRB) decides whether to evict or not. When the TRB decides to continue with the eviction (50% of the cases), the tenant is offered a hearing before members of the board.[1] The notice of the hearing does not detail the nature of the complaint against the tenant, except for a one or two-sentence explanation such

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[1] LeBlanc, Landlord-Tenant Handbook, (New York: Mobilization for Youth, 1965), p. 27.

as: "members of the family are a nuisance to the neighborhood."[1] The tenant who faces eviction has little more than a vague idea of the charges, evidence, or criteria of the Authority's action. The interview with the manager of the project is of limited value as the Authority does not restrict itself to his report and may well consult police, school or social agency files for additional information on the tenant. As a consequence of the lack of specificity in the charges against him, the tenant doesn't know what evidence he needs to obtain in support of his case.

Aside from the inability of a tenant or his representatives to prepare a meaningful defense against charges of "undesirability," the way in which the hearing itself is conducted works to the tenant's disadvantage. In the first place, the panel before which the hearing is held, "shall not be bound by the technical rules of evidence or procedure and a verbatim transcript shall not be required."[2]

The tenant is told he may explain his side of the story, and is permitted to interrupt and interject comments as the panel reads a summary of his record. The tenant is not told the source of allegations against him; often the incidents recounted have occurred some

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[1] From a letter received by a client of MFY as quoted in Rosen, op.cit., p. 16

[2] Resolution Relating to Desirability as a Ground for Eligibility, #62-9-683 Section 5(c). As quoted in Rosen, Ibid., p. 16,

years prior. Whenever the tenant or his attorney may challenge certain charges as hearsay or disprove them:

> The fact remains that these charges have already been considered by the (Tenant Review) Board in reaching its initial decision to evict and the panel may still take the charge into consideration.[1]

The Unit attorney responsible for representing public housing tenants illustrates the disadvantageous position of the tenant in the hearing as follows:

> Since the tenant was not given any real prior notice of the charges to be made, it is, of course, impossible, generally speaking, for the tenant to have anyone present who has actual knowledge of these charges and who may be able to dispute the truth of them. Further, even if the tenant has an attorney with him, since no one is present with actual knowledge of the facts which underlie the charges being made, there is no effective means for cross-examination into the truth of these charges. Further, the report read at the hearing normally includes not only serious charges, but very minor infractions of rules such as riding bicycles on the sidewalk, breaking a light bulb in the hall, or loitering. Further the charges cover a great number of years (dating back to when the tenant first moved in), and many times there are no recent charges against the tenant...but only charges relating to when the tenant's child, now sixteen, was five years old. The entire report is read calmly to the

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[1] Ibid., p. 17

> tenant as though each of the charges were of equal value. In the few cases where a lawyer is present, the lawyer, of course, challenges the Tenant Review Board and questions them as to why such charges are included at all in the hearing.
>
> Once challenged, the Tenant Review Board often backs away from appearing to rely on such trivial or old incidents, and justifies their inclusion by stating, for example, 'Well, this is just to give a picture of the total family pattern of living and certainly wasn't meant to imply that the reason why we're putting this tenant out is that ten years ago her son rode his bicycle on the sidewalk.'
>
> A major problem is that while the attorney will challenge the Tenant Review Board on these points, the tenant without an attorney is simply presented with an overwhelming record of misbehavior from the day the tenant and his family walked into the project until the present.[1]

It is clear from the foregoing that the tenant who faces eviction on the basis of being undesirable is not entitled to the "necessary elements of a fair hearing...notice, confrontation and cross examination, keeping of a record, and inspection of documents."[2] The procedure currently followed fails to meet the requirements of a fair hearing the following ways:

(1) Notice - The tenant is so notified of the eviction proceedings and the basis of charges that the preparation of a meaningful defense is precluded.

(2) Confrontation and cross examination - The sources of complaints and evidence against

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[1] Nancy LeBlanc, op.cit., p. 28-29.

[2] Rosen, op.cit., p. 18.

the tenant are not revealed such that the tenant is unable to question their veracity, correct misstatement of fact or challenge bias of complainants. The manager's dossier contains first and secondhand reports, corroborated and uncorroborated reports of incidents, much of which would be rejected in a court setting as hearsay.

(3) Hearing record - The right to the hearing is not established in the law and thus the hearing is conducted informally without record. The absence of record limits the range of appeal to Article 78 proceedings which consider whether an action was arbitrary or capricious.

(4) Investigation - The tenant or his attorney may not consult the manger's dossier which is the primary source of evidence for the hearing.

(5) Findings of Fact- There are no standards of evidence which determine what kinds of evidence may be considered and what kinds may not. As a consequence, a vast morass of detail is accumulated with little guidance as to substantiation required.

In light of the above, the tenant is put in a position where it is almost impossible to challenge the evidence upon which the Tenant Review Board based its determination. Only in those cases where by coincidence a direct witness can refute the manager's allegations, can the tenant hope to overturn the eviction. Such instances are rare.[1] One protection afforded

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[1] LeBlanc, op.cit., p. 29.

the tenant who faces an eviction order, is the period of time allowed to pass before the eviction is actually carried out. The Authority usually stays the eviction three to six months, and will continue to do so if the offending behavior has not recurred or the problem occasioning the eviction is removed. In actual practice, very few tenants are evicted from public projects.(1)

Tenants also have recourse to a further remedy: they may challenge the decision of the Tenant Review Board by instituting an Article 78 proceeding. According to a Unit attorney, there are three major bases for instituting such a proceeding in a public housing eviction:

> One is that the whole procedure followed by the Tenant Review is improper, because it isn't a 'fair hearing.' The second is that the 'facts' given by the Housing Authority as the basis for the evictions are untrue. And the third is that even if the facts are true, they do not constitute a justifiable reason for evicting the tenant.(2)

The knowledgeable tenant can, with legal assistance, go beyond the administrative hearing to defend against eviction. The availability of legal representation is essential for such appeal to be a realistic possibility for the public housing tenant.

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[1] Ibid., p. 32.

[2] Ibid., p. 30.

B. The Experience of the Legal Unit

In contrast to cases attacking admission criteria and procedures of the New York City Housing Authority, no cases involving the eviction of tenants have yet reached a court test. This is true despite the fact that a number of tenant cases are still pending in Article 78 proceedings. What is of interest here is the common pattern of litigation found in eviction cases. When a tenant is ruled ineligible at a Tenant Review Board hearing, the practice of the Unit is to institute an Article 78 proceeding which challenges the final determination of the Board on any or all of the three grounds outlined immediately above. The tactic of the Housing Authority has been similar to that employed in the cases of applicants: the Authority simply refuses to meet the issues in court. The Authority petitions the court for a series of adjournments over periods of several months and up to a year or more, and finally drops the matter.

A good illustration of delay in a case's resolution and the Housing Authority's refusal to meet challenges of its procedures in court, is the case of a Legal Unit client who, despite a regulation prohibiting pets in public housing, has been able to keep a dog for over a year. After refusing to remove her pet in compliance with the regulation, the tenant was ruled ineligible for continued occupancy in public housing. Once the determination to evict was formalized, an

Article 78 proceeding challenging the pet regulation, was intiated. For over a year, the Housing Authority has requested adjournments of the case, and at the time of writing, the dog still resides in public housing, the Housing Authority still avoids a court test, and the case remains unresolved.

After a series of adjournments, the Authority usually holds another hearing in which the tenant is reinstated and the eviction proceeding dropped. Most eviction cases handled by the Unit have followed this pattern.

To date, no tenant represented by the Legal Unit has suffered eviction from public housing. This fact reflects the unwillingness of the Housing Authority to subject its eviction criteria and procedure to judicial scrutiny.

The difficulty in effecting change in admission or eviction criteria and procedure should be apparent. The response of the Authority to the intervention of the Legal Unit has been to delay the resolution of a case, to avoid a court confrontation, and finally to "buy out" the case by removing the original cause of the litigation. The Authority can protect legally questionable practices by reversing eviction proceedings or by admitting an applicant. The two exceptions are the Manigo and Holmes cases. In the opinion of the responsible attorney, Manigo represents a situation where the Housing Authority is confident of winning the issue on the grounds that juvenile deliquency can be established as an indication of a potential threat

to the safety and welfare of the other tenants. In the Holmes case the issues are such that while it is not to the Authority's interest to risk a court test, at the same time the group case can not be "bought out" in the same way that those of individual applicants can. If the Authority were to admit the entire Holmes group, a much larger number of equally needy and eligible applicants could easily replace those admitted. Conversely, to accept the group's demands for procedural reforms would require additional resources for determining applicant eligibility and could be worse than risking an adverse court decision.

Holmes is a good example of the situation where a legal challenge to public housing procedures has the potential of winning more than a case specific result. In the large remainder of cases, the Housing Authority has been able to avoid litigation by reversing its original decision. Several conclusions can be made regarding the potential impact of Legal representation of public housing clients. In the first place, such legal assistance provides the aggrieved applicant or tenant with a legal remedy for arbitrary, capricious or inequitable treatment. This is particularly important with regard to evictions where the standards are so vaguely defined, the procedures followed admit possible abuse, and the tenant appeal hearing has little relation to the original determination of "non-desirability." On the other hand, it is

clear that broad change in admission and eviction procedures is not likely to result from the Unit's intervention in the near future. Such change requires legislative action, and otherwise, will necessitate extensive, time-consuming, and in all likelihood, marginally effective work on the part of Unit attorneys.

Although as of summer 1967 the Housing Authority was reviewing all admission and eviction procedures, and the Tenant Review Board appeared to be more aware of the issues affecting Tenant's rights, public housing appeared to show a minimum impact which could be related to Unit legal actions. Important issues remain and there appears to be little possibility of their resolution in the near future. The broad procedural reforms needed, as outlined above, are most likely to result from legislative enactment. The impetus for such legislation may well require the combined effect of legal and community pressure.

CHAPTER VI

LOW INCOME FAMILIES AND THE LAW

Perhaps the family, of all social institutions, is the most seriously affected by poverty. It is here that the impact of overcrowded housing, uncertain, irregular and poorly paid employment, and economic and personal limitations associated with indigency are most clearly manifested. The family structure and domestic relations of the poor have been well analyzed in recent years, with the result that the high costs of poverty status have been brought into sharp focus. Thus, for example, the close relationship between the breakdown of Negro family structure, the evolution of matrifocal family units and the precarious employment status of the Negro male has been documented.[1] While the cultural context differs, similar patterns of consensual unions, and serial monogamy have been observed among low income Puerto Rican families both in Puerto Rico and in the United States.[2] The threat to family stability posed by the many serious problems associated with poverty status is not limited to low income families in the United States, but has been observed in Mexico and elsewhere.

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[1]For a good discussion of the 'Moynihan Report,' see Lee Rainwater, William Yancy, The Moynihan Report and the Politics of Controvery, Cambridge, Mass.: The M.I.T. Press, 1967.

[2]Oscar Lewis, La Vida, New York: Random House, 1965, 669 pp.

[3]Oscar Lewis, Children of Sanchez, New York: Random House, 1961, Introduction.

As might be expected from the evidence of family structure and domestic patterns, the roles adopted by the partners, attitudes toward marriage and family responsibilities and the ways in which partners relate to one another can be seen as a response to the debilitating pressures of poverty.[1] Just as the strength and well-being of an individual's family is a crucial ingredient for his future participation in society, a variety of forms of pathological behavior closely associated with family environment have been found to be correlates of poverty status. The incidence and types of mental illness have been identified with class--and by implication, income--status.[2] In another sphere, the poor are both the most frequent victims and perpetrators of criminal activity.[3] So, too, are the populations of our prisons disproportionately drawn from the lowest income groups. Juvenile delinquency also appears to be most heavily concentrated among the poor. One analysis of delinquency persuasively suggests that broken homes which result in the absence of the father are a primary source of

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[1]See Walter B. Miller, "Lower Class Culture As a Generating Milieu of Gang Delinquency," Journal of Social Issues, Vol. 14, No. 3, 1958, pp. 5-19.

or

Rainwater, Lee, "Crucible of Identity: The Negro Lower-Class Family," Daedalus, Vol. 95, No. 1 (Winter 1966), pp. 172-216.

[2]Hollingshead, August B., Dedlich, Frederick C., Social Class and Mental Illness. (New York: Wiley and Sons, 1958).

[3]President's Commission on Law Enforcement and Administration, The Challenge of Crime in a Free Society. (Washington, D.C.: U.S. Government Printing Office, 1967), p. 45.

[4]Wald, Pat, Law and Poverty. (Washington, D.C.: U.S. Printing Office, 1965), p. 35.

delinquents.[1] Other analyses suggest that delinquency originates in blocked access to legitimate success opportunities and as such represents an effort to create an alternate opportunity structure as a source of respect and socio-economic mobility.[2] In any case, the important point here is not to judge the adequacy of a particular theory of delinquency but to note that the important theoretical explanations of delinquency strongly suggest the interrelationships between poverty, family instability and delinquent behavior.[3]

The Lower East Side presents the full range of family pathology, delinquent behavior, and individual crises characteristic of a typical low income urban neighborhood. Mobilization For Youth began as an effort to control delinquency in the area and has centered a number of programs around the family. Although the Legal Services Unit was not an explicit attempt to assist families in the Lower East Side, a significant portion of its case load is composed of troubled families which have become involved with the law.

For the period under consideration in this study (where a detailed breakdown of the Unit case load is available - February to June, 1967), cases involving family-related or domestic relations issues accounted for between 12 percent and 16 percent of the monthly case load. Of the domestic relations cases, divorce or separation actions constitute 45 percent of the total; while another 42 percent of the cases involved family

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[1]Sheldon S. Glueck and Eleanor Glueck, Unraveling Juvenile Delinquency (New York: Commonwealth Fund, 1950), 399 pages.

[2]See Richard A. Cloward and Lloyd E. Ohlin, Delinquency and Opportunity (New York: Free Press of Glencoe, 1961), 211 pages.

[3]For a good discussion of delinquency and income class see David A. Matza, Delinquency and Drift (New York: John Wiley and Sons, 1964), 192 pages.

crises where one or more of the family members is faced with some form of legal proceedings in the Family Courts. Child custody and adoption actions accounted for another 10 percent of the domestic relations cases.[1]

The following discussion of Unit experience with domestic relations cases will consist of three parts: a review of divorce and separation cases; a review of cases which involve serious family crises (juvenile delinquency, pre-delinquent behavior problems, child neglect petitions, and child custody); and an analysis of the functions performed by legal representation of the poor in this area of the law.

1. Unit Work with Divorce and Separation Cases

New York divorce law until recently has been a good example of de facto bias in the law governing marital relations. Until the revision of New York divorce laws in 1966 the only ground for divorce was adultery. While the law applied equally to all New York residents regardless of income, its effect on those seeking a divorce was unequal in as much as some out-of-state decrees were recognized. Consequently, those with the financial resources to travel were able to obtain divorces which were, by virtue of income, not available to the poor. One observer describes the effect of out-of-state divorce in the following way:

> Since a migratory divorce is usually more expensive than one secured locally, this pattern of evasion is not equally open to all New Yorker. If state laws are easily avoided by financially independent residents, thay can be avoided by others only at some sacrifice, and avoided not at all by those with low incomes. In this sense, the laws impinge differentially on the population ....[2]

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[1] See Appendix A for a more detailed breakdown of the domestic relations case load.

[2] H.O. Gorman, Lawyers and Matrimonial Cases: A Study of Informal Pressures in Private Professional Practice (1963), p. 11-12. As quoted in Carlin and Howard, "Civil Justice and the Poor," Law and Society Review, Vol. 1, No.1 (1965),p.22.

There were, of course, other options open to the poor. These included annulment (termination of the marriage if one of the members had been absent over five years and was presumed dead), formal separation, fraudulent legal action, or desertion.[1] While one observer suggests that the discriminatory effect of New York divorce laws upon the poor contributed to a more permissive attitude of the bench toward indigents seeking a divorce, the poor man's divorce was, in large part, legal separation arranged with the help of the Legal Aid Society, or simple desertion.[2] Frequently new consensual unions were formed after the break in the marital relationship.

The pattern of informal accomodation or formal separation with the subsequent assumption of new marital relations and responsibilities (after the first marriage) created large numbers of families whose marital relationships required a number of adjustments before they could be legally recognized. In most instances, divorces had to be obtained and remarriages arranged before the tie could be legalized and children born in the interim could be legitimized. Much of the Unit's work with divorce and separation has come out of the backlog of legally unresolved marital relationships created by a narrow, discriminatory divorce law.

The revision of New York divorce legislation has had the effect of releasing the pent-up demand for divorces. In addition to liberalizing the grounds for divorce,

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[1]See R. Wels, "New York: The Poor Man's Reno" 35 Cornell Law Quarterly, 303-26 (1950). Wels observes: ""It is, perhaps, a judicial awareness of the ease with which quick solutions to marital complexities are available to those able to pay for them and a judicial sense of fairness, that has caused our judges to turn New York into a poor man's Reno for all with sufficiently elastic consciences,"" p.315.

[2]For a detailed analysis of the New York Family Court Act of 1962, see Nanette Bembite, "Ferment and Experiment in New York: Juvenile Cases in New York Family Court," 48 Cornell Law Quarterly (1963).

the new legislation which, although requiring a two year separation, essentially made a divorce a mere formality. Under the new law, the parties are to work out a separation agreement which details the terms of support, child custody and visiting rights. If, after a two-year period of separation, it can be shown that the terms of the agreement have been fulfilled, winning a divorce is a simple formality and easily obtained.

Since the law has gone into effect, the Unit has had a sizeable increase in the number of clients seeking divorce or legal separations. A Unit attorney who specializes in Family Court cases has found that many want to set the record straight. These are individuals who have had to settle with separation, the poor man's divorce, and have in the meantime proceeded to set up new households. Now, large numbers of such individuals want to get a divorce, remarry and have their children legitimized.

In such cases, the function of the Legal Unit is of a service nature. It simply involves providing advice on the separation agreement, and representation in the court proceedings. As such the Unit is one of a number of organizations providing this service. For example, the Legal Aid Society has established a special unit to handle such cases and in view of the numbers of cases handled by such agencies, the average monthly total of twenty divorce or separation cases taken by the Unit in this period may seem insignificant by comparison. Nevertheless, assistance with divorces is a necessary function and, perhaps, the accessibility of Unit offices makes it more possible to assist a client who would otherwise be intimidated by a trip out of the neighborhood to another, more imposing agency.

II. The Family Court System of New York

Almost half of the Unit's domestic relations cases involve Family Court proceedings. New York Family Courts deal with five categories of problems: 1) juvenile delinquency - behavior which, if the offender were an adult, would lead to prosecution under a criminal stature; 2) pre-delinquent behavior problems which involve minor offenses, truancy and school discipline issues; 3) child neglect petitions brought against parents who abuse their children or fail to provide adequately for them; 4) child custody and adoption cases; 5) parent problems and issues of family non-support.

The Family Court system was reorganized in 1962; juvenile defendant rights were clarified. According to the principles underlying the revision of the court, the judicial process is to be conducted with the intent to meet the program or therapeutic needs of its juvenile defendants. The court sessions as a consequence are less formal, the requirements of testimony and evidence are more relaxed, and the adversarial confrontation between prosecution and defense is less pronounced than in adult criminal court proceedings. In theory, the absence of the formal requirements of process allows the court to deal more flexibly with its young defendants and to arrive at solutions which are more sensitive to their needs. The orientation of the court is to be therapeutic and ameliorative rather than punitive.

However, the functional effectiveness of this orientation depends not only upon the attitudes of the judges, but also upon the adequacy of the parole system, the availability of supportive services, and the adequacy of corrective institutions. The degree to which these requirements are actually met by the Family Court and related institutions sets the context within which the Unit must work. The procedural modes of the court and the availability or lack of services and community based

guidance programs determine the tactics of Unit attorneys and the options open to their clients. Constraints upon Unit attorneys in the Family Court include the large volume of cases handled by the court, the non-observance of a number of constitutional protections normally accorded to adult defendants when their liberty is at stake, inadequate psychiatric testing services, as well as a complete lack of institutional facilities able to meet the needs of defendants who require therapeutic guidance and to whom incarceration is inappropriate. Each of these problems will be discussed in some detail inasmuch as they determine both the functions performed by the Unit and the character of the representation it can offer.

A. Case Pressures in Family Court

The great number of cases brought into the juvenile term of the Family Court has had the most severe impact on the parole system associated with the court. According to Unit attorneys, the parole system is breaking down for the lack of personnel. Parole officers have been leaving and have not been replaced. As a consequence, case loads have increased to an average of 132 cases per officer. Obviously, case loads of this size make it difficult, if not impossible, for parole officers to establish personal relationships or maintain any but cursory contact with their charges. Moreover, such case pressures preclude the intensive case work so much needed by many pre-delinquents. The strain upon the parole system works to the advantage of the Legal Unit's youthful clients. The social services provided by the Legal Unit staff of social workers make it possible for their parole into the custody of the Unit.

Because the MFY can provide supportive services and effectively assume

parole responsibilities, the parole officers are often eager to have MFY accept the custody of a defendant as it lightens an already overwhelming load.[1] Also important is MFY's capability of assuming parole responsibilities immediately upon the court's decision. Frequently, paroled defendants must remain in detention for approximately six weeks awaiting a psychiatric examination and another four weeks before being released to supervision. For MFY parolees, this period of detention is unnecessary.

B. Another Dimension of Caseload Pressure: The Case of Bob and Danny

The rush of cases in the juvenile section of the Family Court can have unfortunate consequences for an occasional unlucky defendant. A good illustration of this problem is the case of Bob and Danny who were accused of attempting to rob a smaller boy of his subway money. Due to the intense pressure of cases, the intake parole officer put the records of both defendants on a single sheet and at first glance it was unclear which record was which. Bob had no previous offenses on record while Danny had a history of hallucinations, mental problems and other relatively minor offenses. A mix-up occurred after Danny had been tried and exonerated in which the judge picked out the reference to hallucinations, assumed this was Bob's record and ordered him into immediate detention for psychiatric observation. After some confusion, as Bob was being led away, the Unit attorney was able to point out the mistake to the intake parole officer, secure her help and have the judge rescind his order. Had the

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[1] A good example of this was the case of Roberto R., who had slashed another student in the back with a razor. Although this was a very serious offense, he was released into the care of a Unit attorney and a MFY psychiatrist. He was paroled without going to trial because MFY could offer immediate service.

parole officer been uncooperative, or had the Unit attorney not been alerted in time, Bob could easily have been referred to Bellvue for a longer period of observation by a court psychiatrist who might well have interpreted his denials of having been to court or experienced hallucinations as evidence of severe repression. In this way, Bob came close to being subjected to an enforced psychiatric observation for an offense (jostling) which is not even considered a misdemeanor and for which the maximum sentence is 30 days with the sentence usually suspended. In this case a youthful defendant would have been subjected to many indignities for something which an adult defendant would have, in all likelihood, been released. This near disaster can be traced directly to the effects of intense caseload pressures in the Family Court.

C. The Price of Judicial Therapy

The relaxation of standards of evidence and formal procedures noted above, in effect, removes a number of legal protections accorded adult defendants in criminal cases and although the intent of the Family Court procedure is to maximize the therapeutic effect of the experience, the results for the defendant can often be disastrous. The absence of several important protections for the defense is made the worse for the lack of institutional resources or community based programs to fulfill the therapeutic purpose of the court.

By adult criminal court standards, the practices in the Family Court are highly eccentric and in some instances illegal. A good example of this is the way in which accusations of rape are handled by the court. The Unit attorney who specializes in Family Court cases describes a case in which a boy was found to be a juvenile delinquent and sentenced accordingly, on the basis of the uncorroborated testimony of the girl involved. In criminal court for such a finding to be reached, there must be

medical evidence, supporting witnesses, doctors' testimony in support of the accusation. In this case, all the court required was the girl's testimony that she had been raped by the defendant. Although this decision was reversed on appeal, the appeal did not reach the issue of evidentiary standards in the Family Court. Unit attorneys claim that large numbers of boys are labeled juvenile delinquents and are jailed in exactly this manner.

Another Unit attorney who specializes in criminal cases describes a case which illustrates the absence of evidentiary standards in a case involving theft. Under normal circumstances in a theft, the court requires the owner to identify the stolen property as his own and that it be shown that the defendant has possession of the property without the owner's permission. In this particular case, the defendant was accused of stealing some watches and found guilty despite the fact that the complaining witness was unable to identify the watches as his own. The Unit attorney objected and was offered a lesser charge and a dismissal of the case if the defendant remained in school for a month. When the attorney still objected, the judge adjourned the case rather than make a ruling which then could be appealed.

While the first case was adjourned, the defendant was arrested a second time, in this instance for the theft of a typewriter. In the second case, the complaining witness was from out of town and wanted to drop the charges. The same judge refused to accept this. The case was then adjourned for several times and was finally settled when the Unit attorney was late for the hearing and the judge prevailed upon the defendant's mother to accept the deal he had offered previously -- to dismiss the second case and put the defendant on probation for the first. Had these cases been tried in adult

criminal court, the charges would probably have been dropped due to lack of acceptable evidence, and the judge could not have enforced his presumption of guilt on the part of the defendant.

This case also illustrates a second problem encountered in the Family Courts. This is the tendency of the judges to act as prosecutors in the very cases they are trying. In this instance, the judge refused to allow a complainant to drop the charges and insisted on forcing his decision upon the family in the absence of their legal representative. This case illustrates a common practice among some judged who consistantly act as prosecutors of the defendants who appear before them. In one instance, a judge, after convicting a Negro youth of a minor offense asked: "By the way, what were you doing at 52nd and Madison anyhow?" Unit attorneys are particularly careful to keep Negro defendants away from this judge. Another judge was honest enough to admit that he disliked children and had himself transferred to Parent Relations. In general, Unit attorneys avoid appearing before prejudiced or prosecuting judges by adjourning the case until a more fair judge is obtained. While many judges leave much to be desired in their attitude toward defendants, according to experienced Unit attorneys, many others are very good at sizing up defendants and parents alike and deal sensitively with the difficult and often delicate human problems brought into Family Court. In part, the problem of attitude among Family Court judges could be met through more rigorous selection procedures and by requiring some special competence in an appropriate discipline (psychology, sociology, etc.). According to the Unit attorneys the Family Court system has a very real need for not only more highly qualified judges but also better prepared parole officers, and more well trained lawyers.

D. The Dilemma of New York Family Courts

The primary justification for the non-legal mode of operation of the Family Court Juvenile Term is that the proceedings are to benefit the child in a therapeutic way. However, the force of this argument is lost when the institutions and programs appropriate to a defendant's needs are lacking. Even if there were no problems of improper use of court power on the part of some judges or if the non-observance of legal protections provided adult criminal defendants presented no problem, the absence of alternative resolutions for a child's case imposes the most severe constraint upon the therapeutic value of Family Court Proceedings.

The Juvenile Term of the Family Court handles three kinds of defendants under sixteen years: juvenile delinquents who have committed what would be a crime were they adults; those defendants defined as Persons in Need of Supervision (PINS - these are children accused of minor offenses, school discipline problems, etc.); and neglected children who have been abandoned or abused by their parents.

In each type of case the court has two choices open to it. The child can be allowed to remain at home or be placed in an institution. There are no "halfway" institutions which would allow the child to remain in the community or programs which would allow the child to remain at home with intensive services provided. If the child remains at home, the services provided by neighborhood settlement houses or community service agencies are often limited to one visit per week where the child sits across a desk from a worker and tells him what he has done or what he is supposed to have done. The possibilities of close attention, follow-up are limited. The opportunities for deception are numerous.

The alternative is to institutionalize the child for months or years. The value of this experience for the child is not clear. A Unit attorney attempted to obtain recidivism figures from state homes and training institutions and found that such information was not available by virtue of its not being collected. At present there is little evidence one way or another as to the therapeutic value of various institutional settings. When asked about recidivism, the head of one state school replied that the children return when they don't work out in the community (otherwise, when they become sixteen, they enter the criminal court system).

The absence of alternatives means that many children who could otherwise be helped must be institutionalized. Unit attorneys note that frequently such placements extend until the defendant reaches age sixteen. The limited range of types of institutions available to the Family Court has meant that delinquents and PINS who are institutionalized are thrown together. Children who are removed from their homes by child neglect petitions must be institutionalized as there is no other alternative. While there will always be a need to institutionalize the defective, emotionally disturbed, or criminally inclined children, an experienced Unit attorney claims that a great many children could remain in the community or with their families.[1]

What is required for this to become possible is the development of community institutions and more intensive family support programs. A Unit social worker who primarily works with family problems suggests that many of the present needs could

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[1]A good example of this is the case of Nora P. who, though mentally defective was capable of caring for her children. The children had been removed from the home on a child neglect petition due to the disorganization and unsanitary condition of the home. Unit attorneys took up her case, obtained the release of the children, and provided follow-up support. At the present time, she is maintaining her family quite well.

be met by day care centers and small community residential homes for teenagers who need ties to home but need to escape their parents.

The lack of community facilities or improved home support services cannot be explained wholly in terms of cost. A Unit attorney surveyed New York State detention homes, work houses and mental hospitals and found 41,000 children under sixteen years were in custody. The average annual cost of institutional care was found to be $7,300. In some families as many as five children have been removed from the home at a yearly cost of $36,500 to the state. The same Unit attorney suggests that the cost of institutionalizing a single child could pay the salary of a social-caseworker who could help families deal with their problems before they necessitate the removal of children from the home.

Another limitation on the Family Court is the lack of adequate psychiatric testing services directly available to the court. Psychiatric clinics are held in the mornings only. In the afternoon, a lone overworked clinical psychologist, without a doctorate, can be consulted. If a judge has an obvious psychotic defendant before him, he has little choice: he can risk returning the child to the community, remand him to Bellvue, or take his chances with the limited diagnostic resources at hand. Unit attorneys representing clients with mental problems try to ensure that their trails are scheduled for the morning when the psychiatric clinic is available.

III. Impact and Functions of the Legal Unit

The social and legal services provided by the Legal Unit in part compensate for the lack of community resources for family problems. As already noted,

the ability of the Unit to provide on-going support services for an individual juvenile defendant has been the basis upon which it has been able to obtain parole custody of a defendant and thereby prevent his institutionalization. This applied with equal force to families faced with child neglect petitions. The presence of MFY social worker has been a crucial element in a number of cases where families have retained the custody of their children.

The attorney responsible for a sizeable portion of Unit cases in Family Court indicates that of thirty cases over a three month period only one child was placed in an institution while two others were held temporarily. Some of the cases involved families which had several children who would have been removed from the home and placed in institutions. Thus, the number of children which could have been institutionalized was significantly greater than thirty.

The importance of supportive social services to the effectiveness of the legal representation provided by the Unit is indicated by the fact that the same attorney estimates that one third of the children would have been lost to institutions without the social service support in the cases. The social service component of the Unit establishes the basis upon which it can provide the kind of community-based service which is otherwise not available.

Social workers attached to the Unit play an exceedingly important role in Family Court cases. The social workers are an important source of referrals to the lawyers. An attempt is made to reach the client at the point of his difficulty with

a governmental agency or private individual or business organization.[1] However, the most important functions performed by Unit social workers are in relation to the work of the attorneys. A MFY memorandum describes the social worker's roles as one in which he

> ...explores the family situation, provides crisis intervention at the point of the family's confrontation with the court, works with extended family relationship, works to develop the most desirable resources for the family, etc. The worker tries to help the family mobilize its strengths and develop its own plans for dealing with its problems. The lawyer and social worker may then bring this plan to the court. Often, the court will accept such a plan as alternative to the use of authority.[2]

Unit social workers also serve as intermediaries for their clients:

> ...another major function of the Social Service Unit has been in the visiting and accompanying of clients to various institutions of the city, either to serve in the capacity of a witness in court, or to give the client support in what might be a stressful situation; or to interview an individual who might be out of the home... and [this is] important for the lawyer in that the social worker can keep him appraised of important developments in the case.[3]

Where necessary, Unit social workers will relate to a family on a case work basis. In one instance, the worker had to restructure family relationship in order to keep the six children in the home. Unit social workers also provide the attorneys with important insights, analyses of a family's problems, and suggested solutions.

There have been instances, however, of conflict between attorneys and

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[1] Legal Services Unit, Mobilization for Youth, Memorandum: Social Work Practice on one MFY Legal Services Office" (New York: 1967, unpublished), p. 1.

[2] Ibid., p. 2.

[3] Legal Services Unit, Mobilization for Youth, "Memorandum: Statistical Summary of Social Service Unit of Legal Division" (New York: June 22, 1967, unpublished), p. 2.

the social workers. The conflict arises from differing professional ethics. The lawyer's first duty is to protect his client's legal rights and best interests, while social workers attempt to work out the best solution for all the concerned parties.[1] This form conflict arises when the attorney represents the parents in a neglect proceedings and the children also need help. In such cases, the social workers will remain out of the court presentation of the case. Nevertheless, such conflict has been rare, and the inclusion of the social worker in the process of providing legal counsel to troubled families has been essential to the success of the Unit with Family Court cases.

A. Representation of Indigent Parents in Neglect Proceedings

An important function performed by the Legal Unit has been to provide legal counsel to indigent parents in child neglect proceedings. A similar function has been to represent indigent men brought before the Court for failing to meet alimony or support payments. In this latter type of case, the defendant can not afford an attorney and when asked demurs an adjournment of the case and, having failed to maintain family support payments, receives a six month sentence for contempt of court. Unit attorneys hope to have the court accept the state's responsibility for providing legal assistance to indigent defendants in as much as they are subject to prison sentences which have the same effect as criminal sanctions.

In child neglect cases, Unit representation of indigent parents serves to protect them against the initiation of neglect petitions without proper cause. In such instances, by defeating the neglect

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[1] Legal Services Unit, "Social Work Practice...", op. cit., p. 2.

action the Unit maintains the integrity of the family and can, in addition, provide supplementary social assistance to help the family with its problems.

A recent child neglect case illustrates how neglect actions based on inaccurate information can threaten to unnecessarily break up a family. In this instance a seventeen year old girl had complained of the sexual advances of her father. She had called in an SPCC investigator who, after a month of visiting the family, initiated a child neglect petition to have the children removed from the home. Upon investigation by the Unit social workers it became clear that the girl's stories were fantasies and that she had been sexually playing her younger brother. The Unit attorney on the case attempted to settle the case out of court, but the SPCC investigator insisted on going to court. In the process of the trial, the fantasy basis of the girl's allegations was brought out. As a consequence, the neglect action was dropped, and the girl was placed under psychiatric observation. Nevertheless, the experience was very hard on the family and the younger brother.

In this case the SPCC worker had misdiagnosed the situation with terrible effects for the family. Had the parents appeared without counsel the children could have easily been unjustly removed from the home and the family's home life completely destroyed. The Unit attorney in charge of most Family Court cases indicates that it's hard to beat a neglect case without competent legal assistance. According to this attorney, the Family Courts are generally disposed to accept a social worker's argument supporting the neglect petition and are easily convinced that she knows what's best for the

family. In these situations the importance of counsel for the parents becomes clear. The attorney will ask questions, probe the worker for more facts, test the credibility of the testimony and expose inconsistencies in the evidence or argument supporting the neglect action. In sum, the Unit repr of indigent parents, can help to protect them against an unequal, unfair encounter with the law.

B. Other Functions of Legal Counsel in Family Law

In general, the function of Legal Unit work in family law has been to reduce the discriminatory effects of the Family Court system. The Unit compensates in part for the absence of community institutions for delinquent and pre-delinquent youth. In doing so, the Unit in effect increases the options available to the court and the defendant by providing opportunities for supervision aside from returning the defendant home or having him placed in an institiution. Moreover, the detailed service and social service follow up has resulted in placements better suited to the needs of the defendant. Similar experience has been noted elsewhere:

> Attorney were often successful in attacking imprecise charges and having them reduced. Attorneys were also able to negotiate alternative dispositions of cases, such as finding relatives to take a child rather than sending him to a foster home, proposing psychiatric help rather than commitment to a ranch school, or sometimes convincing a client that cooperation with a probation officer is preferable to resistance and ending with the loss of parental control. If these findings are indicative, the adversary function is likely to be marginal in relation to the attorney's functions as a negotiator and interpreter between judge and Family.[1]

[1]Edwin M. Lement, "Juvenile Justice: Quest and Reality", Trans-Action, Vol. 4, No. 8, July/August 1967, p. 40.

Another function performed by the Unit has been to help the client wend his way through many institutions brought to bear on family problems. Finally, by joining social service with legal advocacy, the Unit provides the necesary resources upon which the judicial determinations can more sensitively reflect the needs of the defendant. This combination also makes up in part for the lack of community facilities for young offenders. In short, Unit representation assists the Family Court system to better fulfill its therapeutic goal than would otherwise be possible within the constraints set by informal court procedure, discretion of the judges, case load pressures, and the lack of institutional or program resources for the non-criminal defendant.

C. Social Change and Family Law

The function of the Unit in family case has been of a service nature. In the period considered here, the Unit brought no family cases which were instrumental in effecting change. Nor has the Unit been able to win institutional change inasmuch as the family caseload is too small to force de facto change. In eighteen months of practice the attorney in charge of most Family Court cases has encountered only four cases capable of generating appeal issues. Two of the cases involved judges acting as prosecutors; the others relate to the right of an indigent defendant to legal counsel in proceedings where his liberty is at stake.

Chapter VII

SCHOOL CASES: The Right to an Education

Introduction:

It is commonly recognized that the acquisition of a good education or a desirable skill is of critical importance to the individual who seeks to move out of poverty. The strategic importance of education for the upward economic mobility of the poor is reflected in the number of compensatory educational programs which seek to redress past and present educational inequities in slum neighborhoods. And while new school plants, improved teacher salaries, special educational programs for the slum child, and considerable experimentation may reduce the gap between slum and suburban schools,[1] there is recurring evidence that inadequate resources, unimaginative teaching, and indifference to or outright abuse of the slum child are still all-too characteristic of public schools in slum neighborhoods.[2]

The most recent legal issues in public education have been concerned less with the equality of education than the rights of individual students.[3]

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[1] See Conant, James B., Slums and Suburbs (New York: McGraw-Hill Book Co., 1961, 145 p.) for an excellent description of the differences between slum and suburban schools in expenditures per pupil and educational content.

[2] See Kozol, Johnathan, Death at an Early Age; Nat Hentoff, Our Children Are Dying.

[3] Harold Rothwax, Nancy LeBlanc, William Resnick, "Comment: The Rights of Public School Students, "Welfare Law Bulletin , #11 (New York: New York University Law School; Welfare Law Project, #11, Jan., 1968) The authors state p.10. (footnote continued on next page...)

Recent legal challenges of school regulations or procedures have focused on three areas: 1) regulations concerning marriage or pregnancy; 2) dress regulations; 3) student rights in school suspension hearings.[1]

Although limitations upon the participation of married students in extra-curricular activities and rules prohibiting their attendance for short periods after marriage, or regulations which permanently prohibit the school attendance of married students have for some time been held to be arbitrary and unreasonable,[2] nevertheless, it is accepted that the students' physical well-being is at stake and that pregnancy is a disruptive influence in the school.[3]

In other cases, courts have upheld the mother's right if she is of school age to return to school once the pregnancy is completed.[4]

(continued) "Significant school issues, involving substantive freedoms, permissable regulations and penalities, procedures by which regulations are enforced, and the limitations of school authority have not, however, become great public or legal issues. They have received little attention despite the economic and social importance to the child of the decisions made by school authorities. Today, with a deepening appreciation of the demoralizing impact on the poor of many of our public institutional settings, and with the poor having new expectations in regard to official behavior, previously unnoticed issues are emerging."

[1] Ibid, p. 10-12. As a full discussion of legal attacks on marriage and pregnancy regulations and dress regulations, and for reports of school suspension cases, see Welfare Law Bulletin #9, p. 2 and #11, p. 9.

[2] Ibid, p. 10. As quoted: Nutt vs. Board of Education of Woodland, 128 Kan. 507, 278 Dac. 1065 (1929).

[3] Ibid, p. 11. As quoted: Ohio ex/rel. Able vs. Chamberlain, 175 N.E. 539 (C.P. Ohio 1961).

[4] Ibid, p. 11. As quoted: Alvin Independent School District vs. Cooper, 404 S.W. 2nd 76 (Ct. C.U. App. Texas 1966).

Such suspension policies appear to work against the educational goal. For example, one set of observers describe the consequences of excluding pregnant or married students:

> The policy of discouraging married, and expelling pregnant students accounts for many premature drop-outs. Once out of school, the child tends to remain out.[1]

School dress regulations have generated considerable public controversy in the recent past, and are a frequent grievance of students. In two recent cases involving male hair styles courts accepted the school authorities' argument, without actual proof, that the hair styles would be disruptive.[2] While some would argue that dress is an unimportant issue, it does have important bearing on the right of individuality and self-expression. It has been found that dress regulations are often used by school administrators as a means of controlling individualism and protest.[3] A recent decision in favor of a student identifies the issue quite well in the following:

> The limits within which regulations can be made by the school are that there must be some reasonable connection to school matters, deportment, discipline, etc., or to the health and safety of the student... The court has too high a regard for the school system to think they are aiming at uniformity or blind conformity as a means of achieving their stated goal in educating for responsible citizenship...Absolute uniformity among our citizens should be our last desire.[4]

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[1] Ibid, p. 4.

[2] Ibid, p. 11. As quoted: Leonard vs. School Committee of Attleboro, 212 N.E. 2nd 468 (Mass. 1965); Ferrell vs. Dallas Independent School District, 261 E Supp. 545 (N.D. Texas).

[3] Ibid., p. 11. See Comment, "The Right to Dress and Go to School," 37 U. of Colorado Law Review 492 (1964-65).

[4] Ibid. p. 11-12. As quoted: Myers vs Arcata Union High School Dis-

(footnote cont....)

The source of this issue is a conflict of interests between school authorities and the individual student. Thus, in the school context:

> The student wants the benefit of a public school education with a minimum of control and without sacrificing his personal or political concerns. The school administrators' interest is the efficient, effective and orderly conduct of the public school system. [1]

The third area of school litigation, mentioned above, is that of school suspension and can best be understood in terms of this conflict. Poor neighborhoods contain many sources of school behavior problems--broken homes, high incidence of multi-problem families, alcoholism, mental illness, etc. It should be no surprise that many children who come from seriously troubled families find it difficult to conduct themselves as required in school. On the other hand, the school administrators who among other things must deal with over-crowded classes, inadequate resources, high rates of turnover among teachers in slum schools, understandably often find the disruptive student a serious threat to the precarious balance they have established between the satisfaction of the teaching staff, the maintenance of educational standards, and the orderly operation of the school. It is in this context that suspension proceedings take on an added significance. While suspension from school may have severe consequences for the student's chance to obtain a minimum education, the suspension of disorderly students is frequently of critical impor-

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(continued...) trict (1966), Superior Court of California, Humboldt County.

[1] Ibid., p. 10

tance to the efficient administration of a school. School authorities may well be tempted to utilize the suspension prerogative well before other alternatives have been exhausted. It is here that legal assistance may have a crucial role to play in the defense of a student's right to an education.

School cases handled by the Legal Services Unit of Mobilization for Youth have taken place within the general context of suspension proceedings. Suspensions are the primary source of Unit school cases inasmuch as the New York school system appears to be well ahead of the courts with regard to dress regulations. Cases involving exclusion from school for reasons of pregnancy have not been encountered.[1] However, in school suspension cases, just as with the other areas of school litigation, there is a fundamental constraint upon the uses of law as an instrument of change. This is: the courts are unwilling to substitute their discretion for that of the school authorities.

> The general rule by which substantive regulations are tested is easily stated: the courts will not upset a school regulation unless it is arbitrary or unreasonable.[2]

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[1] Ibid. p. 11. "The Commissioner of Education of the State of New York, James E. Allen, ruled that New York schools do not have the right to ban merely unorthodox school attire (in that case the wearing of slacks). Ruling No. 7594 March 14, 1966. However, with regard to the exclusion from school for pregnancy, A Citizens' Committee for Children of New York study revealed that thousands of girls are suspended because they are pregnant. These cases have not resulted in legal action probably because the girls are not officially suspended, but instead are requested to voluntarily withdraw from school."

[2] Ibid., p. 10.

Unless the attorney for the student can show a particular school regulation to be arbitrary or unreasonable, he must show that the behavior of the school authorities in the instance at issue was inconsistent with the relevant regulation or legislative statute. The reluctance of the courts to intervene in school administrative matters is partly a function of a general unwillingness to interfere with the administrative prerogatives of any public agency. This attitude has already been noted in the discussions of welfare, and public housing cases.

I. School Suspension Practices

Although New York State law requires that any person between the ages of fifteen and twenty-one years is entitled to attend the public schools where he lives[1] a student may be suspended from required attendance for the following reasons:

--he is insubordinate or disorderly:

--his physical or mental condition endangers himself or others

--he is too feeble-minded to benefit from instruction.[2]

The law provides that a minor who is suspended as insubordinate or disorderly is to be immediately "sent elsewhere for instruction or steps taken

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[1] The Citizens' Committee for Children of New York, "Memorandum on School Suspensions," (New York: Oct. 20, 1966, unpublished memorandum p. 1. Quotes Sec. 3202 of the New York State Education Law).

[2] Ibid., p. 2. Quotes Sec. 2314 subsection of the New York State Education Law.

for his confinement." The same law defines a school delinquent as a student who is:

> A habitual truant, or is irregular in attendance, or is insubordinate or disorderly during such attendance.[1]

The law provides for special schools to be created for students with serious discipline problems. A school may, with the written consent of the parent of a school delinquent, order him to attend a special school or other instruction under confinement.[2]

The suspension procedure is officially described as therapeutic rather than punitive and a student is to be considered for suspension only after

> all available remedial procedures have been applied (and) a pupil remains disruptive or maladjusted to the extent that he does not profit from instruction or that he prevents other pupils from learning...[3]

There are two forms of school suspension. In the first, a school principal can suspend a child for a period no longer than five days. However, prior to the suspension, the principal is to hold a pre-suspension conference "to try to resolve the problem at an early stage." If problems persist, the principal may suspend the child for five days during which a

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[1] Ibid., p. 2. (Same subsection of the New York State Education Law).

[2] Ibid., p. 2. "The consent here is illusory in the sense that action in Family Court for violating the law which forbids the inducement of a child not to attend school can be brought against a parent who fails to give his consent. If the court fails to punish the parent a "proceeding can be brought against the minor for violation of the compulsory education law."

[3] Ibid., p. 4. As quoted from General Circular #16, April 18, 1966 from Executive Deputy Superintendant, New York City Public Schools.

"guidance conference" is held for the purpose of providing an opportunity for parents, teachers, counsellors, and supervisors, etc., to plan educationally for the benefit of the child; attorneys seeking to represent the parent or the child may not participate.[1] A child may not be suspended for more than two five-day periods and if the problem requires more than five days to resolve, the case is to be referred to the District Superintendent for a guidance conference within ten days of the suspension. Although the parent is to be notified the conference may be conducted without him.

The principal is to send in advance a report of the student's misbehavior in chronological order, and is to bring to the conference the pupil's official records including health and test records. The parent is to be notifid of the conference and although the purpose of the conference is to "plan educationally for the benefit of the child", if the parent fails to appear, the meeting can be conducted without him.[2] It is this conference at the District Superintendent's level which can bear the most serious consequences for the student. A decision concerning the student is to be made by the District Superintendent at the conference or within five days. The decision may include:

> ...reinstatement, transfer to another school, referral for placement in a school for socially maladjusted children, referral to the Bureau on Child Guidance...for study and recommendation--including medical suspension, home instruction, exemption from instruction or referral to the Bureau of Attendance for court action.[3]

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[1] Ibid, p. 5. As quoted from General circular #16, see note 19.

[2] Ibid. p. 6, as quoted from General circular #16.

[3] Ibid, p. 6

Once the child is suspended his case is to be "reviewed continually in an effort to explore every possible resource for the child," and if necessary the suspension will be continued until an available resource is located.[1]

This brief description of suspension procedures is based on school regulations. There is, however, evidence that services for the suspended child are not available, that suspension proceedings are unfair to the child, and that once a child has been suspended his chances for future acceptance in school are adversely affected. A study of school suspensions for 1965-66 conducted by the Citizens' Committee for Children of New York (CCC), indicates how the guidance conferences work to the disadvantage of the child. The child's records are shared by school personnel participating in the conference; the case is discussed and the decision is made before the child and his parents are brought into conference.[2] The study found indications that:

> ...even the school personnel may be placed in a defensive position at such conferences. They feel they must produce story after story to make the child look bad, rather than suggest helpful measures...
>
> When the child and family are brought into the conference, they are treated in such a way that they must feel guilty and irresponsible, rather than be in a position to help solve the child's problems... After this 'conference' is over, the parent is told what plans have been made.[3]

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[1] Ibid, p. 6.

[2] Ibid, p. 7.

[3] Ibid, p. 7. "...in at least one district, the district superintendent usually asks the child to tell the audience 'the bad things he has done', immediately upon his entering the conference. That same superintendent has been known to comment on the neatness or lack of neatness during the hearing."

At such conferences no one is present to help the child tell his side of the story or help him question those who have testified against him. The CCC reports:

> The theory says that the school is acting in order to help the child, so the child does not need help from anyone else... (and) suggests regular review of suspension decisions and special school dispositions but this does not seem to take place. [1]

The essential bias of suspension procedures against the student as well as the absence of an objective consideration of his school needs is summarized by the CCC report as follows:

> In a sense, the suspension conference is used as an educational device. It is an educational administrative method to keep teachers happy providing them with a sense of support. As a result, there is a negative attitude toward permitting anything in the conferences that might undermine the teacher in his attitude that suspension is there as an aid to him. Therefore, everything a teacher says in a suspension conference or (is) in the documents that go to the conference, is accepted as fact. The idea that a teacher might possibly be at fault or at least contributing to the youngster's behavior is ignored.[2]

The services which are to follow a suspension were found to be generally lacking. In a sample of seventy suspensions, students were found to have been suspended without services for one-and-a-half and two years. Others had been suspended for six months as punishment for staying out of school for one year. Where services were provided they were found to be inadequate. The only resource available to many children were the "600" schools for maladjusted children. Home instruction

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[1] Ibid., p. 7.

[2] Ibid., p. 8.

amounted to about one-and-a-quarter hours on the average.[1] Finally the CCC study found information on many aspects of suspension proceedings not available. Many dimensions of the problem have yet to be uncovered.[2]

In general, the findings of the Citizens' Committee for Children of New York are consistent with the experience of both Mobilization For Youth social workers and attorneys of the Legal Unit. From 1962 to mid-1965 MFY social workers were allowed to attend District Superintendent suspension hearings. They found that the cases were discussed and decided before the child and his parents were allowed to come into the conference; that the conferences were held more to ratify the initial suspension than to consider its justification; that the child or his parent had no right to organize and present their case or question the evidence against the child; and that the conferences regularly ignore the implications of the case for the teacher or the operation of the educational system. More disturbing, however, MFY social workers found the hearings to be considerably less therapeutic than the schools claimed. One MFY worker described the hearings in the following way:

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[1] Ibid.

[2] Ibid., p. 9. According to the reply of the Bureau of Attendance to a CCC inquiry, certain categories of information are not available. They include: the length of time of suspensions; the specific reasons for the suspensions; the specific services available to suspended students. The CCC reports finding an informal suspension system where school transfers and suspensions are conducted without reference to official procedures. No sense of the numbers of students handled in this way was obtained. The CCC was also unable to obtain detailed first-hand information of what actually goes on in the conferences. In addition, there was no sense of how many students, once suspended, were able

> a few words need to be said about the flavor of the hearings. They seem to be a highly judgemental, moralistic and debilitating experience, not only for the families involved, but for the school personnel as well. Since school personnel are placed in the position of being personally accountable for the child's difficulties, they protect themselves by using page after page of anectodal incidents on the child, which is used in the hearings often as an indictment and not in any sense in terms of understanding the family's position or in terms of seeing the way in which the school system fell short of meeting these children's needs.
>
> The great bulk of the children come from our disadvantaged groups. For these children and their families, the hearing comes through as an awesome and frightening experience. To find oneself at the end of a long table, surrounded by strangers with "power", given this group's image of authority, can be both confusing and upsetting. This, often combined with a language barrier, tends to make the families respond quite subserviently and this subservience is reinforced by the structure and personalities involved in the hearings. [1]

This social worker describes how some children were severely chastised for "impertinence" which was any behavior which was not conforming. Other behavior such as hyperactivity, name-calling, hitting other children, was frequently described as "sick." The worker found herself interpreting aspects of low income culture to the school authorities yet she noted:

> each comment I make becomes applied to the individual case only, and there is absolutely no carry-over...Thus the focus in the end gets turned back to the individual family's problem without looking at the way the current school structure may be demanding too much, may in fact be evoking acting-out behavior

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(cont.) to return to school. "Exactly what does happen, how much to whom is not now known to us." (p. 10).

[1] Mobilization For Youth, "Memorandum, Re: District Suspension Hearings," (New York, April 19, 1963, unpublished report.) p. 1-2.

> or without looking at its responsibility for working out alternative class structures, curriculum changes, etc.[1]

MFY workers performed several important functions for the school system. They interpreted the ethnic and class culture with which the school authorities had to deal; they followed up suspended students; they looked into the backgrounds of the families involved; and talked to the teachers, principals and guidance counsellors involved. However, in September, 1965, as a result of increasing conflict between MFY workers and school authorities, the MFY presence at suspension hearings was ended. It was at this point that the Legal Unit became actively involved with the issue.

In late 1965 the Unit suggested to the superintendent of New York City Schools the importance of providing students with counsel at a suspension hearing. The reply was that the hearing was therapeutic, not punitive, in nature and the provision of counsel was, therefore, inappropriate. Another similar letter detailing the importance of counsel in hearings was sent to the Chairman of the Board of Education of the City of New York. In April, 1966, once again a reply in the negative was received. As a consequence, in May, 1966, the Unit initiated its first court action in a school suspension case.

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[1] Ibid., p. 2-3.

II. Major School Suspension Cases: Cosme and Madera

Although the potential number of suspension cases where legal counsel might be of relevance was considerably greater, the actual number of cases brought into the MFY Legal Services Unit has averaged two to three cases per month. As of spring, 1968, the Unit is litigating two school suspension cases, Cosme vs Board of Education and Madera vs Board of Education.[1] Both involve the right of a student to have counsel present at a suspension hearing (guidance conference). One case is being heard in the state court system, the other in the federal courts.

The first important school suspension case which raises the student's right to counsel is Tomasa Cosme vs Board of Education of the City of New York. Tomasa Cosme had asked the Unit for assistance for her son who was in the process of being suspended from junior high school "on account of lewd, lascivious and obscene language used to nearly every girl in his class..."[2] Unit attorneys requested and were denied permission to attend the District Superintendent's guidance conference. The Unit then petitioned the Supreme Court of New York for a writ of Mandamus to order the Board of Education to permit an attorney to attend the conference. The petition was dismissed on the basis that the conferences were:

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[1] Materials related to the Madera case were gathered in March 1968.

[2] Board of Education of the City of New York, Answer, in Appellants Band Appendia, Tomasa Cosme vs Board of Education of the City of New York p. A22.

> ...simply interviews or conferences which include school officials and the child's parents. Further, they are purely administrative in nature and are never punitive.
>
> Respondant is not statutorily mandated to grant a parent a hearing. Moreover, because the hearing or conference is administrative, the petitioner is not entitled to be represented by counsel.[1]

The court accepted the school's justification for the guidance conference and, as well, the argument that the presence of a counsel would turn the conference into a quasi-judicial proceeding rather than an educational discussion. Moreover, the court displayed the traditional reluctance of courts to intervene in administrative matters in the following statement:

> Respondant is vested with discretion in the performance of its duties. Only a clear abuse of such discretion is reviewable by a court, and no such unauthorized action here appears. Accordingly the petition is legally insufficient.[2]

Finally, the court argued that the administrative remedies within the schools (an appeal to the State Commissioner of Education for review of the case) were not exhausted, and therefore the court action was premature.

The Unit appealed the decision to the Supreme Court of the State of New York, Appelate Division. The appeal argued that: principles of due process called for the right to counsel in school suspension hearings; that it was not necessary to exhaust administrative remedies before

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[1] Ibid., p. A2

[2] Ibid., p. A2-A3

bringing legal action; and that the hearings were in fact adversary and adjudicatory in nature. The Appellate Division affirmed the decision of the lower court without opinion.

The second important school case, Madera vs Board of Education of the City of New York was brought in the Federal District Court and may well have far-reaching consequences. According to one review of the case, Madera is the first federal court case to "face squarely the problem of due process limitation on suspension hearings, and particularly on the requirement of right to counsel."[1] The Unit is presently petitioning the Supreme Court of the United States for review of this case.

The facts of the case are parallel to those of Cosme. The parents do not speak English, their son had been accused of striking a teacher and was to answer a charge of juvenile delinquency in Family Court and in addition, attend a guidance conference. Unit attorneys again had requested and been denied permission (under General Circular #16) to attend the conference. They brought the case before the Federal District Court of Southern New York.

The decision reached is of interest. In the first place, the court held that under the Federal Civil Rights statute it had jurisdiction over the case, and that, contrary to the Cosme ruling, it was not necessary

[1] Welfare Law Bulletin #11, Jan., 1968. Op. Cit., p. 9.

to exhaust all state administrative or judical remedies before initiating legal action in a federal court.[1] The court distinguished between the five-day suspension by a school principle and the longer suspension proceeding which involves the "guidance conference" at the District Superintendant level. The former proceeding is in itself of little long term consequence to the student whereas the guidance conference was seen by the court as involving very serious issues for the student. Perhaps the least of these was the loss of schooling for the student due to the delays in obtaining appropriate program placement. The court found, by reviewing school records, that students were required to wait for as long as four to six months before being admitted to a school for socially maladjusted pupils or as long as seven to ten months before finding an institutional place.[2] Such delays can in effect amount to expulsion from school or the loss of the student's right to attend school.

More serious, however, was the possible loss of liberty of either the child or his parents should the issue of neglect or delinquency be raised in Family Court by the schools as provided by the law. The

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[1] Madera vs Board of Education of the City of New York, 35 U.S.L.W. 2620 S.D.N.Y. April 10, 1967. The decision here reads: "Defendants have questioned the propriety of a federal court determining the issues raised on this case on the ground that this is a matter handled by the state...It is now a well settled principle that relief from the Federal Civil Rights Acts may not be defeated because relief was not first sought under state law which provided a remedy. Monro vs Pap, 365 U.S. 167 (1961). The whole purpose of the Federal Civil Rights Acts would be seriously undermined if a federal claim in a federal court must await an attempt to vindicate the very sameclaim in a state court. McNeese vs Board of Education 360 F. 2nd 592 (4th cir. 1966), "p. 9-10.

[2] Ibid., p. 22.

court reasoned the following manner:

> ...a "Guidance Conference" can ultimately result in a loss of personal liberty to a child or in a suspension which is the functional equivalent of his expulsion from the public schools or in a withdrawal of his right to attend the public schools... as a result of a "Guidance Conference," adult plaintiffs may be in jeopardy of being proceeded against in a child neglect proceeding in the Family Court.
>
> For the foregoing reasons, this court finds that the due process clause of the Fourteenth Amendment to the Federal Constitution is applicable to a District Superintendent's Guidance Conference. More specifically, this court concludes that enforcement by the defendants of the "no attorneys provision" of Circular No. 16 deprives plaintiffs of their right to a hearing in a state initiated proceeding which puts in jeopardy the minor plaintiff's liberty and right to attend public schools.[1]

The court considered the requirements of due process in a proceeding which affected rights of great value and potential loss of liberty, and concluded that such requirements included the right to expression through counsel. Therefore, the court held that the prohibition of Circular #16 against attorneys violated the due process clause of the Fourteenth Ammendment and its enforcement:

> denied the plaintiffs to a hearing by depriving plaintiffs of their right to be represented by a counsel at such a conference if plaintiffs so desire.[2]

The court, consequently, enjoined the enforcement of the "no attorneys" portion of General Circular #16.

The decision was appealed by the Board of Education, and in December, 1967, a ruling setting aside the injunction was obtained

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[1] Ibid., p. 23.

[2] Ibid., p. 40.

from the Second Circuit Court of Appeals. The difference between the two courts stems from the different way in which the significance of the guidance conference was viewed. In contrast to the District Court which saw possible Family Court actions against the parent and child or the functional equivalent of permanent expulsion arising from the conference, the Circuit Court viewed the conference as a preliminary investigation which could result merely in a change of school assignment. For the Circuit Court, the issue was "how the child may be returned to the educational system". It did not consider, for example, the more serious consequences of suspension such as the long delay suspended students experience while awaiting assignment to another school or a more specialized institution, or the stigma attached to those placed in the "600" series schools for the socially maladjusted. As one observer states:

> "The Circuit Court foresaw few serious consequences resulting from the conference, and viewed the hearing as an early step in necessary disciplinary procedures far removed from any delinquency adjudication."[1]

Moreover, a real fear expressed by the Circuit Court was that the presence of a lawyer would transform the conference into adversarial proceeding similar to those which obtain in criminal courts:

> The conference is not a judicial or even a quasi-judicial hearing. Neither the child nor his parents are being accused.

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[1] Welfare Law Bulletin, #11, Jan. 1968, op. cit., p. 9.

> In saying that the provision against the presence of an attorney for the pupil in a District Superintendent's Guidance Conference 'results in a depriving plaintiffs of their constitutionally protected right to a hearing' (267 F. Supp. at 373), the trial court misconceives the function of the conference and the role of the participants therein play with respect to the education and welfare of the child. Law and order in the classroom should be the responsibility of our respective educational systems. The courts should not usurp this function and turn disciplinary problems, involving suspension, into criminal adversary proceedings--which they are definitely not...The courts would do well to recognize this. [1]

The Circuit Court held the Guidance Conference not to be a criminal proceeding and therefore does not require the provision of counsel. Nor are statements of the conference used in any criminal proceedings, and so reasons the court, there is no need for a counsel to protect the child's right against self-incrimination. On this basis, the court concluded there was no constitutional command nor any requirement of due process that required the presence of counsel at these conferences, and therefore removed the injunction of the lower court. Nevertheless, as one review notes, the court did not determine in Madera:

> what requirements the court will make when a child is actually expelled or remanded to a custodial school or other institution which restricts his 'freedom to come and go as he pleases'... [2]

At the time of writing, the Unit is petitioning the Supreme Court of the United States for a writ of certiorari (review). Nevertheless, even should

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[1] Ibid., p. 9. As quoted from the text of the decision

[2] Ibid., p. 10.

a favorable decision be obtained in the Madera case, the main, serious questions would remain with respect to the role of counsel in suspension proceedings. In the first place, there would still be no legal framework within the context of the Guidance Conference which would make the role of counsel a meaningful one. For example, who would compel the school authorities to allow the attorney to question those who have produced evidence against the child, or allow him to examine the records on the basis of which the authorities made their decision? Or, for that matter, who is to compel them to allow the attorney to present the student's side of the case? In absence of such guidelines, or a simple legal framework, the school authorities could, in effect, ignore the presence of the attorney. Unless the courts were to go beyond allowing counsel to be present at suspension hearings, and define the role counsel might play in such proceedings, the role of counsel would remain at the discretion of the school authorities responsible for the hearings. Under such conditions, counsel for the student might be reduced to an ineffectual "presence." Many important issues will remain before rights of a student subject to suspension are adequately protected. Clearly, the Madera case, if successful, is but one small step in a long process of the definition of students' rights in public schools.[1]

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[1] Other types of school suspension cases are, at present, in process. In Spring 1968, the Unit has represented several suspended students who have experienced lengthy delays in being placed in an institution or being re-admitted to school. The State Education Law Sec. 3202 sub. 1 clearly states that all persons over five and under twenty-one years of age have a right to attend school. The Unit has simply initiated Mandamus proceedings so that the student may claim his acknowledged right to an education. In each of the four cases, the students have received an institutional

Summary

What Rothwax concludes about schools could equally as well be concluded about public housing, welfare, and unemployment insurance:

> Often the lawyer's task consists of presenting the reality behind the service and humanitarian language with which administrative officials describe their institution. As the U.S. Supreme Court said in In re Gault, '...unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure.'
>
> So few cases have been decided that any enumeration of what constitutes due process in the many contexts of the school is impossible. It is incumbent on the lawyer to requst , then demand, and, if refused, litigate to insure proper procedure... and put administrative authorities on notice that they are being observed. [1]

(continued from last page) or school assignment before the case came to court. In this way the problem of lengthy unserviced suspensions is being attacked. Thus far the schools have avoided a direct confrontation in court on this issue. Harold J. Rothwax, "The Rights of Public School Students", Welfare Law Bulletin, op. cit., p. 2, 04.

[1] Ibid., p. 2, 06.

CHAPTER VIII

REPRESENTATION OF CRIMINAL CASES

Introduction

Crime and poverty bear a close relationship. The causal link between poverty and crime is brought out in recent statistics on Negro and white crime. According to the President's Commission on Law Enforcement and Administration of Justice, Negro crime rates were multiples of those for whites in 1965:

Index offenses including petty larceny under $50	4 times
murder	10 times
burglary	3 1/2 times
Arrests over the age of 18	5 times
Arrests under the age of 18	3 1/2 times

The commission concludes:

> "differences become very small when comparisons are made between whites and Negroes living under similar conditions. However, it has proved difficult to make such comparisons.....Even when Negroes and whites live in the same area, the Negroes are likely to have poorer housing, lower incomes, and fewer job prospects. The commission is of the view that if conditions of equal opportunity prevailed, the large differences now found between Negro and white arrest rates would disappear."[1]

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[1] President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society. (Washington: U. S. Government Printing Office, 1967) p. 44-45.

For this reason, poor neighborhoods, "the slums, traditionally experience the highest crime rates.[1] Moreover, the poor suffer disproportionately at the hands of the law. They are "the prime targets of 'clean-up' campaigns and dragnet investigative arrests."[2] They are less cognizant of their legal rights, and consequently more prone to making confessions or admissions damaging to their cases. The resultant pleas of guilty and convictions follow as a matter of course.

Low income defendants often are at a disadvantage in court proceedings from the beginning. While the poor defendant must be assigned counsel in felony cases,[3] the right in misdemeanor cases has not been established on a national basis.[4] A poor defendant's first contact with a lawyer is usually at his arraignment after several important protections have been foregone; frequently an indigent defendant does not recognize the importance of legal counsel, and will waive his rights to such assistance. Further, the bail system has been shown to discriminate in favor of the more affluent. One observer describes the operation of the system as follows:

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[1]In a study of convicted felons in Washington D.C., it was found that 90% had incomes of less than $5,000 while 56% of Washington's population earned the same amount. "The picture which emerges from this data is of a group of young adult males who come from disorganized families who have had limited access to educational and occupational opportunities, and who have been frequently involved in difficulties with the police and the courts..." Ibid., p. 45.

[2]For example, in Kansas City Missouri, 44% of serious crimes and 38% of all arrests occur in a single poor neighborhood. Pat Wald, Law and Poverty, Report to the National Conference on Law and Poverty, (Washington, D.C.: U.S. Government Printing Office) 1965, p. 35.

[3]Gideon vs. Wainwright, 372 U.S. 335, 334 (1963).

[4]Wald, op.cit., p. 35.

> ...he (the defendant) faces the problem of raising bail money or spending months in jail awaiting grand jury indictment or trial... If it (the money) cannot be raised and the breadwinner goes to jail to await trial, his family may be thrown onto relief, evicted from public housing, or broken up. In jail the accused cannot locate or persuade defense witnesses to appear. Assigned counsel, rarely compensated for out-of-pocket expenses or given investigative help, must prepare the defense unaided.
>
> At sentencing, the poor defendant who has been in jail since his arrest, has a reduced chance of establishing his rehabilitative potential for probation as a jobholder, stable family man, and integrated member of the community. Often he is imprisoned solely because he cannot pay a fine."[1]

The involvement of the poor with the law is extensive, and the need for legal assistance is obvious. Despite bail reform programs and recent court decisions which afford the poor additional legal protections, a great deal remains to be done before a poor defendant can receive equal treatment at the hands of the law.

The Lower East Side is a poor neighborhood, and its crime rates express this fact. For example, 1950-60 juvenile delinquency rates in the neighborhood were in considerable excess of these for New York City;[2] of the area's population,

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[1] Ibid., p. 37-38.

[2] The following table summarizes 1950-1960 delinquincy for the MFY area, Manhattan and New York City.

	Offenses per 1,000 Youth Aged 7-20 Years			Percentage Change		
	1951	1957	1960	1951-57	1957-60	1951-60
Total MFY Area	28.7	49.2	62.8	71.4	27.6	118.8
Manhattan	34.5	52.8	68.2	53.0	29.2	97.7
New York City	20.1	37.9	42.4	88.6	11.9	110.9

Mobilization For Youth, A Proposal For the Prevention and Control of Delinquincy By Expanding Opportunities (New York: 1962) p.17.

31% lived in abject poverty, 49% lived under conditions of deprivation and 41% were receiving public assistance of some kind.[1] Likewise, the incidence of narcotics addiction, burglary and aggravated assault in the Lower East Side is well above the average for the New York area.

1. Unit Assistance to Criminal Defendants: A Form of Institutional Change

The practice of criminal law by the Legal Services Unit is a good illustration of what, for our purposes, is here defined as "institutional" change. In this case, the Unit provides the kind of service not offered by other groups. From the outset, Unit criminal representation was intended to play a complementary role to the activities of other organizations providing legal services to the poor. It was to fill in gaps of existing legal programs, not to duplicate them. Accordingly, Unit representation was "to supplement the work of the Legal Aid Society not to compete with it."[2] Perhaps the greatest value of the Unit's practice of criminal law is its pioneer work as a neighborhood law office.

At the outset, an analysis was undertaken to identify those areas where a small legal staff could maximally contribute to legal services for indigent defendants. The research focused upon meeting the needs of indigent defendants unserved as of that time. The proposed program was to include the following services:

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[1] Ibid., p. 27. Abject poverty is defined here as a family of four living on $3,000 or less per year; conditions of deprivation are defined as those of a family of four with a yearly income of $5,000 or less.

[2] Mobilization For Youth, Petition to Appellate Division of the Supreme Court of the State of New York, First Judicial Department. (New York: Legal Services Unit, Jan. 1964, unpublished, application for court authorization) p. 3.

--Representation of defendants at the police station house.

--Extension of an attorney's role to include post-conviction probation proceedings and related matters.

--Follow up of court cases with local detached gang workers to encourage defendants to utilize work programs and other opportunities.[1]

The program also included activities supplemental to the work of the Legal Aid Society. The Unit was to perform several functions directly related to the Society:

--Act as a "feeder" system by referring routine criminal cases to the Society. (Cases requiring extensive investigation or preparation were to be handled within the Unit).

--Assist the preparation of a defense for Lower East Side defendants. Unit attorneys were to gather defense witnesses and investigate as needed.[2]

From this it should be clear that the Unit's work in criminal law represents an important new legal resource for the indigent in the Lower East Side.

The following discussion will be divided into three parts: (1) the context of legal assistance available to indigent defendants in the Lower East Side; (2) the criminal law caseload and Unit representation of the accused; and (3) the use of law as an instrument of social change in the enforcement, context, and administration of criminal justice.

1. The Context of Legal Assistance Available to Indigent Defendants

For the innovative character of the Legal Unit's Service to the Lower

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[1] Ibid. p. 2.

[2] Ibid. p. 3.

East Side to be fully appreciated, it is necessary to describe the practice of criminal law by the two other major sources of legal counsel for the indigent, the Legal Aid Society and the private criminal lawyer.[1] They are the primary sources of legal assistance for indigent defendants and, without a consideration of their activities, any discussion of the Legal Unit's work in criminal law would be incomplete.

A. The "Marginal" Private Criminal Lawyer

At the outset it should be emphasized that the following discussion of the "marginal lawyer" does not apply to all private attorneys who practice criminal law, but to those who base their practices almost exclusively on criminal cases; who primarily serve a low income or lower middle class clientele; and who depend upon a large volume of cases to sustain their practice. Typically, the "marginal" criminal lawyer can be found at the court where it is possible to solicit clients as they come in to be arraigned.[2]

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[1]It should be remembered throughout the following discussion that there is no intent here to impugn the motivation, skill, honesty or commitment of the members of the private criminal bar or attorneys for the Legal Aid Society. The practices to be described here find their origin in the economics of poverty and administrative organization of the criminal courts. Such factors are too basic to warrant blame of lawyers or organizations working within this framework. Moreover, the presentation of problems encountered in the practices of private criminal lawyers and those of the Legal Aid Society should not be taken as an implication that the two are in any way comparable. The practices and their causes are too disparate, the problems too different, to support any assumption of equivalence.

[2]This definition does not include the majority of neighborhood based attorneys who for the most part do not accept criminal cases. In a recent survey of Lower East Side private attorneys it was found that only two out of seven accepted criminal cases at all. None of the attorneys interviewed relied upon criminal cases exclusively. Also, the definition does not apply to the highly paid criminal lawyer who does not have to rely upon a large volume of cases. Such attorneys, however, have little relevance to the indigent defendant.

The "marginal" criminal lawyer is a product of the economics of poverty. As shown earlier, poor defendants make up a disproportionate share of criminal cases, and the central problem facing an attorney who handles indigent criminal defendants, is securing a fee for his services. The very nature of the poor client and his predicament creates a real possibility that the lawyer will not be paid. Some defendants have little respect for contractual obligations, or a sense of responsibility for paying debts under certain circumstances. Others simply can't pay a lawyer's fee. Unless a payment is made in advance, an occasional defendant who wins his case will refuse to pay his fee; once the imperative of obtaining legal counsel is removed, there is little to compel him to pay this bill. The time required to collect the debt encourages the lawyer to give it up. Conversely, a defendant who is jailed is in no position to pay debts, and is unlikely to feel a strong obligation to pay for his unsuccessful defense. This is particularly true where there is the suspicion that the defendant was "sold out" by the lawyer. There is some truth to the lower class stereotype of the "shyster" lawyer. Lawyers are often profoundly distrusted by their lower income clientele. The poor realistically perceive the kind of service they can expect.

Due to the poverty of his clients, and to the uncertainties of getting paid, the marginal criminal lawyer will often ask for a lower scale of payment than he would otherwise. Frequently, such a lawyer will accept a $150 downpayment for a $500 case with the knowledge that it is all the payment he is likely to get. The rate per case is a function of the amount of time to be spent on the case, and the probability that the defendant will pay his fee. Moreover, the "marginal lawyer" must compete with a sizeable number of other attorneys who are ready to step in and

consequently must close the deal quickly.

In order to survive, the marginal criminal lawyer must (1) work with a large volume of cases; (2) delay the resolution of a case until fee has been secured so as to compel the client to pay; (3) minimize actual time spent in court in order to work for a large number of clients. Such constraints are reflected in the marginal lawyer's behavior in court.

For example, the large volume of cases prevents the lawyer from spending much time on any one case; to make it worthwhile, he must minimize his courtroom time. The need to delay a case until after the fee is paid creates an incentive to avoid situations in which a case may be quickly settled. As a consequence, marginal criminal lawyers typically forego many possible legal protections available to their clients in an effort to reduce the time spent in court. For example, to the serious disadvantage of their clients, many private lawyers waive the preliminary fact-finding hearing because of the difficulties it presents to them. Theoretically, a preliminary hearing is held to determine whether there is sufficient evidence to try a defendant. In practice, preliminary hearings perform an important service to the defense attorney by offering him a preview of the evidence held against his client. Such information is extremely useful if not crucial, to the preparation of a defense. Moreover, the preliminary hearing also affords the defense attorney an opportunity to have the charges reduced or dismissed. For these reasons, Legal Aid and Legal Unit attorneys will almost invariably request a preliminary hearing for their clients. Conversely, private criminal lawyers will waive a preliminary hearing to avoid having to spend a day in court and to avoid the risk of a reduction or dismissal of the charges against his client. The time in court would be lost for servicing a large number of cases; a dismissal could possibly result in

in the loss of a paying client altogether; and a reduction in the charges could require a reduction in fee.

A recent case handled by a Unit attorney provides a good illustration of how these constraints are translated into the legal performance of the marginal attorney. The case involved four defendants who, during domestic argument, had been parties to a shooting. Two of the four were represented by a private criminal attorney who waived the preliminary hearing to the Grand Jury. Despite the heated protests of this lawyer, the Unit attorney who represented the two other defendants persisted in obtaining a preliminary hearing for his clients. Subsequently, at the hearing, he was able to get the felony charges reduced to misdemeanors. The result in this case was that of four equally involved defendants, the two who had benefit of a preliminary hearing were to be tried on misdemeanor charges while the two co-defendants still faced felony charges.

In another, similar case involving three youths charged with burglary, the prosecuting attorney made a serious mistake in court room procedure. The Unit attorney who represented one of the youths immediately asked for and obtained a declaration of a mistrial. The motion was made over the objection of a private lawyer representing the other two boys. In this case, the private attorney was willing to ignore the trial error to avoid having to spend more time on the case in court. In the subsequent retrial all three youths were acquitted.

These practices obviously lend some credence to the prevalent lower class fear of betrayal by a lawyer. Furthermore, it is not unusual for the "marginal lawyer," after receiving his fee, to plead his client guilty, thereby obviating the need for an extensive defense preparation for the case, and eliminating the chance

that the case might require more than a minimal expenditure of time in court. In one such case, the mother of a youthful defendant hired a private criminal lawyer to defend her son at a cost of $200. She hired the private attorney despite her eligibility for the assistance of a Unit attorney who had worked with the boy before. After receiving his fee, the lawyer entered a simple pleas of guilty and the youth received a three year sentence. The Unit attorney in this case had gathered witnesses favorable to the defendant and was prepared to contest the charge.[1]

In sum, the "marginal" criminal lawyer carries a large volume of indigent or lower class clients; delays a case until the fee is secured; minimizes time expended on a case by foregoing time-consuming legal protections such as preliminary factfinding hearings, or jury trials; and frequently pleads clients guilty without contest. Finally, according to experienced attorneys, such "marginal" criminal lawyers frequently have the least adequate professional training and constantly seek the help of more knowledgeable Legal Aid attorneys in question of newly developed law.

B. The Legal Aid Society

The Legal Aid Society is the largest and most experienced organization which provides indigent defendants with legal counsel in New York City. In the past twenty years the Legal Aid Society has extended its area of service throughout the New York area in both federal and state courts. For example, in 1962 the Court

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[1]This case is typical of what one private attorney referred to as a "twenty-five dollar trial." In a conversation outside a courtroom, this particular lawyer told two Unit attorneys that he was going to give a client a $25 trial by pleading him guilty without contesting the charges.

Reorganization Act established a Family Court to handle juvenile delinquency and domestic relations cases. The act required that counsel be provided to all indigent juvenile defendants, and the Legal Aid Society was subsequently asked to provide the legal counsel necessary to fulfill this requirement.

Although free legal assistance for indigents was already well established in New York by 1963, the growth of such services received an additional impetus from the Supreme Court decision of Gideon vs. Wainwright (372 U.S. 335, 344, 1963) which stated in part:

> Not only the precedents but reason and reflection require us to recognize that in our adversary system of criminal justice, any person hailed into court, who is too poor to have a lawyer, cannot be assured of a fair trial unless counsel is provided for him.[1]

This decision has been interpreted to require the state to provide indigents with legal counsel in felony cases where substantial prison sentences are involved. Following the Gideon decision, a spate of legislation requiring the provision of legal counsel to indigents at both the state and federal court level was passed.

In New York state each county or judicial department was made responsible for devising a system whereby indigents would receive legal counsel. The courts could choose from three alternatives:

(1) Establish a state Public Defender program.

(2) Contract services to the Legal Aid Society.

(3) Assign private counsel to individual cases.

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[1] Gideon vs. Wainwright, 372 U.S. 335, 344 1963 as quoted in Pat Wald, Law and Poverty, op. cit., p. 36.

The three alternatives were investigated by the First Judicial Department in New York City, and a time-and-motion study demonstrated that the Legal Aid Society was the least expensive alternative according to cost per case represented. The choice was a logical one. The Legal Aid Society had considerable experience with providing counsel over a long period, and had established the administrative organization necessary for handling a large volume of indigent defendants.

The Legal Aid Society provides an indigent defendant with legal counsel at each step in the judicial process. Whether the case is in a lower criminal court or in a state Supreme Court, one Legal Aid attorney will represent the defendant at his arraignment, and still another attorney will have him at the trial. For this reason, the defendant may be represented by as many as four or more attorneys as his case progresses through the court system. This arrangement has important administrative and economic advantages underlying it. Each attorney becomes highly specialized in the procedure in his court and is able to deal with a case with a minimum waste of time. For example, Legal Aid attorneys need not expend the effort to acquaint themselves with the law and procedure at this particular stage in the judicial process; trial mistakes are reduced to a minimum and the rapid disposal of a case is more likely. Moreover, Legal Aid attorneys learn the idiosyncracies of the prosecuting attorneys and judges in the court. Knowledge of the predelections, opinions and courtroom strategies of the opposing attorney or judge, can be crucial to a successful defense. Such information is not readily available to an outsider. The specialization of function which characterizes the Legal Aid Society is according to several experienced attorneys, one way to provide legal counsel for indigent defendants on an efficient mass-production basis.

The administrative advantages as well as the economies derived by the Legal Aid system are evident. However, the fact that this approach often works to the disadvantage of the defendant, is equally clear. Serious problems which plague the Legal Aid system are related to the large number of cases each attorney is required to handle and to the fragmented nature of the assistance offered an indigent client. The high volume of cases has, perhaps, the most serious consequences for the kind of representation the Legal Aid Society is able to offer to the low-income client. Caseload pressures derive from the predominance of the low-income defendants in criminal offenses. Unit attorneys with experience in the Legal Aid Society, relate that, although many new lawyers are being added, it is not uncommon for a Legal Aid counsel to handle forty or more cases in one day.

The pressures of a large caseload are felt by attorney and defendant alike. In the first place, large numbers of defendants require that the attorney dispose of a case in a very short time. This forces him to scan and summarize the previous record if any, and quickly extract the essence of the case from the defendant in several short minutes. Because many cases fall into a pattern, Legal Aid attorneys must learn a shorthand method for capturing the important details of a case, constructing a defense and devising a strategy for negotiating a settlement with the prosecution.

The fact that the prosecuting District Attorney faces the same pressure, does not compensate for the brief preparation of the Legal Aid attorney. Although the prosecutor may spend an equally short time interviewing the arresting officer or other complainants, the officer is able to secure witnesses for his side while a

defendant frequently cannot. Moreover, the courts more readily accept the word of an officer over that of a defendant in cases of conflicting testimony.[1]

The disadvantage of the jailed defendant is accentuated by the lack of pre-trial investigation for Legal Aid clients. In the criminal court, investigators who can locate defense witnesses are generally available only when the defendant can give the exact name and address of a potential witness. Investigation in the Supreme Court often is provided several months after the fact, when the Grand Jury has already heard the case, indicted the defendant, and set the trial date.[2] The investigating attorney is often faced with tracing departed witnesses and obtaining information from persons who have a dim recollection of a months-old incident.

It should be noted here that the Legal Aid Society tends to represent the most disadvantaged clients in cases which involve serious charges. Such defendants often possess long criminal records, are less able to mount successful defenses, and are often convicted in a short trial. Private criminal lawyers are less willing to accept these cases because the probability of a quick adjudication increases the risk of not being able to secure the fee. Moreover, first offender cases tend to produce higher fees.

For the defendant who is confronted with a serious moment in his life, the rushed treatment, and the lack of an opportunity to tell his side of the story, can be a terrifying, discouraging and disillusioning experience. The first brief interview of the defendant often occurs in the detention pens of the city jail with

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[1]Norman A. Olch, "Representation In Criminal Cases By a Neighborhood Law Office." (New York: Fall 1966, unpublished student report) pp. 31-35.

[2]Ibid., p. 34-35.

20-30 other inmates present. Pandemonium reigns in this setting: other lawyers are interviewing their clients; defendants are being called for trial; the opening and closing of the steel doors reverberates throughout the concrete cells. The lack of privacy and the noise level make communication between the defendant and his lawyer difficult. Aside from the environmental conditions affecting the first interview, the attorney is so rushed that it is impossible for him to hear out the defendant's full account of the incident in question. When the defendant is unable to tell his story in detail, he often will conclude that his lawyer is neither interested nor very competent. Although much of the detail considered relevant by the defendant is not actually central to his defense, the fact that much of his story is ignored by the attorney confirms his suspicions of the essential inequity and indifference of the judicial system. The defendant is consequently unable to differentiate his assigned attorney from the rest of this suspect judicial process. The time constraint not only prevents the attorney from hear ing out his client but also prevents him from explaining the judicial process to him or, where appropriate, playing any sort of supportive role. The brevity of the contract, the frequent rotation of attorneys, and the constant movement in the court process prevents the development of a personal relationship between the attorney and his client.

The second major problem of the Legal Aid approach is the fragmentation of the legal services offered. The effects of such fragmentation are various. Attorneys who are attached to a particular courtroom are unable to make use of legal remedy which requires leaving the court. One former Legal Aid attorney reports that in the Criminal court, Legal Aid attorneys frequently were unable to have excessive bail requirements reduced, because a bail reduction petition could

only be made elsewhere in the court building. The attorney could not afford to absent himself from the court for even a quarter of an hour for fear of his next case being called. In this way, important defense protections are sometimes sacrificed in the interest of efficiency. Fragmentation also means that the attorney has no prior contact with a case before he is to present it in court. Each attorney must rely on whatever records have been made by his predecessors in the case which, in turn, places a great responsibility on the attorney to record his results in court accurately.

As previously mentioned, the fragmentation of representation results in the defendant being unable to find assurance or support in the several attorneys he briefly encounters, each of whom is under the same time constraints and speaks to him shortly about the case.

What little potential the process might have as a learning experience for the defendant is quickly neutralized by such feelings. The nature of the law, the operation of the courts and the function of his assigned attorney remain a mystery to a baffled and increasingly hostile defendant.

In short, the volume of the caseload and the fragmentation of the service seriously limit the ability of the Legal Aid Society to provide indigents with the personal treatment, comprehensive in-depth legal counsel, and the carefully prepared defense and follow-up help required to make the public goal of "equal justice under the law" a reality in the criminal courts. While the present system rapidly and efficiently processes a large volume of cases, it does so at a high cost to the defendant.

II. The Legal Services Unit: Practice of Criminal Law

A. Goals

Unit work with criminal cases is directed toward the attainment of three major goals:

(1) The provision of comprehensive high quality legal representation on a neighborhood basis.

(2) Breaking the cycle of recidivism among defendants.

(3) The use of law as an instrument of social change.

Each of these goals is translated into the kinds of cases accepted, the treatment of clients and nature of the services offered. Although they are interdependent, they will be discussed separately below.

Service to the Community: Comprehensive Representation on a Neighborhood Basis

An important purpose of the Unit is to provide high quality legal representation to neighborhood residents. To make such service readily accessible the Unit offers decentralized law offices, late office hours, and a twenty-four hour emergency call service. The comprehensive nature of the services provided to the defendant is an important aspect of its concern with criminal law. To begin with, one Unit attorney will handle a defendant's case from the initial interview through trial and post-trial proceedings. The attorney is in a position to establish a personal relationship with a defendant and can pursue later contacts on an informal basis. Unit attorneys are available to the client whenever he wants to see them. The detailed consideration a client receives is described by one observer in the following way:

> The defendant and witnesses are spoken to at length, often more than once. Their stories and backgrounds are carefully considered and a careful decision is reached on who should and should not testify. Where necessary, character witnesses are prepared (usually persons in charge of some MFY program). The scene of the alleged incident will be visited and photographs taken when needed. A decision to advise a client to plead guilty will be based on a thorough knowledge of the case and a careful evaluation of the possibility of securing an acquittal after trial.[1]

The Unit provides resources for the pre-trial investigation of a case which otherwise would not be possible. Social workers and VISTA volunteers attached to the Unit are available to investigate a defendant's family, work or school situation, locate and interview witnesses, and gather field material of use to the preparation of a legal defense. As noted previously, such pre-trial investigation is often crucial to the successful defense against a criminal charge. In addition, it is possible for the Unit to begin a pre-trial investigation soon after the incident in question and threrby reduce the loss of witnesses, and evidence to a minimum.

Another important factor which contributes to comprehensive legal representation is the relationship the Unit has to other programs of Mobilization For Youth. MFY, it will be recalled, is a juvenile delinquency prevention and control agency which sponsors a wide variety of programs. The availability of MFY work and training programs is of a strategic resource for youthful defendants. As will be noted in more detail below, the Legal Unit has been able to place its clients in such programs to their advantage.

The presence of legal, social and psychiatric resources allows the Unit to deal with a client's problem on several different levels. In cases such as that of Auturo Gomez, it will be recalled, the criminal problem, an arrest for

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[1] Ibid., p. 34.

fighting with a policeman, was closely related to other social and economic problems such as the accumulation of large debts due to a store failure. As noted before, social work support of the defendant's family is especially crucial at a time of crisis such as an arrest.

The Criminal Caseload

Unit attorneys report that the two categories of cases most commonly encountered involve drug charges or disorderly conduct complaints. The drug cases can be divided into three major categories:

(1) Possession-1/4 oz. marijuana, 1/8 oz. heroin, any amount amphetamines or LSD

(2) Possession of "works"--needle, cooker for heroin or amphetamines, etc.

(3) Drug Sales--Marijuana and heroin are the drugs most commonly encountered. Recently, however, several cases involving the possession or sales of LSD or amphitamines have appeared.

Unit attorneys prefer not to accept drug sales cases because they frequently involve the use of an undercover agent whose evidence nearly always results in a conviction. Because of the difficulty of identifying the agent or gathering defense witnesses (usually there are none), the special resources of the Unit can contribute little to the outcome.

Another common criminal complaint encountered by the Unit concerns charges of disorderly conduct. Most typically such complaints relate to instances of assault, fighting, resisting arrest or creating a commotion, and are frequently the result of the abrasive relations which exist between Puerto Rican and Negro youths and the police. Groups of young Puerto Ricans or Negroes are often broken up or told to move on; minority group members who drive cars are often stopped

and questioned. Such practices naturally create resentment and resistance which in turn results in arrests for disorderly conduct.[1]

The remainder of the caseload is made up of occasional burglary cases, rare robbery complaints and miscellaneous charges. Organized gang fighting is virtually nonexistent.

Criteria for Accepting Cases

The Unit's resources are limited. The number of cases Unit attorneys can accept at any given time is a function of the cases which remain outstanding. If the volume of cases represented became very large, the Unit would face the same problems encountered by the Legal Aid Society. Because resources are limited and an excessive caseload would defeat the purposes of the Unit, the attorneys who have the primary responsibility for the criminal practice, have formulated criteria according to which they accept a case or refer it to Legal Aid. Although each attorney is free to determine his own criteria for accepting a case (within the income requirements laid down by the Office of Economic Opportunity), a consistent set of standards is evident. Unit attorneys will normally provide assistance in cases where any one or combination of the following conditions is present:

(1) It is the defendant's first offense. The defendant's initial experience with the law is thought to be of crucial importance. Personal treatment, guidance and follow-up are seen as essential for the first encounter with the law to be a constructive one.

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[1]Experienced attorneys report that some of the disorderly conduct cases appear to be the consequence of a policeman locating an individual and then charging him with disorderly conduct or assault. A pattern seems apparent in the fact that most of such cases involve a relatively defenseless individual who, because of a court record, alcoholism or drug addiction, is unlikely to make a formal complaint. Although the presence of the Legal Unit in the neighborhood appears to produce a

(2) The defendant is involved in a MFY program, has had experience with MFY activities, or can be enrolled in such a program.

(3) The defendant's criminal problem is realted to other psychological, social or economic problems which are clearly amenable to other forms of assistance which the Unit can provide.

(4) The case requires the kind of pre-trial investigation, defense preparation and continuing personal attention not possible for Legal Aid to provide under the conditions described above. Such cases are those in which the personal treatment and comprehensive assistance offered by the Unit might make a difference in the judicial outcome.

(5) Unorthodox cases to which Legal Aid is not sympathetic or responsive and which require extensive legal research.

(6) Cases which involve instances of police brutality, harassment or questions of improper search and seizure commonly associated with drug cases.

The importance that an individual case may have for the Unit's relation with the community is also taken into consideration. This is particularly true for cases where the defendant may be well-known and respected in the neighborhood.

Unit attorneys responsible for the criminal caseload also accept clients whose cases involve special issues or interests. For example, one attorney prefers representing youthful defendants aged 16-18. Such a caseload often presents problems of neighborhood diplomacy when a case involves several local youths. This attorney maintains a neutrality in such situations by refusing to represent both sides in a conflict and by making certain that clients will be accepted on a "first come, first served basis;" the remaining defendants are referred to the Legal Aid Society.

Another attorney is particularly interested in cases involving ha-

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certain wariness among the police, there has been no appreciable change in the incidence of such cases.

rassing arrests of drug addicts found in possession of property goods. Such cases arise when an addict is seen on the street with a radio, television set or some clothing and is arrested for receiving stolen goods. The defendant then remains in jail while the case is adjourned by the police, and several weeks pass before the charges are dropped for lack of witnesses or evidence on the origin of the goods. Although the arresting officer's suspicions may be correct, the law prohibits such an arrest unless there is supporting evidence substantiating the cause for suspicion. Inasmuch as it is well known that arrests such as these will not stand up in court, they are little more than a form of harassment.

Breaking the Chain of Recidivism

The theory behind the Unit's approach to breaking the chain of recidivism is the same as that underlying the "total law" strategy. The assumption is that criminal acts have social, economic and psychiatric origin and must be affected if the judicial process is to have a correctional effect.

By this reasoning, the Unit's response to Auturo Gomez's fight with the policeman was twofold. First, the legal aspects of his problem were dealt with--the court appearance, probation, threatened loss of job and public housing unit--and then a long range effort was made to get to the root of his drinking problem which was the immediate cause of the fight. For a youthful defendant, the Unit's assistance could extend beyond meeting the legal requirements of his defense, and include help for his family with the Welfare Department, finding him a job, enrolling him in a training program, or securing psychiatric help for him. It would also include follow-up assistance in past conviction matters if he were to be convicted.

Often a young defendant in a criminal case will return to the Unit for help with his family's welfare and housing problems. Unit attorneys attempt to probe beyond the present cause for seeking help to ascertain whether the client faces other problems amenable to legal intervention. Finally, according to the Unit's view, "breaking the chain of recidivism" requires not only the removal of environmental pressures which encourage the recurrance of criminal behavior, but also the presentation of opportunities for repeat offenses.

This outlook is translated into the way a defendant is treated throughout the judicial process and afterwards. Unit attorneys attempt to make an encounter with the law a learning experience for the defendant. The absence of the intense caseload pressures experienced by Legal Aid attorneys allows the defendant an opportunity to tell his story in full: Unit attorneys explain the meaning of each step of the judicial process to the defendant, what his options are and, of course, what he can expect. The purposes of this is to combat feelings of the defendant that he is being "sold out" or that the system is out to "get" him, and make the whole process intelligible. Unit attorneys believe this to be especially important for a youthful first offender whose first contact with the law could be made a turning point in his career. Such explanations are also quite important to allay the misapprehensions of adult first offenders who have inadvertently become involved with the law and are terrified of the possible consequences.

As Unit attorneys stay with a client through each stage of the process, it is possible for them to develop a personal relationship with each client. It is believed such relationships make it easier for a former client to seek help before a crisis erupts. This has been particularly true with youthful clients who drop by the Unit on a friendly basis. The fact that an attorney can stay right with a

defendant allows him to play a supportive role and appears to increase the positive impact of the experience.

Few Unit clients remain in jail because of the bail system. Unit attorneys repeatedly petition the court to reduce the bail to an amount the defendant can afford. Without such efforts on their behalf many of the defendants would remain in jail until their case came to trial. The defendant who is out of jail on bail has a materially better chance of a lighter sentence or not being convicted. For example, it is possible to locate witnesses remembered only by face and first name and whose whereabouts are known by location rather than address. This attorney can help him get a job, enroll him in school or a job training program. None of this is possible while the defendant remains in jail. A defendant after a long confinement often emerges poorly dressed, unshaven and exhibiting what is known as "prison pallor," (a dingy appearance common among prison inmates). In this condition, the defendant is unlikely to make a good impression upon the judge. Moreover, such a defendant has had no opportunity to prove his intention to reform or cast favorable light on his good character and consequently, lacks any such evidence to recommend himself to the leniency of the judge.

Obtaining the freedom of a defendant is a keystone of the legal strategy employed by Unit attorneys. The results of their efforts have been remarkable. For example, the Unit director reports that of 75 defendants represented in several winter months in 1967 only one was not out on bail. Such a record is a result of the repeated efforts to secure low bail for each defendant.

Once defendants are freed on bail, Unit attorneys attempt to

place them in a constructive environment. Adult defendants are supported in their efforts to regain their former enployment or find a new job. Youthful clients are, if possible, placed in job training, college preparatory programs, or community helper programs sponsored by MFY, local settlement houses or neighborhood church groups. The purpose is to establish the basis to support probation for the client and secondly to reduce the defendant's contact with the environment which produced the original behavior. The Unit attorney who almost exclusively represents defendants aged 16-18 indicates this appears to be an effective method of keeping young defendants out of jail, on probation, and for involving in school, job or community programs youths who otherwise would not participate in them. This attorney prefers to accept clients not involved in MFY or other programs, so that thraugh the legal problem the young person may be induced to enter a program.

The consistant experience of the Unit has been that judges are most lenient when, as one observer puts it,

> ...the lawyer can tell the Court that the defendant is now working or is in the job training program, that his employer speaks highly of him, the defendant has voluntarily gone for psychiatric help, or that he is enrolled in the MFY college preparatory course.[1]

The Unit has frequently found that, for similar offenses, a defendant who can present such supportive reports will often receive sympathetic treatment from the Court while less fortunate and ill-prepared defendants will be dealt with more harshly. Lighter sentences and a greater incidence of probationary treatment appear to result from the close relationship the Unit has developed with MFY programs and those of other community institutions.

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[1] Olch, op. cit., p. 34.

Unit attorneys continue to work with a client upon his return to the community. After being paroled, or finishing a prison sentence, the former defendant receives follow-up assistance intended to help him avoid further involvement with the law. An important dimension of the follow-up care concerns the client's relationship to his parole officer. The Unit sees to it that a client knows his rights and obligations and often intercedes in parole officer-client conflicts.[1] The advocacy of a parolee's interest in such instances of conflict is an important source of support in the tenuous process of re-establishing his life in the community.

In sum, the legal strategy of the Unit is "breaking the chain of recidivism" and consists of the following elements:

(1) The practice of "total law" approach aimed at dealing with the environmental factors which contribute to criminal behavior.

(2) A strategy of legal representation of defendants in criminal cases which includes:

    (a) Representation on an individual basis;

    (b) Pre-trial investigation;

    (c) Minimization of defendant's time spent in jail awaiting trial;

    (d) Emphasis upon making the experience for the defendant a learning one;

    (e) Personal treatment for each defendant;

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[1]For example, one former defendant had a parole officer who insisted upon visiting him during working hours at his job. Although the visits were threatening the client with the loss of his job, the parole officer refused to arrange another time for the conferences. Although the officer concerned did not respond to an attorney's request for a rescheduling of the visits, a supervisor in the corrections department agreed to make the change. Had the client lost his job because of the intransigent parole officer he might well have found his way into court again.

(f) Utilization of community school, social agency and employment resources for the integration of a defendant into community life;

(g) Post-trial follow-up assistance.

While the Unit has been successful in freeing defendants on low bail, winning light or suspended sentences for its clients, and has effectively related community school and employment resources to the legal process, figures are not available by which to evaluate the overall strategy in terms of actual rates of recidivism. Case dispositions and follow-up records are not available at present. Moreover, similar records for defendants represented by other groups necessary for a comparative analysis do not exist. A proper evaluation of the Unit's record in breaking the chain of recidivism awaits further research.

The Use of Law as an Instrument of Social Change

The Legal Unit orientation toward social change so evident in its welfare, housing and other work is also found in its practice of criminal law. The Unit is committed to the use of law as an instrument of change in the content of criminal law and the administration of justice. However, for a variety of reasons, the impact of the Unit upon the law or the process of administering criminal justice has been negligible. This is particularly evident in comparison with the contributions the Unit has made, for example, to the development of welfare law and the enforcement of New York housing legislation. Three major factors underly the Unit's inability to effect change in this area: the inertia, pace and sources of change in criminal law; the small number of cases which raise appeal issues, and the particular demands upon the attorney-client relationship in criminal cases.

Criminal law appears to be less susceptible to dramatic change or new developments than other less-established areas of law which affect the poor. Concepts of the criminal law and of procedures of criminal justice are well defined in Anglo Saxon judicial tradition; criminal offenses are highly specific, and procedures of administrating the law are well established. Consequently, attitudes and practices of lower criminal courts are well entrenched, and the rate of change is slow.[1] The source of change in criminal law is not located at the state level where the large majority of cases are adjudicated. Rather the stimulus for change has largely come from the U.S. Supreme Court and the federal court system. Moreover, as a general rule, the courts are reluctant to sit in judgment of the legislature. Except in rare cases where constitutional issues are raised, the courts will not consider the legality of specific details of a legislative enactment. In this way, the Unit's commitment to change is constrained by narrow bases of appeal, the established character of the criminal court system, and its resistance to change.

A second barrier to change is the narrow basis upon which appeals can be made. Few cases handled by the Legal Unit present issues which can be appealed and, further, the Unit does not have the requisite volume of cases to effectively challenge current abuses of court procedure. One Unit attorney, who largely represents youthful defendants, reports that not one case in over a year of work has raised a potentially successful appeal issue. Only a handful of criminal cases to date have led to appeals or challenges of improper procedure. The most important cases have involved issues of procedure rather than issues of substantive law.

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[1] Ibid, p. 14.

A third problem is related to the particular vulnerability of the defendant in criminal cases, and the responsibility of an attorney to represent his client in the best way possible. A basic canon of legal ethics holds that the interest of the client is to prevail over all other considerations. The attorney is to do nothing which in any way weakens the client's best interest.[1] The outcome of a criminal action often holds extremely serious consequences for the defendant whose liberty, job and future depend on the outcome. Winning a favorable decision is much more crucial for a defendant in a criminal case than for a welfare recipient, a tenant or a litigant in a consumer fraud case. As a consequence, an attorney must be equally responsive to proposed resolutions of the case which best serves his client.

The implications of this for successful appeals in criminal cases are obvious. In cases which present good issues for appeal, an alert prosecution will often offer to reduce the charges against the defendant in exchange for a plea of guilty. The attorney will be faced with the choice of pressing the case with the possibility of losing, or accepting the certainty of a light or suspended sentence for his client. If the reduction is a significant one and the original charges involve a lengthy incarceration, it is clearly in the interest of the defendant to accept the offer. In such event, the possibility of an appeal must be foregone.

Also the attorney is faced with an uncertain situation where he cannot be sure if the defendant has been entirely candid, and thus, the defense may be quickly defeated when unanticipated evidence is introduced. The attorney must take

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[1]American Bar Association, Canons of Professional Ethics--Canons of Judicial Ethics. (St. Paul, Minn.: West Publishing Co., 1963, p. 29).

such considerations into account when he decides whether to advise his client to plead guilty in exchange for a lesser sentence. The District Attorney has a very real advantage in his ability to "buy out" cases which pose serious challenges to court procedure or substantive aspects of the law.

In sum, Unit attorneys must work within an environment resistant to change; with a limited number of cases subject to appeal; and with defendants whose willingness to pursue an appeal are easily compromised. Under such conditions, it is not surprising that little change has resulted from Unit practice of criminal law.

To conclude the discussion of social change, two cases will illustrate the difficulties attendant with test issues. One involves the common practice of jailing a witness for the prosecution to ensure his availability at the trial. A second case raises the issue of a defendant's right to a preliminary hearing.

Material Witness

New York law allows the district attorney to hold without bail a witness considered to be "material and necessary" to the state's case. Ironically, it is possible to have a defendant free on bail and a witness still in jail. While the law is designed to assure the presence of witnesses important to the prosecution's case, in practice it is used to extract information from a witness who is forced to remain in jail until the trial is held as much as a year later. Of course, many witnesses will agree to testify in order to avoid a lengthy incarceration.

An illustration of the practice is the case of Ronaldo M., who had been arrested in connection with the killing of a store owner. Ronaldo's arrest had been

based on a rumor that he had been present at the scene of the crime and had provided the defendant in the case with the murder weapon. There were no witnesses to Ronaldo's presence at the crime and the state had no other more reliable evidence than the rumor. Ronaldo was first arrested for possession of a gun. At the outset, the Unit attorney requested a preliminary hearing and the District Attorney declared he was not ready for a hearing. The judge, contrary to the requirement that at the time of arraignment the preliminary hearing is to be held within two days, granted a request for an 18-day adjournment. The Unit attorney responded by challenging the ruling via an Habeas Corpus order in the state Supreme Court, and as a consequence, the lower court was instructed to hold the hearing within three days. The hearing was held and, for lack of substantive evidence, the charges of felonious possession of a weapon were dismissed.

Upon his release, however, Ronaldo was arrested a second time and held as a material witness on the basis that his testimony was necessary to the prosecution of the homicide. The Unit attorney asked for and was again denied a hearing. Another Habeus Corpus was filed; however, in clear violation of procedure, the Supreme Court judge refused to rule and informally requested the lower court judge to allow a hearing. In the lower court, bail was set a $10,000 and a motion to dismiss the charge on the basis of hearsay was rejected. After three weeks had passed, another hearing was held as required by law and the case was dismissed for a lack of evidence. A challenge to the practice was no longer possible after the charges had been dropped.

Ronaldo's case is a good example of how a promising appeal may be lost when a case is won. It is probable that the practice of holding an uncooperative

witness in order to obtain desired testimony would be discontinued if every attorney were as persistent in demanding a hearing as was the Unit attorney in this instance. In this way the practice could be made so expensive in time as to be unprofitable for the District Attorney. The injustice of this practice is made all the more evident by the fact that in Ronaldo's case while the crime occurred in spring 1966, the case had yet to come to trial in spring 1967. Moreover, the prosecuting District Attorney admitted privately that, inasmuch as more reliable witnesses were available, he did not require the testimony of Ronaldo and probably wouldn't call him.

The Preliminary Hearing

The second example relates to the practice of denying preliminary hearings to the defense. As noted before such hearings provide the defense attorney with an opportunity to learn the evidence against his client and to have the charges reduced or dismissed. While in Ronaldo's case the hearings were denied by the judges, District Attorneys also attempt to prevent the holding of a preliminary hearing. In cases involving serious charges, the state will often request a series of adjournments, and in the meantime present the case before the grand jury.

In one such case, the defendants in a shooting case were denied a preliminary hearing. The Unit attorney on the case brought an Article 78 Mandamus order to compel the state to grant a preliminary hearing as required by law. Subsequently the opportunity to obtain a ruling which might have provided a source of general relief was lost when the judge, eager to go home at the end of a long day, offered to reduce the charge from a felony to a misdemeanor if the attorney would forego the court hearing. The offer was clearly to the defendant's interest and was accepted.

Unit attorneys report that instances such as these occur repeatedly and make

it difficult to obtain any impact on the administration of criminal justice. Although both of the cases reviewed above were settled to the advantage of the defendants and the individual denials of procedural rights were overcome, the abuses they illustrate continue.

Summary

The comprehensive approach to the representation of defendants in criminal cases is a new resource for the low income residents of the Lower East Side, and as such represents a form of institutional change in itself. The Unit has little success with the goal of change through the law.[1] Appeals in criminal law are easily vitiated by the state's capability to offer the potential appellant a settlement thereby rendering the issue moot. Secondly, cases which offer good test questions are rare and finally, the courts are unwilling to challenge the authority of the legislature except where the laws can be shown to be arbitrary or in violation of constitutional guarantees. The comparatively narrow exercise of judicial review is a serious constraint upon Unit attempts to obtain change in the administration and substantive content of criminal law.

Perhaps, the most important function the Unit performs with its criminal practice is to relate the judicial process to the rehabilitative effort of community programs. Whether judicial solutions which are sensitive to individual needs can be translated into lower rates of recidivism among Unit clients will require additional research.

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[1] At the time of this writing the Unit had two cases on appeal to the U.S. Supreme Court. The first challenged legislation prohibiting the possession of marijuana on the grounds that it went beyond the state's prerogative to act in public areas and improperly intervenes in matters of a purely private interest. The second case attacks the bail system on the basis that it denies an indigent defendant equal protection of the law. Materials relating to both cases were received too late to be included in this discussion.

CHAPTER IX

LEGAL COUNSEL FOR INDIGENT TENANTS IN PRIVATE HOUSING

Introduction

Housing In the Lower East Side

The Lower East Side is a low income neighborhood in New York; its housing reflects this fact. 1960 census figures indicate the scope of housing problems in the Lower East Side. At the time of the census, 107,000 persons (down from 300,000 in 1910) were living in 33,922 dwelling units.[1] The composition of the housing supply at that time is presented in Table III.

Table III [2]

Housing Units by Type

Tenements (non-project housing)	18,903	55.7
Public Housing Projects	10,719	31.6
Cooperatives	2,715	8.0
Knickerbocker Village	1,585	4.7
Total	33,922	100.0

[1] Mobilization For Youth, A Proposal for the Prevention and Control of Delinquency by Expanding Opportunities. (New York: 1962) p. 20-21.

[2] Ibid., p. 21, Table 4.

At that time two low income projects and four cooperatives were proposed or under construction.[1] It can be assumed that the present housing supply consists of a larger number of middle income units and a reduced supply of tenement dwellings. Among the tenements, 62.4% were substandard (units which lack hot water, running cold water, private bath or toilet or are deteriorating or dilapidated) and 25.8% were overcrowded with more than one person per room.[2] Despite the fact that the area has been losing population since 1910, albeit very slowly since 1940, vacancy rates of 1.4% for the tenements and 0.2% for public and cooperative dwelling units indicate a "tight" housing supply market (normal rates being 4.5%).[3]

1. The Context of the Housing Problems of the Poor

The way in which housing law relates to the low income tenant is, among other things, influenced by the supply of low cost housing units, a bias in favor of the property owner both in the content and administration of the law, and the availability of legal counsel. The first fact wh ich conditions the operation of housing law is that the poor, by virtue of their economic status, must choose from a limited stock of the oldest, most deteriorated housing available. Moreover, the low income housing supply is being continually reduced as new highways and urban renewal projects invade slum housing areas. The overcrowding and low vacancy rate of the Lower East Side illustrate the limited supply of low rent housing and,

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[1] Ibid., p. 20.

[2] Ibid., p. 21.

[3] Ibid., p. 21.

public housing not withstanding, the poor have little choice but to live wherever they can find cheap accomodations.

A. Favored Party Bias in the Content of Housing Law

Legal principles which support the low income tenant are, as are other areas of poverty law, relatively underdeveloped. This fact follows a long historical process where the low income tenant has not had access to legal resources and has thus been unable to assert his legal interests or more importantly compel the development of his side of property law.[1] For this reason, there exists in housing law a general bias which favors the property owner, and works to the disadvantage of the tenant. For example, in most states, the tenant is:

> --obliged to pay his rent regardless of whether the premises is maintained in habitable condition or whether the services he pays for are supplied;
>
> --denied the right to withhold rent to force the landlord to adhere to housing codes;
>
> --not protected against retaliatory eviction for demanding his right to a "safe, sanitary" home as provided by law.[2]

The same bias is evident in the content and administration of New York

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[1]For a discussion of the general lack of adequate development in poor man's law, see Carlin, Messinger, Howard, "Civil Justice and the Poor," Law and Society, Vol. I, No. 1, Feb. 1966, pp. 17-21.

[2]Ibid., p. 20. Also see Wald, op. cit., p. 13-20.

housing law. For example, in New York City landlord-tenant matters are adjudged in an "abbreviated regular civil action designed to give a landlord quick relief against a tenant."[1] Such a proceeding is based

> ...upon the theory that while it may be all right to force plaintiffs in a personal injury or a contract case to wait many months for a hearing or a trial, when a non-paying or nuisance tenant is involved, fast action is required so the landlord may either get his rent or get possession of the apartment.[2]

In 1820 New York housing law was revised to require the payment of rent in advance with the consequence that:

> ...the landlord may sue for the rent or possession any time after the day the rent was payable. This means a tenant may be liable for rent pursuant to a court order for a period of time during which he hasn't even had possession of the premises.[3]

The tenant's disadvantage is further compounded by the general disregard of the required procedure by which the tenant is notified of an impending eviction. Often the first indication a tenant may receive of summary eviction proceedings against him is a notice from a city marshall that he has to quit the premises within 72 hours. In such cases, the landlord makes use of "sewer service" in which the requirement of posting a copy on the tenant's door and mailing a copy to him are ignored. As a consequence the tenant loses several valuable days in which to

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[1]LeBlanc, Nancy, "Landlord-Tenant Problems," The Extension of Legal Services to the Poor Conference Proceedings. (Washington, D.C.: U.S. Government Printing Office, Nov. 1964) p. 52.

[2]Ibid., p. 52.

[3]Ibid., p. 53.

answer in court. The tenant's only recourse is to capitulate or defeat the move by proving in court that no notification was received. Such a defense would be impossible without the aid of a lawyer.

B. Bias in the Administration of Housing Law

Most low income tenants have little understanding of housing law, and the myriad institutions which administer it work to the advantage of the landlord who has ready access to legal assistance. For example, until 1965, New York City had 5 departments and 19 subdivisions handling housing complaints. Those tenants who brave the bureaucratic intricacies of housing enforcement agencies frequently must wait up to five months for a housing inspection.[1] Aside from the delay and red tape which inhibit a tenant's efforts to assert his housing rights, landlords receive absurdly low fines for permitting serious housing violations in their properties. For example, in 1964 the average fine administered under Section 304 of the Multiple Dwelling Law was only $16.00.[2] There is other evidence of a lenient attitude toward the landlord held in the courts. In cases involving Section 2040 of the New York State Penal Code where a criminal summons can be issued to a landlord for failing to provide heat, hot water, utilities, the courts rarely apply sanctions and instead prefer a conciliatory role. One observer notes:

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[1] Wald, op. cit., p. 15 (New York Times, Mar. 1, 1965).

[2] Fines levied under Section 304 of the New York Multiple Dwelling Law, which provide penalties up to $250 for failure to make repairs after notice, averaged $16 in 1964. Herald Tribune Jan. 27, 1965 as quoted in Wald, op. cit., p. 15.

> The court where the summons is returnable tends to see itself as a kind of mediation-counseling service...and strives to adjust and compromise situations.[1]

This reluctance to prosecute landlords requires tenants to persis t through numerous hearings, adjournments, continuances, etc.; and repeated appearances in court constitute a form of harassment for the low income tenant. One observer aptly notes:

> Since after all the tenant is not so much interested in having the landlord fined as he is in having the heat turned on, it works out that the tenant must come to court innumerable times. Each time he must again tell the judge what his complaints are and what the landlord has or has not done to satisfy the complaints since last time they were in court. This may go on for months, with progress at a snail's pace, so that, in the end, the tenant may well wonder if it was all worth it.[2]

C. New York Rent Control Legislation

Despite these and many other instances cited where the law as it is written and operates is biased against the tenant, New York City housing legislation is probably the most liberal in the country in the way it affords the low income tenant means by which he can prosecute his legal right to a safe and sanitary dwelling. New York is the only major city to retain rent control legislation which provides among other things:

--A limit upon rent increases of 15% per change in tenancy.

--Prohibition of retaliatory eviction; the landlord must show a reasonable cause.

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[1] LeBlanc, op. cit., p. 57.

[2] Ibid., p. 57.

--A scaled rent reduction for continuing violations of city housing codes.

--An administrative agency whose sole responsibility is enforcing rent control legislation.

D. Other Housing Remedies

There are other sources of legislative support for tenants whose landlords fail to fulfill their legal obligations to maintain their buildings and supply essential services. Several of the more important ways in which a tenant may seek relief from violations of housing law are summarized below.

Section 2040 Penal Law Summons

Section 2040 of the Penal code permits a tenant to take out a criminal summons against a landlord who has failed to provide essential services. Tenants' complaints are heard in court and the landlord is required to appear. Although the court rarely issues a criminal complaint and prefers to elicit the voluntary cooperation of the landlord in making the repairs, Section 2040 is an effective remedy for single-cause problems such as a lack of heat or hot water, but not for problems of general repairs.[1]

755 Order

Section 755 of the Real Property Action Proceeding Law is a court order allowing the tenant to pay rent to the court instead of the landlord. Serious violations of record placed on the building by city code enforcement agencies are required before an 755 order will be issued. The violations must be so serious as to constructively evict a tenant. In 1965 the section was amended to allow the tenant to arrange for repairs and to pay for them out

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[1] LeBlanc, Nancy, A Handbook of Landlord-Tenant Procedures and Law, with Forms (New York: Mobilization For Youth, Legal Services Unit, 1965), p. 34-36.

of the money deposited in court in those cases where the landlord fails to correct the violations or provide essential services.[1]

Rent Withholding: Article 7-A,Real Property Actions and Proceeding Law

Article 7A is a procedure by which tenants can "bring landlords into court to make repairs when a building has "dangerous conditions." One third of the tenants must participate in the action; violations must be serious, i.e. "dangerous to health or safety" but need not be on record; tenants are to provide an expert estimate of the cost of repairs needed to eliminate the violations. The court is to appoint an administrator to collect rents and make the necessary repairs. The court supervises the case until the repairs are completed.[2]

Rent Abatement

Section 302-a of the Multiple Dwelling Law provides for a complete abatement of rent under certain circumstances. First, "rent impairing" violations must be placed on record by a public agency. The landlord is to be informed of these violations and if, after six months, they are uncorrected, the tenant may stop paying rent. When the tenant receives an eviction notice for non-payment, the tenant is to deposit the rent and evidence of violations with his answer in court. If the landlord is found to be responsible for the persistance of the violations the tenant receives the deposited rent back and is entitled to a reduction of the rent to zero until the violations are removed.[3]

The Spiegal Act

Section 143-b of the Social Welfare Law permits the Department of Welfare to stop rent payments where conditions endangering "life, health, safety, etc." exist. When the landlord initiates eviction proceedings, Section 143-b allows non-payment until the violations are repaired. The law was amended to provide

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[1] Ibid, p. 12-14.

[2] Ibid., p. 23.

[3] Ibid., p. 14.

a complete abatement of rent until the violations were corrected, at which time the department resumes rent payment.[1]

E. The Role of Legal Counsel in the Enforcement of Housing Legislation

Such legislation as that outlined above helps balance what remains, nevertheless, an unequal encounter between landlord and tenant. What is not so obvious is that much of this legislation goes unenforced and has, therefore, little relevance to the problems of low income tenants who because skilled legal representation has not been available have been unable to assert their rights. The absence of counsel underlies the dormancy of housing legislation.

An attorney can play a strategic role in the defense of a tenant's right to decent housing. For example, in those cases where the non-payment of rent is required to activate protective legislation (755 order, Article 7-A, etc.), the role of an attorney is to answer the complaint in court, subpoena official records of the building violations, represent the tenant's interest in adversarial situations or prepare appeals when needed. Only with a Section 2040 criminal summons is the procedure of such an informal nature that an attorney is not an essential participant in the tenant's case. Even in Section 2040, however, the tenant's position is materially strengthened with an attorney in attendance. All the other tenant remedies involve formal court appearances, rigorous standards of evidence, official records of violations, complicated legal procedure, and adver-

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[1] Ibid., p. 14-15.

sarial conditions where the landlord or his attorney will attack the evidence and put forth justifying arguments.

These facts necessitate that the tenant have an attorney represent him. It is this problem which is at the root of the failure of much of the housing legislation designed to ensure that all dwellings meet certain minimum standards of health and safety. It is not the lack of legislation, but the absence of lawyers necessary to enforce the law which allows dangerous and degrading housing conditions to persist. The fact that 67.4% of the tenements were substandard in 1960 attests to the fact that existing housing legislation and relevant codes which existed well before that date have never been seriously applied. While part of the blame for deplorable housing conditions can be laid upon the public agencies whose responsibility it is to see that housing standards are maintained, these conditions also reflect the fact that low income tenants have been the least able to do anything about them. They rarely know their legal remedies, understand how to use them, or feel willing to risk a confrontation with the landlord.

II. Unit Representation of Low Income Tenants

A. The Rent Strike Movement[1]

As soon as the Legal Unit began its work, it became deeply involved in the rent strike movement which swept Harlem and the Lower East Side.

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[1]This short description of the rent strike is included because of its importance in the early housing experience of the Unit. A more detailed analysis of the rent strike movement is found in Chapter XII where the functions of legal counsel in community action campaigns are analyzed.

In a three-month period in 1964 the Unit represented 175 "rent strike" cases; the Unit, by facilitating continuing strikes, forced a number of landlords to make the needed repairs in order to avoid going to court.[1] In court the rent strikes were defended under Section 755 noted above. Trial results varied according to the judge's view of what constituted a "serious" violation. The law required that for a 755 order to be applicable the conditions must be serious enough to deprive the tenant of the enjoyment of his dwelling, to "constructively evict" him. Many judges refused to act unless the conditions were extremely hazardous. A difficulty was that Building Department records required to invoke the 755 order were often dated or misleading.[2] Efforts to update the records often involved long delays before official inspections could be obtained.

Despite these problems, the rent strikes did result in direct improvements for many of the tenants involved.

The disclosures created a public scandal which resulted in the passage of remedial legislation which included the Article 7-A of the Real Property Actions and Proceedings Code, rent abatements (302.a), and the amended 755 order. The end product of the strikes was the establishment of new legal instruments through which tenant rights could be enforced. The remainder of the discussion will consider unit experience with the application of the new legislation.

B. Effects of Providing Legal Counsel to Indigent Tenants

The experience of the Legal Unit in the housing field demonstrates two

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[1] Mobilization For Youth, Action on the Lower East Side. Progress Report and Proposal. (New York: 1964), p. 123.

[2] Ibid., p. 123.

important lessons. First, it has been shown just as in the rent strikes that tenants must have legal assistance to assert effectively their right to decent housing. This lesson underscores the old observation that an individual has no rights, or has no protection under a rule of law, unless he has available to him the means by which he can enforce the law and assert his rights. While this seems almost tautological on its face, such an apparent truism underlies the failures of housing legislation as described above. While badly deteriorated housing conditions in the Lower East Side are not disappearing due to the work of several attorneys, the Legal Unit, within the limits of present legislation, provides a resource for combatting the worst housing practices.

The second most important lesson of the Legal Unit's experience in housing law relates to the role of law as a structure for the landlord-tenant relationship. Both the content and the degree of enforcement of housing laws are important determinants of the interaction between property owner and renter. Legislation provides a structure to the interaction of landlord and tenant, by defining rights and obligations, and by specifying expectations. Legislation which offers tenants some relief from the worst practices of slumlords coupled with increased enforcement of housing law is reflected in the landlord-tenant relationship. The tenant is no longer so dependent upon the good will of the landlord in order to obtain that to which he is legally entitled. The tenant now has a greater capability for defending or asserting his housing interest through the law. The tenant's position is less a defensive one; the law can be utilized as an offensive weapon now that legal counsel is available.

Private housing cases with a few exceptions can be divided into three categories:

(1) Obtaining the services paid for (heat, hot water, etc.);

(2) Making needed repairs;

(3) Eviction for non-payment of rent.

Cases which involve non-payment of rent are usually related to the loss of a job, or late welfare or pay check. In such situations Unit attorneys have to stall for time or negotiate a delayed payment in order to forestall eviction until the crisis passes. In other cases, tenants use the 755 order to bring the landlord into court.

Since the passage of Article 7-A which provides an additional rent strike tool, the use of the 755 order has changed. In 1964 a 755 order was the primary defense for the rent strikes; at the present time it is used as an individual or group defense for the non-payment of rent in cases where the requirements of Article 7-A have not been fulfilled. The 755 order is always available as a last resort defense for the tenant who is willing to confront the landlord on the conditions of the building but is unable to secure the cooperation of the one-third of the tenants necessary to institute an Article 7-A proceeding. A basic function of the 755 order is to prevent the tenant from being thrown out on the street while at the same time exposing the violations in the building.

The amendment to Section 755 which allows the tenant to arrange for repairs to be paid from funds deposited with the court has not been used because the Article 7-A proceeding is available.

Article 7-A provides an additional legal form for rent strikes, and as such

requires the participation of one-third of a building's tenants, identification of the violations, estimation of the repair costs, and the appointment of an administrator to oversee rent collection and repair work. Unit attorneys represent cases of tenant groups organized by the MFY Community Development program, but do not organize the tenants themselves. The division of work in such cases is described in Chapter XII.

The major obstacle to the use of an Article 7-A proceeding is the requirement that one-third of a building's tenants participate in the rent withholding. Despite the proven legality of the action, the building violations usually have to be quite serious and the tenants very angry with the landlord for failing to correct them before one-third will join a rent strike. For this reason, an Article 7-A proceeding necessitates a great deal of preparatory organization to be instituted.

Although an earlier appeal established the constitutionality of the Article 7-A proceeding, the Legal Unit represented the first case which involved low-income tenants and the appointment of an administrator.[1] In Liquet vs. Achva Realty Corporation (Sept. 1965), the Unit won a court order which

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[1] Himmel vs. Chase Manhattan Bank, 47 misc. 2d 93, 262 NYS 2nd 515 (1965) was the test case which substantiated the constitutionality of Article 7-A. It involved a luxury apartment building whose tenants' dangerous conditions were being caused by the defective air conditioning, water supply, elevator, and laundry equipment. The landlord attacked the constitutionality of the law, and was defeated in a holding that Article 7-A was within the state's police power.

> explicitly stated the repairs presently required and allowed the tenant to petition the court for amendment of the interim order if other repairs became necessary during the time rents were deposited with the court.

Since that time the Unit has been a primary source of Article 7-A litigation in the Lower East Side.

C. Change In Response to Housing Actions

When the Legal Unit first represented low income tenants in housing matters, it met with stiff landlord resistance and hostility from the courts. An attorney who has worked with the Unit from the outset recalls that the landlords fought each case without compromise. One local attorney went so far as to attack the Unit's free representation of low income tenants on constitutional grounds. Although the case was dismissed, it is illustrative of the resistance generated by the Unit's activities. In almost every case, regardless of the issue or proceeding involved, Unit attorneys encountered strong opposition from the landlords and their representatives. At the same time the courts reacted to the intervention of Unit attorneys with undisguised hostility, and tended to favor the landlords in their decisions.

Since that time, however, change has occurred in court attitudes and landlord response. In the first place, the Legal Unit has become known to landlords and the courts alike. It has become clear to some jurists that the Unit was asserting rights the tenants were entitled to under the law.

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[1]New York University School of Law, Welfare Law Bulletin, No. 2, Feb., 1966, p. 6.

Secondly, with passage of the new housing legislation, and an accumulation of Unit experience, an important change in the response of landlords has taken place. Whereas landlords had originally fought each issue, at the present time they generally are usually quick to offer to make needed repairs. As with other kinds of cases, the threat of litigation is one of the strongest pressures for settlement out of court. Most landlords recognize that a court defense is costly and that they are more likely to lose than in the past.

As a consequence, an estimated 7 out of 10 Article 7-A proceedings are settled out of court or in early stages of litigation. The same is true for cases involving 755 orders. Most landlords ask for an adjournment while they correct the violations; others simply fail to appear in court, and the tenants continue to withhold rent payments. Unit attorneys have become well acquainted with the lawyers of offending landlords, and are able to resolve, by means of a phone call, cases which otherwise might require court action. Moreover, usually once a landlord becomes aware of tenant organization he quickly responds to the demands in order to avoid a court action. For these reasons, few cases actually go to court.[1]

While the housing legislation of 1965 facilitated the successful defense assertion of tenants' rights to minimally decent housing, it is equally true the tenant relief offered by the new law has been exercised because militant legal representation of low income tenants has been available. Without such representa-

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[1] A Unit attorney estimates that in the past year only 23-30 Article 7-A proceedings for all Manhattan have been tried in court.

tion, it is unlikely that the new legislation would have had much relevance to the housing problems of low income tenants on the Lower East Side. The combination of more adequate legislation with enforcement has been reflected in the landlords' reaction to tenant oriented legal action. The changeover from intense resistance to prompt negotiation of settlement is, perhaps, one of the most dramatic instances of social change effected through the efforts of the Legal Unit.

D. The Persistant Nature of Housing Problems

Despite the fact that landlords have become more responsive to tenants who make use of the law, the enforcement of present housing legislation is not a solution to the housing problems of the Lower East Side. Cases are won, repairs are made and violations removed without effecting a broad change in the housing conditions. The tenements are so old and deteriorated that the same problems recur repeatedly in the same building. Perhaps, the very worst conditions have been eliminated, but defective boilers, falling plaster, broken plumbing lines, dangerous electrical wiring are still prevalent.[1]

The fact remains that so long as the fundamental material components of the old buildings remain unchanged, legal action in behalf of the tenants will continue to be remedial, crisis oriented and repetitive. Each time the boiler breaks down, plaster falls, the plumbing is out of order, the tenant now has re-

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[1] "The anger was shared by her neighbors who sat with Maria in her sister's living room. They were neighbors who lived in other tenements with exposed wires and plumbing leaks and plasterboard for windows. Neighbors who lived in other buildings like hers with its 100 violations on record since August, 1966." From an account of a tenement fire in which a small child died. Marlene Nadle, Village Voice, Mar. 23, 1967, p. 3.

course to legal action and the needed repairs can usually be obtained. Tenants are becoming increasingly sophisticated in the use of available legal resources, and consequently, landlords are less able to act arbitrarily or ignore lawful demands. Yet, each action goes no further than the immediate origins of the crisis: the boiler is repaired not replaced, the electrical short is located and fixed, the building is not rewired. What results, then, is a patchwork of repairs, stop-gap solutions, and crisis-oriented action. While the worst conditions can be bettered and tenants' immediate needs met, the general deterioration of an old, outmoded and vulnerable housing stock continues. An attorney who has worked with the Legal Unit since 1964 believes that, despite the successful cases and changes in attitude, little substantive change in the condition of Lower East Side tenements has occurred. The buildings are still rotten, falling apart and filled with rats and roaches. It is his opinion, one shared by other unit attorneys active in the housing field, that the only lasting solution to the recurrent tenement crises would be a large-scale program of new public housing.

E. Dilemmas of Low Income Housing Legislation

While, in the absence of new housing, tenements in the Lower East Side are an invaluable source of cheap housing for low income residents, a serious conflict exists between the cost of essential repairs and the ability of poor tenants to pay for them. It is this conflict which limits the impact of programs designed to provide desirable living conditions in the existing housing stock. Strict code enforcement programs and various rehabilitation schemes all suffer from the same serious defect of raising the cost of the housing beyond an acceptable point for

the low income tenant. The cost of improvements must be borne by someone, the landlord, the tenant or the public. Most of the programs aside from outside subsidy of repairs or government purchase of tenements, pass the cost, or a large share of the cost, on to the tenement. The housing legislation enforced by the Unit shifts the burden on the landlord. In either case, the results can sometimes be undesirable: high rents for tenants or small landlords driven out of business.

A good illustration of this problem arises out of the Unit's experience with Article 7-A proceedings. Before the law had been used to any appreciable extent, it was feared that the rent money in some cases would be insufficient to finance the repairs.[1] Another fear was that the administrator might have to use repair money for maintenance or emergency repairs instead of the needed repairs.[2]

These misapprehensions were confirmed in a recent Article 7-A proceeding where a Unit attorney was appointed court administrator to oversee the repair of the building. A local social worker agreed to collect the rents and arrange the repairs. Soon thereafter, the boiler broke down and cost $300 to repair. Other costs mounted up and the building cost more to operate than it has produced in rent monies. At that time, the removal of the building's major violations which occasioned the Article 7-A proceeding was not feasible. The same conflict exists elsewhere; major repairs are precluded by high costs and low rent income; and time

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[1] MFY, Handbook of Landlord-tenant..., op. cit., p. 23.

[2] Ibid., p. 24.

payment arrangements have been necessary to get the work done. Unit attorneys have been able to draw upon the considerable reputation of MFY in securing credit. Although most Article 7-A proceedings are self-sustaining and constitute the primary legal tool for obtaining significant repairs, they clearly illustrate the economic dilemmas of improving housing conditions by enforcing housing repair legislation.

Thus, while it can be said that legal representation of poor tenants has helped correct some of the more serious housing conditions, has made the landlord-tenant relationship less of an unequal one, and has provided a tenant with a remedy for obtaining the service he has paid for, it has not eliminated the broader housing problems in the Lower East Side. The tenements continue to fall apart, the Buildings Department continues to carry out its responsibilities at a snail's pace, housing violations are still treated less seriously than motor violations.[1]

All of this is by way of saying that legal representation of low income tenants as a strategy of securing better housing is only as good as the legislation it enforces; and that a greater public commitment is required before the private housing problems of the poor can be successfully resolved on a permanent basis. The experience of the Legal Unit in housing law demonstrates the need less for new legislation than for more publicly financed low income housing.

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[1] "If only the fines were stiffer so that Kaufman (former owner of a burned building) was finally brought into court in January of 1966, he had been given something stiffer than a $15 fine, or if Hadley (present owner) had been given more than a $25 one in February of this year." Marlene Nadle, op. cit., p. 3.

Chapter X

CAVEAT EMPTOR: LEGAL ASSISTANCE TO THE UNWARY CONSUMER

Approximately ten percent of the cases brought into the MFY Legal Services Unit involve a consumer-related problem. The experience with this area of the law reflects conditions which are much the same throughout all urban areas: an immobile, uninformed (as to comparative prices, legal rights, etc.), and apathetic market of low income consumers; sharp business practices by slum merchants, and the manipulation of the law by the merchant to the serious disadvantage of the low income consumer.[1] A brief introduction into the problems encountered by the low income consumer will provide some perspective for the experience of the Legal Services Unit.

Introduction: Credit and the Poor

The most serious legal problems a low income consumer faces have to do with credit purchases. An equally serious abuse is the fact that low income consumers consistently are offered lesser quality goods at higher prices than are middle income consumers but, since this form of economic discrimination does not raise legal issues, it is beyond the

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[1] For a full discussion of the low income consumer's problems see David Caplovitz, The Poor Pay More (New York: Glencoe Free Press, 1963). The actual number of consumer cases was 546 out of a total caseload of 5,785 from January 1964 to May 1967.

scope of this paper.[1]

Easily obtainable credit has brought the low income consumer into the market for goods formerly unobtainable. Thus, for example, a survey of 500 low income families in lower Manhattan conducted by David Caplovitz found that 95% of the respondents owned a television set, 60% a phonograph, 40% a sewing machine, and over 50% had spent $500 or more on furniture sets.[2] Credit arrangements for these families were crucial: 80% of the families had used credit to purchase some durable goods; two-thirds of the durables owned by these families had been bought on credit, and 60% of the families had debts outstanding.

The study also found that most of the purchases had been made from neighborhood merchants or door-to-door salesmen. Both types of slum merchants are willing to extend credit to poor risks because they can charge exorbitant credit rates and high mark-ups on low quality merchandise and can then transfer their debts to collection agencies, which employ highly questionably methods in retrieving the loans. Over one-fifth of the families surveyed reported experiencing some form of pressure related to difficulties they had in keeping up with installment contract payments. Such pressure included threats, repossession of the purchases and salary garnishments. Many low income consumers fail to understand the consequences of failing to maintain the payments of an

[1] A MFY comparison of supermarket and small shop prices in the Lower East Side with prices in middle class areas of Manhattan found that for equal amounts of staples (sugar, soup, flour, milk, beans, etc.) the Lower East Side shopper paid 9.4% more than a shopper in a comparison middle class area and 20% more than a shopper in a cooperative market. See the paper on "Consumer Affairs" in the Community Development section for a full discussion of this problem. Mobilization For Youth, "Consumer Affairs," (New York: 1967 (unpublished draft), p. 11.

installment loan, and, in addition, often fail to anticipate the difficulty of keeping up the payments. Moreover, low income consumers rarely understand that other possessions (television sets, furniture, etc.) can be repossessed in lieu of or in addition to the object in question. Often the wages of the head of the household will be garnished to recover the debt. An employer will frequently be unwilling to go to the trouble of garnishing a menial worker's salary and, instead, will fire him.

Compounding the effects of lack of knowledge or foresight on the part of the consumer are the sales strategies of slum merchants. Typical practices, for example, include deliberate misrepresentation of a good's actual price by not including taxes, interest charges, and fees; "switch sales" in which second-rate goods advertised at extremely low prices are used to lure customers into the store where they are then pressured into buying better quality goods at much higher prices; reconditioned goods sold as new; and the prohibition of exchanges. Customers who intend to pay cash often become credit customers after being talked into buying more expensive items than they had originally wanted. Slum merchants are able to capitalize on what Caplovitz calls "compensatory consumption": the desire for tangible status symbols to compensate for blocked mobility.[1]

(cont.) Services to the Poor: Conference Proceedings, Department of Health, Education and Welfare (Washington, D.C.: Government Printing Office, 1964) p. 62.

[1] Ibid., p. 63.

The operation of the law regulating installment contracts poses another problem for the low income consumer. The Caplovitz survey found that many purchasers, unaware of the consequences, often simply stopped making payments when they found that they had been cheated.[1] By taking the initiative in this way, the consumer becomes subject to legal sanctions for repossession of the goods or wage garnishment. Moreover, the low income buyer often has little idea of where to obtain assistance with legal problems which arise out of credit obligations. Caplovitz found that only a small number of the families surveyed mentioned the Better Business Bureau as a possible source of help; and only three percent mentioned going to a lawyer.[2]

Not only is the law structured in favor of the merchant, the way in which it is applied also works to the disadvantage of the low income consumer. In a great number of cases, even those in which the consumer is willing to defend the case, the first sign of legal action being taken is the notice of wage garnishment. Several notices which would alert the consumer are simply not delivered by the merchant's attorney or the city marshal.

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[1] David Caplovitz makes this suggestion in 'The Poor Pay More, op. cit., p. 13.

[2] David Caplovitz, "Consumer Problems", op. cit., p. 6.

As a consequence, a judgement of default is entered as no defense is offered and the consumer faces repossession or garnishment. Even when notice is received, frequently the low income consumer cannot afford to risk his precarious employment by attending time-consuming court hearings. All things considered, the law, as Caplovitz puts it, acts as the "unwitting" collection agent for the merchant.[1]

The already disadvantaged situation of the low income consumer is often further complicated by the practice, common among slum merchants, of selling installment contracts to collection agencies. This has the effect of making the merchant less responsible to his customer. It also pits the consumer against an organization which has no market relationship to maintain in the neighborhood and can afford to use unethical tactics to recover the debt. Here, as in other areas of poverty law, the contending parties are far from equal. The often ill-informed, vulnerable low-income consumer must defend himself against threats and manipulations of the law by an experienced collection agency. Here, as in other areas, the net effect of the operation of the law, because of lost jobs, reduced income, and increased debt for the low income consumer, is to force him deeper into poverty and increase his disrespect for law.[2]

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[1] Ibid, p. 6

[2] See Caplovitz, The Poor Pay More, op. cit., p. 15.

I. The Abuse of Legal Process

With respect to consumer affairs, one of the Legal Unit's primary interests has become the extent to which the requirements of legal process in the recovery of debts were being systematically by-passed by the collection agencies. Just as with landlord-tenant eviction proceedings, "sewer service" or the non-delivery of court notices appeared to be widely practiced. The initial evidence of "sewer service" of court process was provided by the clients themselves. Unit attorneys estimated that 95% of their consumer fraud cases involved clients for whom the first indication of court action being taken against them was the attachment of their wages.

As a consistent pattern emerged, the Legal Unit initiated a study of default judgements obtained by the retail stores, companies, or collection agencies which most often had been connected with cases brought into the Unit. The study was to consist of two parts: a search of court records of default judgements obtained, and interviews with the individuals who had received the judgements.

The Unit first drew up a list of the stores, agencies, lawyers, etc., who had been "implicated at least once in a case of alleged non-service of process."[1] Next the records of legal actions brought by

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[1] Legal Services Unit, Mobilization for Youth, "Memorandum: Mobilization For Youth Default Study", (New York: Sept. 1, 1965, unpublished), p. 1.

the listed firms and attorneys in the Civil Courts of New York and Kings Counties for the months of July and August 1964 were examined. In the Civil Court of New York alone, 540 actions were brought in the two month period. Of these 532 had resulted in default judgements; only eight had been defended.[1] Not all the firms or attorneys with whom the Legal Unit had had consumer-related litigation were recorded as having brought a legal action during the two month period. One notable exception was an attorney who had opposed Unit attorneys in many consumer cases. It was found that this attorney brought his cases in Brooklyn rather than New York Civil Court, and a random sample of 100 of his cases produced the following:

--100% of the judgements were entered by default;

--60% of the cases involved improper venue--neither plaintiff or defendant being Brooklyn domiciliaries;

--6% of the judgements had been subsequently voided;

--this attorney's litigation comprised approximately 25% of all cases brought in the Brooklyn Civil Court.[2]

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[1] Ibid., p. 2. The following quote illustrates the magnitude of the problem: A study of the docket books in the New York County Civil Court by the CORE Legal Department showed that in 1964, some twelve companies brought 30,000 cases against consumers; 28,000 of these went to judgement and 27,500 of 99% went to default judgement. Since several highly reputable firms were included in these twelve companies, these figures are no doubt representative of all consumer cases." (Legal Services Unit, Mobilization for Youth, "Default Judgements in Consumer Actions: The Survey of Defendants" (New York, 1965, unpublished report), p. 1.

[2] Ibid., p. 4.

The second stage of the study called for 300 interviews with defendants in the default judgement cases studied. Unfortunately, however, it was found that the great majority of respondents selected were no longer living at the address indicated in the court records. In the year of lapsed time many respondents had moved, and the volunteer interviewers were unable to track them down. As a consequence, only thiry usable interviews were obtained, and, while such a small sample is not authoritative, the results are, nevertheless, suggestive.

Of the thirty respondents, twenty-six earned less than $4,000 annually; three earned between $4,000 and $5,000 and one earned more than $5,000 a year. The respondents were asked about the details of purchase and the legal actions taken against them. Special care was taken to ascertain whether the respondent had received the several court notices which precede and accompany a default judgement. Copies of the relevant court paper were shown to each respondent to assure the reliability of the response. As already noted, most of the Unit's clients in consumer cases learned of the legal action against them only when their wages had been garnished. For this to happen, several legal procedures in which the defendant is to be notified of the impending legal action must be violated.

The first step in the process is a court hearing for which the defendant is to receive a summons. About one-third of those interviewed reported receiving such a summons. After the default judgement has been entered, the defendant is to receive a notice of the judgement. As with the court summons, two-thirds of the respondents reported, after being shown a sample, that they never received the notice of default judgement. Finally, three-quarters of the respondents reported income executions against them. The defendant, according to the law, is to receive a notice of the income execution twenty days before the deductions are to begin. The purpose of this period is to provide the defendant with an opportunity to settle the debt before his wages are attached. Only one in every four whose wages had been attached reported receiving such a notice.

The survey suggests that the companies involved systematically ignored the requirements of legal process with the results that most defendants remained unaware of (and therefore unable to defend against) the legal action being taken against them. In the majority of cases, the summons to court hearing, the notice of default judgement, and the notice of an income execution were not delivered to the defendant. As the author of the study puts it, by this time "it is often too late for the consumer to protect his job, much less his legal rights, in the action taken against him."[1]

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[1] Legal Services Unit, Mobilization For Youth, "Default Judgements in Consumer Actions: The Survey of Defendants" (New York: 1965 unpublished) p. 9.

In addition, contrary to the popular belief that the poor fail to pay their debts because they are irresponsible or dishonest, the survey found that the majority of the respondents had witheld payments in response to consumer fraud on the part of the merchant.

> The consumer would find that the merchandise cost much more than he was led to believe it would at the time he signed the contract, or he would find the merchandise delivered was not the merchandise he ordered, or he would discover that the merchandise was damaged in some way.[1]

II. The Experience of the Legal Unit

One Unit client paid over $400 for an old-fashioned type of washing machine which normally cost $80 at retail prices. Another Unit client paid over $1,148 for a freezer unit which cost $348 at retail prices. In such cases where the exorbitant overcharge is obvious, Unit attorneys are able to rely upon a recently incorporated clause of the New York State Uniform Commercial Code which provides the consumer with a defense against "unconscionable profits."[2] Contracts where the doctrine of "unconscionable profits" applies can be voided in court and while this does provide some protection, the low income consumer still remains on the defensive as most cases are brought to the Unit after a default judgement has been entered and wage attachments initiated.

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[1] Ibid., p. 10.

[2] Uniform Commercial Code, State of New York, Section 2 302.

As a consequence, Unit attorneys enter a case at a serious disadvantage. Reopening the case is time consuming and involves a complex legal process.

In the absence of an attorney, the collection agents are extremely threatening to the consumer. In one instance, for example, a Puerto Rican woman was told that she and her children would be jailed if the debt were not paid. However, after an attorney for the consumer (defendant) enters the case and petitions the court to reopen the default judgement, the attitude of the collection agent quickly changes and the issue begins to be worked out. In cases where the doctrine of "unconscionable profit" clearly applies or where false claims can be substantiated, the claim may be dropped. In others, the debt may be reduced.

Though in a few cases the contracts have not been vulnerable to a legal challenge, the general response to the intervention of Unit attorneys has been one of accomodation. The collection agents have been agreeable and cooperative. It is conceivable, as one Unit attorney suggests, that the collection agencies would put up stiff legal resistance were the Unit cases to become part of a larger trend. The absence of legal resistance may be attributed partially to the small number of cases handled by the Unit in relation to the very large number of cases initiated by the most active firms. In a three and one half year period, for example, the Legal Services Unit provided assistance in 541 consumer cases. As already noted, for 1964 alone in one county court, the twelve most active firms accounted for 27,500 default judgements.

Perhaps, with the organization of neighborhood legal offices throughout the New York area, a rising volume of defended default actions might begin to curtail the most exploitative practices. Perhaps merely a higher incidence of defenses will accomplish what a large volume would: the inducement of more lawful behavior among slum merchants. One observer suggests that a randomness in legal defenses might restrain some of the most fraudulent behavior:

> One of the great advantages of asserting private rights, from the standpoint of inducing persons to conduct themselves lawfully, is the randomness of private litigation...If a legal assistance program can establish a climate among the poor in which individuals begin asserting their rights against unconscionable conduct, the consequence will be to make suppliers of credit proceed more cautiously and within the boundaries of conscionable conduct...The suppliers will then be faced with the inability of predicting when an individual will challenge him with unconscionable conduct. [1]

However, the creation of this atmosphere poses serious problems. The experience of the Legal Unit suggests that part of the answer must be the education of the consumer to recognize a legal problem when it arises. Even more importantly he must learn to avoid becoming entangled in improper credit relationships from the first. The latter is perhaps more easily accomplished than the former. When a consumer finds his wages being attached or feels he has been cheated, referral of the

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[1] Allison Dunham, "Consumer Credit Problems of the Poor- Legal Assistance as an Aid in Law Reform," Conference Proceedings: National Conference on Law and Poverty, op. cit., p. 12.

problem to a lawyer would seem to be a fairly obvious solution. Nevertheless, Unit attorneys report that consumers frequently feel that it was their fault for letting themselves be cheated and that consequently they deserve to pay in full. The defrauded consumers often are unwilling to admit that they have been tricked. Moreover, the well-documented fatalism of the poor is another obstacle which must be overcome if fraudulent sales behavior is to be consistently subjected to legal challenge. The availablility of legal counsel in itself is no guarantee that judicial scrutiny will be brought to bear in situations where it might be appropriate.

Consumer education in addition to the availability of legal resources can also help reduce exploitative sales. However, consumer education programs are limited in their effectiveness because it is the person who most needs such educational help who is the least likely to attend consumer clinics or consumer education programs. This would include the people who are unable to get to such meetings, or those who feel that nothing can be done to avoid being cheated, or those who, by virtue of their lack of sophistication or experience, simply fail to perceive the need for such consumer education programs.[1] While consumer education programs are an important part of an overall program, they can hardly be considered a panacea. As long as there is an intense desire on the part of the poor

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[1] Mobilization For Youth sponsored consumer clinics and found it was, in general, the more sophisticated consumer who participated in the program. Those who needed help the most were the most difficult to reach. After 1965 the consumer clinics were discontinued due to lack of funding. However, the Legal Services Unit has continued with consumer education in the community by holding clinics with local groups from time to time.

to share in the affluent society and as long as there are unscrupulous merchants, there will be victims of fraud and a need for readily available legal counsel.

Another method of attacking unscrupulous commercial practices would be to reform the State Commercial Code. The Legal Unit made one attempt at legislative reform. With the cooperation of the New Yo rk Attorney General the Unit proposed legislation which would put an end to "sewer service" by creating a state licensing procedure, a systematic review of marshals' activities, and imposing criminal penalities for perjury in evidence concerning delivery of court processes.[1] The proposal, however, was rejected by the state legislature.

Conclusions

Because the Commercial Code is based on the "buyer beware" principle, the consumer is at a serious disadvantage. The Code makes it the responsiblity of the buyer to detect overpricing, exorbitant credit rates, phony claims and resist high pressure salesmen. While it is equally incumbent upon the seller to observe commercial regulatory codes, in the absence of adequate enforcement of the codes an unscrupulous businessman has little incentive to do so. He can transfer the debt and the collection agent can garnish. Several Unit lawyers suggest that the commercial codes be rewritten to provide the consumer with greater

[1] The Legal Unit drew up an act whose purpose was: "To amend the general business law and the civil practices law and rules in relation to providing for the licensing and regulation of pers ns engaged in the business of serving process."

protection from exploitative sales conduct. Two prime suggestions are abolishing garnishment and assurances that processes are served. While the Legal Unit could contribute to such a reformulation, it has few resources with which to initiate it. At best, as with the proposed legislation controlling court process, the Unit can propose legislation but it can do little to pressure for the political acceptance of its proposal.

In dealing with consumer fraud cases the Unit provides a service to the client by challenging the legal action taken against him. Moreover, the Unit's activities on the Lower East Side--the clients represented, consumer clinics held--contribute to the creation of a more knowledgeable community. However, beyond providing service to the victims of fraud and providing a source of community consumer education, there is little the Unit can do to challenge the basic legislative context which allows the commercial abuses described here. In the absence of organized consumer groups which could exert political pressure on the legislature for reform (at which point the Unit could contribute its experience to the process of evaluating the code), the Unit can do little more than protect individual consumers against being defrauded.

Yet, the fact that legal assistance for consumer problems exists in the neighborhood represents a significant advance in providing the poor with an additional resource to oppose injustices associated with their poverty. When collection agencies realize that they will be opposed in court, they tend to settle since they wish to avoid court costs. This

"fact of opposition" is an important determinant in the fight to see that low-income consumers are treated fairly.

An unforseen consequence of the tendency of vendors or their agents to settle out of court has been the inability of the Unit to bring test cases to challenge the consumer legislative codes. The cases are settled out of court. Should legal services for the poor consumer become increasingly available not only may vendors and their agents become less exploitative but also the laws under which they operate may be more stringently scrutinized by the courts. This may ultimately lead to court insistence on due process and basic legislative reform.

PART III

AN ANALYSIS OF THE PRACTICE OF POVERTY LAW

CHAPTER XI

LEGAL ADVOCACY FOR THE POOR: A FUNCTIONAL ANALYSIS[1]

Introduction

This chapter will take up the first set of research questions posed in the introduction of this volume. The objective will be to examine the functions of legal advocacy for the poor.

Previous chapters have presented the experience of the Legal Services Unit with providing legal counsel to welfare recipients, tenants in private and public housing, participants in delinquency proceedings, victims of consumer fraud, defendants in criminal cases, and individuals with school and/or family problems. The purpose of this chapter is to identify the functional impact of providing legal representation to such individuals. The questions posed here are simple: What are the effects of legal assistance from the viewpoint of the indigent client, the neighborhood, public institutions which serve the poor, and the public at large? More specifically, what, in fact, can a legal representative accomplish for the indigent client as he relates to public institutions, landlords, businessmen? At the level of the neighborhood, what is the role of a legal services program as a community organization?

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[1]The analysis contained in this chapter is based entirely upon the experience of the Legal Services Unit presented in the preceding chapters. The conceptual framework for discussing the effect of legal counsel on biases found in the law is drawn from "Civil Justice and the Poor" (Law and Society, Vol. 1, No. 1, Feb. 1966) by Jerome Carlin, Jan Howard and Sheldon Messinger. Otherwise, the functional analysis of providing legal assistance to the poor is my own.

The chapter will be divided into three parts. The first will explore the impact of the legal representation of the poor with respect to realizing equal protection of the law. The degree to which the legal services meets the requirements of legal party initiative for the poor and the effect of the Unit's work upon the favored party and de facto biases of the law discussed in Chapter III will be considered.[1] Part II of this chapter will review the function of legal advocacy of the poor in the welfare state. The experience of the Legal Unit will be examined for the functions which a legal advocate can perform for a client of a public program. To conclude the discussion, the role of a legal services program as a community institution will be examined.

I. Equal Protection of the Law

In preface to the following discussion, it should be noted that a lawyer represents a form of specialized skill and knowledge which under normal circumstances is not available to the indigent. Further, as indicated in previous chapters, the legal expertise possessed by an attorney is relevant to a variety or problems which could not otherwise successfully be negotiated by the average low-income individual. In view of the complexity of the law and public institutions, many problems confronting the poor require a level of legal understanding and experience which the poor cannot be expected to acquire. Such specialized knowledge and skill can only be obtained through repeated experience on a full-time basis, such as a neighborhood advocate, or after a lengthy

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[1]Carlin, Jerome, Howard, Jan, Messinger, Sheldon L., "Civil Justice and the Poor," Law and Society, Vol. 1, No. 1, Feb. 1966, pp. 9-26.

preparation. It does not seem reasonable to expect a low income head of a family who may be involved in several public programs at once to have the specialized knowledge to assert effectively his interests in all circumstances. The clear impossibility of the poor defending themselves where specialized assistance is required, establishes the basic requirement for the provision of legal counsel.

A. The Legal Services Unit and the Issue of Party Initiative[1]

As noted in Chapter III, the legal system remains inert until an aggrieved individual initiates an action to assert an interest or defend a right. Effective party initiative requires a minimum ability to recognize the legal dimensions of a given problem and access to the resources necessary to bring an action in the legal system. While the Legal Services Unit meets the latter requirement by making it possible to initiate legal proceedures in behalf of the poor, the added resource in itself does not guarantee that all legal problems of the poor will be subjected to judicial scrutiny or that the indigent will take full advantage of legal services.

The utilization of legal resources located in a low income neighborhood depends upon the ability of potential clients to recognize legal problems when they are confronted with them. It depends upon learning to seek out help before a crisis stage is reached. In the long run, the solution of the problem of party initiative depends upon the education of the community in the use of the law. The obvious danger is that only the most sophisticated will make use of the law

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[1]Carlin, et al., "Civil Justice and the Poor" (Berkeley, California: Center for the Study of Law and Society, University of California, Feb. 1966; draft), pp. 2-3.

to defend their interests, and conversely, that the uninformed, the isolated, or those who are resigned to their fate will continue to be victimized by consumer fraud, improperly defined welfare benefits, or find their children arbitrarily suspended from school. Complicating efforts to deal with this problem is that under the best of circumstances, it would be very difficult to estimate the number of individuals who forego assistance with their legal problems.

B. Legal Advocacy and Favored Party Bias

Favored party bias refers to the fact that the law provides advantages to certain roles which it does not for others. Such a bias works against the poor who are rarely found in the advantaged roles such as those of landlord or merchant. While legal advocacy for the poor has not changed the character of the law in this respect, it has had the effect of reducing the discriminatory impact of favored party bias upon the poor. The function of legal counsel in this context is to bring to bear on a given problem protections of the law which are in the interest of the poor. Legal assistance enables the poor to use the law in an assertive fashion as well as to defend themselves against unlawful treatment. The best illustrations of the ability of legal advocacy for the poor to actuate existing protections of the law are found in consumer and housing law.

It will be recalled that one function of legal services work in consumer cases has been to defeat a systematic violation of legal process by the collection agencies and attorneys for slum merchants. Secondly, unit attorneys have successively invoked the protective doctrine of "unconscionable profits," which, in the absence of legal counsel, would probably have gone unenforced. In this

instance, even if an indigent individual knew of the doctrine of "unconscionable profit" and was acquainted with the necessity of challenging default judgements, it would be nearly impossible for him to assert a successful legal defense due to the complexity of a variety of legal steps which are both technical and require a detailed knowledge of legal forms. Moreover it is unlikely, in the case of consumer fraud, that the unassisted individual can successfully defend a default action against an experienced attorney.

Another illustration of the greater realization of protections of the law as a result of legal advocacy for the poor, is the impact of unit attorneys in housing law. Prior to the organization of the Legal Services Unit of Mobilization for Youth, a variety of legal protections for the tenant were, though in existence, not being utilized. The reason for this was the absence of effective legal representation of tenants. One unused protection was Section 2040 of the Penal Code, which permitted a tenant to take out a criminal summons against a landlord who failed to provide essential services; another was the 755 Order of the Real Property Action Proceeding Law which allowed the tenant to pay rent to the court instead of the landlord where serious violations in the building were on record.

It is quite clear that the services of a lawyer were needed to make these provisions of the law effective. For instance, to obtain a 755 order, it is necessary to answer the landlord's complaint in court, subpoena official records of the building records, present the case before a not infrequently hostile court, and answer the arguments of the landlord's attorney. Even with criminal proceedings under Section 2040 of the Criminal Code where the court plays a conciliatory

role, the position of the complaining tenant was found to be significantly improved with an attorney in attendance. Consequently, despite favored party bias in both consumer and housing law, there were a variety of defenses and legal strategems relevant to the defense of the poor which in the absence of legal counsel could not be employed. In this way, a basic function of providing legal representation to the poor is to reduce the discriminatory effect of legal bias by bringing to bear existing, unused legal protections. Landlords or merchants are no longer quite so free to ignore legal standards relating to their commercial practices.

C. Legal Advocacy and De Facto Bias

The problem of de jure bias in the law discussed in Chapter III will not be treated here because the work of the Legal Unit has primarily taken place within the legal apparatus which deals with the problems of the poor. De jure bias refers to the existence of two separate legal systems and bodies of law, one for the well-to-do and another for the poor. While Unit activities have had little bearing on the de jure issue as such, Unit attempts to raise test issues may eventually develop safe-guards which would force the legal systems which affect the poor to operate more similarly to those which adjudicate problems of the affluent.[1] However, it should be recognized in light of the difficulties of effecting social change through the law discussed in Chapter XIII, the likelihood of this is quite small.

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[1]See the published version, Carlin, et al., in "Civil Justice. . .," op. cit., pp. 17-20.

Legal advocacy is, nevertheless, highly relevant to the issue of de facto bias in the law. The source of de facto bias is in the differential capability of socio-economic groups to assert their interests through the law.[1] In part, this difference is a result of information and education, but more importantly it is a function of differential access to the legal assistance necessary to make effective use of the law. Provision of legal counsel makes it possible for the poor to assert their interests through the law in much the same way more affluent people do.

Not unexpectedly, a basic function of legal advocacy for the poor is to make the traditional goal of equal protection under the law more of a reality. The experience of the legal unit bears this out. Legal assistance has had the effect of making the law apply to the poor more equally. Unit attorneys guide their clients through the legal system and provide informed advice to their indigent clients just as the attorneys in the employ of middle class clients do. The best examples of this function are found in Unit experience with family and criminal law.

For example, in family law, an important function of Unit attorneys has been to defend the integrity of the family by providing the family or individual client with a greater range of options for dealing with their domestic, school, or behavioral problems. The net effect has been to keep the family together and to help the individual child or parent to avoid institutionalization. The importance of this to the individual can be appreciated in view of the lack of therapeutic facilities in most institutions to which such individuals would be committed.

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[1] Ibid., p. 21.

In criminal law, the classic institutionalized example of de facto bias against the poor is the bail system. Bail requirements impose a serious disadvantage upon low income defendants. In a case where the same amount of bail must be raised, the more affluent defendant who secures his freedom, is able to prepare his defense, keep his job, and maintain his family relationships while the lesser privileged, equally accused individual must remain in jail with the possible opposite consequences of family break-up, loss of a job, plus the forfeiture of any credentials that he might profitably use to avoid a less sympathetic hearing of the court. The overall effect of Unit representation of defendants in criminal cases has been to provide a level of representation more nearly equal to that obtained by middle or upper middle class defendants. As noted in the section of criminal law, the laywers have been extremely successful in obtaining reduced bails, securing the freedom of their defendants, and entering them in a variety of work training, college preparatory, school or church programs. In addition, Unit attorneys have been effective in assisting their clients to establish credible reform records. Consequently on the basis of this evidence of their good intentions, many Unit clients have received suspended sentences instead of incarcerations which could well doom other attempts to obtain a good job and pursue accepted lines of behavior. Thus, with respect to criminal and family cases where the law, in effect, denies equal protection ot individuals with less financial means, the function of counsel has been to compensate for the de facto disadvantage of the poor.

II. Functions of Legal Advocacy in the Welfare State

A. The Reduction of de Facto Bias in Administrative Appeals

An important function of a legal representative of the poor is to limit the effect of the de facto bias characteristic of many administrative appeal procedures in public institutions. In previous chapters which present the experience of the Legal Unit with substantive areas of the law, procedural biases have been described in welfare fair hearings, public housing eviction hearings, and school suspension (guidance) conferences and in Family/Juvenile Court sessions.

Legal representation of the clients of public programs performs several important functions within the context of administrative appeal procedures. In the first place, the presence of a legal advocate assures a client that he has an opportunity to present his side of the story. Whether it is the client or the lawyer who testifies, it can be fairly certain that the client's case and the issues raised by his appeal, will be clearly articulated and presented before the hearing body. A second function performed by the legal advocate is to assure that the client's rights and entitled benefits provided by the law will not be ignored by the hearing body. As noted in previous chapters, legal unit attorneys develop specialties in each area of the law, and are well acquainted with the laws and the rules and regulations of the institutions with which they intervene in behalf of their clients. Thus, the attorney will see to it that relevant statutes, agency rules or regulations will be brought out. In the presence of an attorney, it is no longer possible for the representatives of an institution to ignore the legal issues raised by an appellant.

A third function of legal advocacy in this context relates to the adversarial character of administrative appeals. Although Family/Juvenile Court proceedings are claimed to be therapeutic in nature, and in public housing and welfare hearings, the emphasis is upon fact finding, there is a confrontation of two sides of an issue, two versions of a story, and frequently the active presence of attorneys for each side. Moreover, there is a legal structure to the hearing inasmuch as there is a set of defined principles and procedures which are supported by legal codes and enabling legislation. In a broad fashion, the deliberations and the decisions reached are related to the legal outlines provided by such administrative codes or legislative mandates. In the context of the adversarial confrontation, the client who is assisted by legal counsel is no longer at the mercy of the attorneys or professional representatives of the institutions as was the case prior to the advent of the Legal Unit in welfare fair hearings, public housing eviction proceedings, and unemployment compensation appeals. The presence of a professional with a specialized understanding of the law and of the agency rules and regulations ensures that the client receives fair treatment and is able to tell his side of the story without fear of intimidation. Furthermore, an attorney can make certain that his client's disadvantages of knowing the law, frequent language difficulties, and fear of confronting his welfare worker, public housing manager, or his school principal plus a host of other relevant officials will not be exploited.

However, by way of qualification of the discussion to this point, it should be made clear that the presence of an attorney at the hearings in no way changes

the procedural basis of the hearing. With the exception of participating in hearings of the New York Board of Social Services held in Summer 1967 for the purpose of revising New York State fair hearing procedures, Unit attorneys have not as of yet influenced the formal aspects of administrative appeals. Thus, for example tenant review hearings in public housing are still poorly defined with respect to client rights. However, with respect to school suspension hearings, a successful conclusion to the Madera case may well be the first contribution to the development of a rule of law in the appeal procedures of public schools.

B. Legal Advocacy and Dependency in the Welfare State

A second function of the provision of legal service to the poor in the welfare state involves the effect of such representation upon the dependence relationship found in the welfare state. By safeguarding the interests of a client, a knowledgeable advocate can diminish the extent of dependency on the public service giver. The advocate, in this way, provides support for the client. The client is supported in three closely interrelated ways.

(1) The Support Function

(a) Protection of Legal Rights -- In the first place, a legal advocate protects the client's legal rights to benefits, entitlements or protections of the law. In distinction with the discussion of procedural bias where the intervention of an attorney occurs at one point in time, defense of the client against improper treatment continues on a day-to-day basis. In the on-going relationship between the public service giver and his client, the presence in the background of a legal

advocate with full knowledge of the law, rules and regulations helps to ensure that the client will receive correct treatment as provided by the program.

(b) Defense against unreasonable, arbitrary or abusive treatment -- A second aspect of this function is closely related to the first. This function involves the challenge of unreasonable, arbitrary or abusive treatment. Here the presence of a legal advocate for the poor, who by virtue of his legal standing and knowledge of the law of the institution can challenge the improper use of decision-making authority on the part of the staff worker. By policing against abuse of authority, the advocate has the effect of making the service giver more responsible for what he does. The staff worker of the welfare institution is held accountable for his decision, and is thereby encouraged to adhere to the law which guides the operation of his particular program. The worker has the full knowledge that if he does not observe the law with respect to his client, his behavior and/or his decision will be held up to scrutiny through the appeal procedure. An example of this kind of support in the welfare context would be the case of an elderly welfare recipient who had been receiving benefits for thirty years without any trouble and who upon a change of welfare workers had become involved in a personal conflict with his worker. He soon found himself cut off from receiving further benefits without adequate cause or a legally justifiable reason. In this case, the intervention of a lawyer in behalf of this recipient resulted in his reinstatement. Moreover, as will be detailed in the next chapter, a primary function of the Unit attorney assisting welfare client groups is to combat the member client's fears of retaliation by their case workers. Were such retailiatory suspensions to occur, they would be immediately appealed and quashed.

A similar function is performed in the public housing contest, where the availability of legal assistance has in a number of cases resulted in the prevention of individuals being evicted from housing units because they were ADC mothers, or because one of their children got into trouble in school, or for a variety of other reasons which had little bearing on the maintenance of a stable, peaceful public housing community.

(c) Defense of a Client's Constitutional Rights -- A third dimension of the support function of a legal advocate for the poor is to ensure the observance of the client's constitutional rights. Here, as in the first instance, where the client's rights to program benefits are at issue, the presence of a legal advocate can inhibit the agency from intruding upon the client's more basic legal rights. A good example of the Unit performing this function is found in the case of the Welfare Department psychiatric commitment procedures which were being used against recalcitrant or highly uncooperative welfare recipients. The Unit challenged the legality of the practice as well as questioned the professional basis of the procedure. The procedure was substantially modified through negotiation after the United threatened legal action. In this case, a very real constitutional issue was posed. The former practice presented an unlucky welfare recipient with a very serious problem, one which entailed the loss of liberty, commitment to a mental institution, and the general stigma of being taken from the neighborhood by representatives of a mental hospital.

Other issues were where constitutional rights of a client were involved are also found in the welfare law section with the case of Alma Reed who for six months was harassed and repeatedly searched by her welfare worker in an

effort to obtain evidence of a man residing in her home. The Reed case raised the issues of unreasonable search and seizure and the welfare recipient's right to privacy. Although the harassment and the searches were not prevented in advance , the Unit had the unlawful suspension from old age assistance rescinded. In all likelihood, the welfare worker, having had his conduct exposed in a fair hearing will be less eager to engage in similar practices with other clients.

Another welfare practice which raised search and seizure and privacy issues was the midnight search of welfare recipients to verify that they were eligible for AFDC welfare payments in that no man was residing in the household. The searches were discontinued before they could be challenged by the legal services Unit. As noted in the welfare law section, there is a good reason to believe that the presence of a legal advocate program which increased the probability of such welfare searches being challenged within the fair hearing and in the courts contributed to the decision of a newly appointed welfare commissioner that such searches should be terminated.

C. Legal Advocacy and Human Dignity

A fourth function of legal advocacy for the poor, with respect to the dependency relationships in the welfare state, involves the human dignity of the client himself. In this case the availability of an advocate who can challenge the improper denial of assistance or the harassment of the client is a significant resource for the client in dealing with an environment over which he otherwise

would have very little control. The addition of a resource with which an individual can begin to deal with his environment can add a feeling of personal control and in this way contributes a needed sense of human dignity in a situation where often a debilitating feeling of helplessness and unwanted dependence is fostered.[1] The fact of having someone who will listen to and appreciate his definition of the problem, will fight for his rights, and articulate his case in the strongest possible way, can contribute to the client's sense of personal worth and dignity. This function is of no little importance in combatting the pervasive feelings of despair so often noted among the poor.

Perhaps the best example of this function occurred in the criminal law context with the case of a young Puerto Rican man who was stopped by a policeman, pulled out of his car, called a number of obscene names, and beaten up. Under normal conditions, without the availability of a lawyer, this person probably would not have carried the issue any further, as he probably would not have trusted the reliability of the police complaint apparatus or have bothered to take the problem to a Legal Aid Society office outside the neighborhood. With the aid of a Unit attorney, this client was able to bring a criminal complaint against the policeman, and initiate a suit for personal damages. Both of these actions, although they did not prevent the occurence of the beating, did influence the eventual separation of the officer from the police force. In this particular case, the individual was not subject to a beating without being able to respond and he was not helpless or powerless to use the law in an assertive way to defend his rights.

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[1]For a discussion of the relationship between feelings of powerlessness and structure lack of personal control, see Seeman, Melvin, Neal, A.G., "Organizations and Powerlessness," American Sociology Review, Vol. 29, No. 2, p. 225.

In general, the importance of a legal advocate for the client of a welfare or public service program is simply to offset the sense of helplessness and powerlessness which affects someone who has little knowledge of his rights, and who recognizes that his relationship to the staff line worker is a crucial one for his continued reception of the program's benefits. To the extent that the sense of powerlessness is diminished through the availability of an advocate, legal services can contribute to the individual's sense of his own worth and thereby help overcome the pattern of self-defeating attitudes which are often reinforced within the context of public service institutions.

D. Legal Advocacy and Enforcement of Legislative Intent

A fifth function of legal advocacy for the poor involves the enforcement of the intent of public legislation and is the converse of the protection of a client's rights to benefits, entitlements, or protections of the law. Thus, the presence of a legal advocate helps to ensure that the law, as it was intended and written, will be observed by public agencies. Legal counsel provides an instrument through which the poor can obtain their rights. A good example of this function is the effect that the Legal Unit has had upon the welfare appeals system. Federal guidelines for welfare programs, as well as the state laws, provide for a system of appeal designed to allow a recipient to challenge decisions of the welfare staff. However, prior to the organization of the Legal Unit, the system was largely unused. Few clients or social workers knew of the possibility of using the hearing to challenge welfare decisions. In effect, the functional right

to appeal did not exist, and the appeal system, as such, was little more than a paper formality. Now that the fair hearings system has been reactivated, such an appeal is now a functional right.

Another good example of the enforcement of the intent of legislation, is the history of the Unit's challenge to the Welfare Abuse Act. It will be recalled that the intent of the legislation was to exclude those individuds who had come to New York for the sole purpose of obtaining higher welfare payments. In actual practice, as it turned out, individuals were being denied welfare benefits or emergency assistance if they had come to the city without a prepared plan of support for themselves, if they had come without a job. The common practice was to require such an individual to promise to return to wherever they had come in order to obtain emergency aid. This latter practice was an obvious violation of the law which provided that emergency aid was to be provided to anyone on a basis of need, not on the basis of whether they were going to return to their original homes. There is no need to go into the history of this being overturned, other than to point out that this is a very clear case where the intent of the law had been distorted in its application. A legal challenge had the effect of forcing discontinuance of the practice, and the establishmentof new guidelines for servicing out-of-state applicants.

Another instance of the enforcement of legislative intent in the welfare context was the telephone issue. Prior to the advent of the legal unit, it was customary for many welfare workers to threaten their clients with suspension from the welfare rolls if they had a telephone or if they did not get rid of the one they

already possessed. This practice, it will be recalled, clearly violated the regulations of the Federal welfare provisions which provided that the welfare recipient was to receive his basic payment in money with no prior conditions attached to it. The response of the Legal Unit was to raise the issue and threaten to take it to a Fair Hearing. The Welfare Department, in view of the obvious illegality of the practice quickly reacted by officially removing the prohibition. The Department subsequently issued a memorandum which reminded case workers that they were not to have telephones removed as a basis for continuing eligibility to receive welfare payments.

III. Functions of a Legal Services Program As a Community Institution

A. Relating the Judicial Process to Social Services

The experience of the Legal Unit illustrates the functions which legal services perform for community groups, and neighborhood social agencies. One such neighborhood function performed by the Legal Unit is to link the judicial process to social services available in the community. It will be remembered, in the case of criminal law, that Unit representation of youthful defendents sought to keep them out of jail, out on low bail, and involve them in community programs. In this way, the Unit integrates community services with the court system by arranging remedies which are sensitive to both the individual's needs and the local resources. Other examples of relating the judicial process to social services are found in the experience of the Unit with family law where the emphasis is on permitting the client to remain with his family if feasible. To make this possible,

the Unit accepts the responsibility for providing the client with follow-up case work assistance. The effect is to prevent the institutionalization of many clients who do not require it. This, of course, reduces the cost to the state and in most instances works to the benefit of the client.

B. Legal Advocacy and Program or Legislative Feedback

The initiation of legal actions in behalf of the poor provided a source of feedback on the performance of public programs and the impact of laws affecting the poor. This function can be seen from two perspectives. First, from the point of view of top-level public administrators, legal advocacy can provide specific evidence on the performance of their programs. A common problem among large scale bureaucratic organizations is that of making certain that lower level staff carry out policies as they are intended.

The best illustration of this function is the experience with the psychiatric commitment procedures. In this case, although the procedures were known to the newly appointed psychiatric director, the legal unit was able to document the effects on individual clients and clarify the legal implications of the procedures in such a way as to make it quite clear to the director that they should not be continued.

A second perspective has to do with the development of law and public social policy which are sensitive to the needs of the poor. Here, the function of legal advocacy can be to identify defects in existing public programs and to provide insight on how they can be rectified. It is important for legislators as

well as public program planners to have some idea as to the impact of their policies on the poor. Legal assistance programs are one way to identify program deficiencies by providing evidence of where they are intruding on the rights of individual clients or where they are not providing service according to original program designs. In light of this function, the Legal Unit is planning to develop a legal reform group whose primary repsonsibility will be to develop test cases, to coordinate needed legal research and to prepare testimony for public legislative hearings. The objective of such a legislative reform unit would be to organize the experience of the Legal Unit in a systematic way in order to provide resources for the evaluation of public welfare laws and service programs.

C. Legal Advocacy and Social Change

Legal advocates for the poor can function as catalysts for change, by raising test cases, challenging arbitrary or illegal practices, by enforcing the intent of legislation. Legal advocacy can also generate pressure for the revision of institutional procedures, inhibit the harassment of clients, and raise legal issues which could effect large-scale impacts throughout the country. Aside from noting that an important function of legal advocacy for the poor is to provide stimulus for change, the detailed examination of Legal Unit experience for instances of change as well as the ways in which such change occurred will be left to Chapter XIII.

D. The Representation of Community Action Groups

Finally, an important function of the Legal Services Unit in the Lower East Side involves the impact of providing legal counsel to community groups. The Unit has offered key legal support to welfare action groups and groups of tenants engaging in rent strikes. Unit attorneys have represented the groups in court, provided important legal advice, and have been instrumental in reinforcing group cohesion by making it clear that group members would be protected against the possible retaliation of landlords or welfare workers. In a number of instances the legal resource was crucial to the success of the groups. The representation of community action groups is a critically important dimension of the role of the Legal Services Unit as a community institution. A detailed presentation of the functional interdependencies between the Unit and both community action campaigns and Neighborhood Service Centers will fallow in Chapter XII.

CHAPTER XII

MUTUAL RELATIONSHIPS BETWEEN LEGAL SERVICES AND OTHER MOBILIZATION FOR YOUTH PROGRAM STRATEGIES

Introduction

The purpose of this chapter is to identify the interrelationships existing between a legal services program and other programs which service the urban poor. The general issue is how such legal services fit into a broad effort to eliminate urban poverty. The issue will be taken up in terms of two program strategies of Mobilization For Youth which are functionally interrelated with the Legal Services Unit. In the concluding chapter the same issue will be taken up in the larger policy framework provided by the Model Cities Act.

This chapter will be divided into two sections. Part I will examine the interrelationships between the Legal Services Unit and the Neighborhood Service Centers of Mobilization For Youth. Part II will explore the role of legal services in the organization of tenant and welfare recipients groups formed by Mobilization For Youth. The emphasis will be upon identifying the role the Legal Services Unit plays in the two programs' strategies. The issues here are: (1) In what ways does the provision of legal counsel to the poor complement or contribute to the work of the programs? And (2) How does the work of the Legal Services Unit depend on the presence of these two programs in the area? The object is to clarify the

interdependencies which may exist between the three programs.

The Mobilization For Youth Experience: Program Interdependencies

The two MFY programs to be examined for their interdependencies with the Legal Services Unit are those which have the most important interrelationships with the Legal Services Unit. Both programs work closely with the Unit, depend upon Unit assistance and likewise contribute to the Unit's work. This is not to imply that interrelationships do not exist between the Unit and other MFY programs, but that these are minor by comparison. Such programs as the World of Work, Youth Service, the School Curriculum Project, etc., do not have the occasion for the close cooperation, the operation of joint programs, the exchange of clients and mutual services which characterize the relationship of the Legal Services Unit with the Neighborhood Service Centers and the Community Development Program. The complementaries which do exist between the programs can be generalized to the extent to which the programs are similar to others across the country. This issue will be dealt with at the conclusion of this chapter.

1. A. Neighborhood Service Centers of Mobilization For Youth

The MFY Neighborhood Service Centers (NSC) are similar to service centers contained in many urban poverty programs. While there are differences in organization, program emphasis, and content, the NSC experience is relevant to this type of program.[1]

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[1] In a passage which is quite relevant to the MFY program, Robert Pearlman

Neighborhood Service Centers are one form of service provided by Mobilization For Youth to the residents of the Lower East Side. At their height there were four such centers in operation, located in storefronts and basements of public housing projects. They were visible, easily accessible, and informally operated. Immediate service was provided without appointment. Indigenous workers and professional provided family and individual counseling, assisted with housing, welfare, legal, consumer and school problems. The goals of the Neighborhood Service Centers were as follows:

1. To make institutional facilities more used by and useful to the low income population.

2. To encourage policy changes in institutions in order to make them more responsive to the special needs of the poor.

3. To ameliorate the effects of poverty, discrimination, alienation and other forms of social deprivation where they exist.

Mobilization emphasized the solution of the social problems affecting the client rather than the client's adjustment to these problems. The harsh environment of poverty was viewed as a key determinant of patterns of behavior among the poor. The service program was "designed to help in reversing the self-defeating models of adaptation characteristic of lower class residents of the Lower East Side and other

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and David Jones provide the following working-definition of the Neighborhood Service Center: (1) It provides information and referral services to assist people to use established agencies; (2) The center acts as advocate to protect a client's interests and rights with respect to another agency. It may also seek a change in another agency's procedure or policy that will become a precedent for similar situations; (3) Concrete services are provided directly to individuals and families; (4) The center organizes and mobilizes groups for collective action on behalf of the residents of the neighborhood. From Robert Pearlman, David Jones, Neighborhood Service Centers(Washington, D.C.: U.S. Department of Health, Education, and Welfare, 1967), p. 1.

slum areas, and also focuses on the interaction of client and institution."[1]

According to a former NSC director the more specific objectives were:

> 1) to provide information about a wide range of community resources; 2) to teach skills in such areas as budget managing, purchasing; 3) to act as intermediaries in dealing with bureaucratized services; 4) to establish closer connections between area district and city-wide resources; 5) to offer such direct services as nurses, baby-sitters, homemakers and escorts; 6) to offer a neighborhood social resource with professional sensitivity and psychological insight; 7) to give immediate help in time of trouble or emotional distress; 8) to make available intensive diagnosis and treatment.[2]

These objectives were formulated within the more general goal which was:

> to arrest self-defeating motives of adaptation by helping adults to deal with the complexities of, and acquire competence in urban social life; encouraging the non-deviant adaptation which children use, who have shown signs of incipient deviant behavior, or have committed delinquent acts ...[3]

Here the emphasis was more upon changing the individual than upon changing some of the institutions or other environmental factors which contribute to the behavior patterns which the NSC has sought to influence. Soon, however, due to the heavy demand for services it was no longer possible to provide the intensive, diagnostic and long-term contact with clients originally intended. As a result, the NSC stopped handling cases requiring long-term service and took those which required immediate help and concrete service. Thus, it was decided to serve only those clients with problems that concerned the use of public welfare, health, housing and employment cases. Long-term versus short term issues became

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[1] Mobilization For Youth, Action on the Lower East Side: Progress and Proposal, July 1962 - August 1964 (New York, 1964), p. 100.

[2] Joe Kreisler, Director, Mobilization For Youth Neighborhood Service Center, "Neighborhood Service Center Program" (1966, unpublished), p. 2.

[3] Ibid., p. 2.

irrelevant.[1]

The Development of Advocacy Roles

Gradually the emphasis shifted to welfare cases and NSC workers were constantly attacking improper welfare decisions. By mid-1964 they began to define their roles as advocates for their clients. A summary report of NSC experience describes the confrontation with the welfare system in the following way:

> We fought on every issue with the Welfare Department until the clients that came to our agency got what was legally and rightfully theirs. We started with our own basic assumption that it was criminal for any person to be without food, shelter, clothing, and so forth. We therefore fought the Welfare Department on this basis using always, of course, their procedures which in effect grant this but then procede to qualify and hedge.[2]

This experience led NSC professionals to respect the validity of their client's world view. The workers gradually came to accept their client's descriptions of hostile public institutions, the indignities of welfare, of the unscrupulous practices of local merchants. As the NSC workers came to accept the definition of the environment by the client, they became less judging of the client, concentrated less on the therapeutic definitions of his need, and began to fight for his rights. The emphasis shifted from dealing with the individual's shortcomings to attacking the practices of a fraudulent landlord, or abusive welfare worker.[3]

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[1]Mobilization For Youth, "History of the Role of the Professional Caseworker in SIF" (New York, 1967, unpublished draft), p. 9.

[2]Mobilization For Youth, "Neighborhood Service Centers" (New York, 1967, unpublished draft), p. 8.

[3]A history of the NSC professional worker describes the new attitude: " "when a client came to the NSC and called her welfare worker a bastard because

Over time, NSC workers developed special skills in asserting the interests of clients and became highly competent advocates for their clients. A history of the Neighborhood Service Centers defines the role:

> as the willingness to intervene with a government agency on behalf of a low-income person. It does not mean helping the poor man to help himself, or enabling him to better manage his transactions with the governmental department. It means filling in the power deficit on his side of the transaction by providing him with an advocate who has specialized knowledge of the rules and regulations of the system (this includes its informal and thus unstated inner workings, which, though obscure from general view, may nevertheless prove of major significance in understanding how decisions get made and how they can get changed). But most of all advocacy means a readiness to become an adversary, to pit oneself against the system with whatever means at hand, whether skills in persuasion, manipulation, or straightforward pressure.[1]

The effect of this interaction was to hold the welfare worker more accountable for his decisions concerning the client. On the one hand, NSC workers sought to restore rightful benefits denied to their clients through negligence or misinformation, and on the other hand, sought to police against an almost lawless indifference to the rights of welfare recipients.[2]

The NSC advocate role adopted by professional, indigenous worker and social work student alike involved the same obligations, activities and relation to

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he failed to provide a pair of shoes to which she was entitled, no effort was made to present her with another reality in which welfare or the welfare worker could be seen as victim. The NSC worker accepted the premise that the shoes were her client's right, and proceeded to get them by any means possible."" Mobilization For Youth, "History of the Role...", op. cit., p. 8.

[1]Mobilization For Youth, "Neighborhood Service Centers," op. cit., p. 9.

[2]Richard A.Cloward, Richard M. Elman, "The Store Front on Stanton Street: An Experiment in Professional Advocacy" (New York, June 1965, unpublished draft), p. 13.

the client.[1] The advocate role developed in the Neighborhood Service Centers met a very real need for mediation with public institutions in behalf of the poor. Advocacy was also considered a significant advance over the casework orientation of many social work programs. Here the focus of concern was to challenge the poverty environment rather than to adjust the individual to his situation.

The very real service provided by the Centers should not be ignored. In a five-year period the NSC's serviced 8000 families or an approximate total of 35,000 individuals.[2] Moreover, NSC services were reaching some of the more deprived Lower East Side residents. For example, 1963 caseload figures revealed that 75 percent of the cases were known to the Department of Welfare; 75 percent of the clients were Puerto Rican, and 20 percent were Negro. About one-third of the population of the Lower East Side is made up of these two groups.[3]

Mobilization claims to have "reversed the experience of the private social agencies which ordinarily underserve the low income population" and contends that these results do not reflect a special campaign to involve the hard to reach, but "stem from a definition of client need and a response to that definition which has

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[1] ""The workers totaled up Welfare budgets. They placed telephone calls to a bewildering variety of City agencies. They argued and cajoled. The work was such that no meaningful differentiations between workers could ever be established. Within the Centers (and without regard to training and titles) all could be equally effective, if they were willing to define the problem in terms of justice. They could then serve notice on their opposite numbers that they were prepared to move a notch further up the DW hierarchy if justice were not rendered on the present level."" Ibid., p. 3.

[2] Ibid., p. 17.

[3] Mobilization For Youth, Action on the Lower East Side, op. cit., p. 100.

meaning to low income persons."[1]

Legal Services and NSC Advocacy

According to NSC workers, the availability of legal counsel is a key determinant in the success of their work. To summarize: the general effect of the involvement of legal services in NSC work has been to enhance the effectiveness of the NSC advocacy role. The availability of legal counsel has provided NSC workers with an important source of information, has widened the range of cases they could effectively handle, and strengthened their position in asserting the rights of their clients.

Attorneys of the Legal Services Unit assist NSC workers in three important ways:

(1) Legal Information and Advice - Unit attorneys advise NSC workers on the law, requirements of legal process, administrative procedures of public institutions, the rights, benefits and protections entitled to a client, and on how to proceed with a particular case. The result of such advice is more effective service to the client. Moreover, in time NSC workers have developed their own specialties as they have worked with Unit attorneys.[2]

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[1] Ibid., p. 100.

[2] ""Working closely with the Mobilization Legal Service Unit, social workers at the Center developed the following areas of competence: They contested narrow eligiblity rulings; they attempted to reinstate those whose eligibilities had been arbitrarily disallowed by Departmental investigations; they strove to provide maximum permissible benefits for their clients if they were being under-subsidized; they provided representation for clients at fair-housing procedures; they contested the rulings of the Housing Authority; they attended school suspension hearings and other semi-legal administrative procedures at issue; they contested administrative actions that were in violation of their clients' best interests; and they attempted to police any instances of administrative lawlessness which their clients brought to their attention."" Cloward and Elman, op. cit., p. 14.

(2) Assistance with Cases Requiring Specialized Legal Knowledge or Appearances in Court or Administrative Appeal Settings - Unit Attorneys handle cases where the role of the NSC worker would be limited by the nature of the law or the court action required. Thus, NSC workers will refer consumer fraud, unemployment, divorce, criminal arrest, and housing cases to the Unit. Unit attorneys also handle the Fair Hearings of NSC welfare clients or Tenant Review Hearings where the nature of the appeal procedure requires the assistance of an attorney.

(3) Support for NSC Workers - Unit attorneys back up the efforts of NSC workers in cases where the law supports the client but the institution refuses to recognize this fact. In such instances, the case is referred to a unit attorney who will initiate an administrative appeal or other appropriate legal action. The very fact of such assistance improves the negotiating position of the NSC advocate. The threat to bring the Legal Unit into the case will often be sufficient to bring an immediate response. The NSC workers report that the support of the Legal Unit has had the effect of making the Department of Welfare more careful and less arbitrary in the exercise of its decision-making power.

NSC Advocacy in the Absence of Legal Counsel

There was wide agreement among NSC workers interviewed that the legal assistance was crucial to the success of their work. It was felt that NSC workers, without the support of legal action, would have to push harder and adopt more aggressive tactics for their clients. In spite of this, however, in some cases which require legal action of some kind, the NSC workers would be limited in the extent to which they could pursue the client's interest. Moreover, the pressures of a high

volume of cases would likely prevent their devoting much time to complicated and time-consuming maneuvers through legal and quasi-legal procedures.

In the past where public institutions have ignored a client's rights, the NSC would have had to rely upon persuasion, reason, and appeals to sympathy to win voluntary compliance with what by law should be his client's right. Prior to the availability of legal resources, the Welfare Department often refused to respond to the arguments of NSC workers. Other cases involving criminal arrests, consumer fraud, etc. were beyond the competence of the NSC advocates to render assistance.

It should be noted here that the large majority of cases handled by NSC workers do not require recourse to legal counsel. NSC workers estimate that approximately 10 percent of their cases required the intervention of a Unit attorney. The largest part of NSC cases do not raise legal questions, and often those which involve such issues can be settled without reference to the Legal Unit. In such instances, the presence of an informed, articulate advocate for the client is sufficient to reverse an adverse welfare ruling or to have an unscrupulous merchant abandon efforts to collect a debt. The large majority of welfare cases handled by the NSC's are not referred to the Legal Unit because the decision at issue is clearly unlawful or an accepted administrative principle has already been established.

Functions of NSC Advocacy for the Legal Unit

Neighborhood Service Centers provide a form of advocacy which relieves what would be an overwhelming caseload pressure on the Legal Services Unit, and secondly, they act as a collection system for the Unit. Both functions are of considerable importance to the effective functioning of the Unit.

The NSC worker reduces the number of clients who might otherwise come to the Legal Services Unit for help. By assisting clients whose problems do not require legal assistance, and clients whose problems, while raising legal issues, can be resolved at the NSC level, the worker insures that only those cases where legal help is necessary are brought to the attention of Unit attorneys.

The net effect of this screening process is to permit the Unit to devote its limited resources to clients whose problems cannot be resolved without legal attention. Otherwise, the Unit could be inundated with cases to the extent that it could not devote the necessary time to develop test cases, conduct needed legal research, or more important, maintain the standards of legal service desired. Just as the Legal Aid Society contributes to the Unit's efforts in criminal law by representing a large volume of routine cases, the NSC performs the same function for the Unit with respect to welfare and easily resolved cases.[1]

A second important function which the NSC's perform for the Legal Unit is to provide additional points for case intakes. The Centers are a part of a network of referral sources for the Unit and effectively increase the decentralized character of the legal program. Many clients are referred to the Unit upon intake at the NSC; others are referred when the NSC worker has been unable to resolve the case. Without the NSC's and other neighborhood groups, it is conceivable that a sizeable number of clients would not make their way to the Unit either by reason of not knowing about the service or not perceiving the relevance of the legal counsel to the problem at hand.

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[1] In November 1967, the Legal Unit had a glimpse of the size of caseloads it would have to contend with if there were no Neighborhood Service Centers. At several points, it looked as though the centers were about to close and the Unit was inundated with clients. This was clear proof of the importance of the case screening function of the NSC's.

An important aspect of the referral function of the NSC's is the ability of the workers to identify problems for which legal assistance is necessary. In the absence of NSC workers committed to the use of the law, it is likely that many clients would fail to be aware of the legal implications of their problems.

Finally, once a client has been referred to the Legal Unit, the NSC worker involved will frequently act as coordinator for the client and the lawyer by insuring that the client appears in court or at a hearing at the appointed hour, by investigating the client's story, and by advising the attorney. The NSC worker also will continue working with the client if necessary after the conclusion of the legal action. In short, the NSC worker supplements the work of the attorney in much the same way the Unit social workers do.

Welfare Recipient Organizations

The experience with the organization of welfare recipients illustrates the role which a legal services program can play in a community organization campaign. A brief discussion of the development of welfare recipient groups is appropriate here. As noted above, a major defect of NSC advocacy was its inability to win resolution of issues beyond an individual case basis. As early as a year after the NSC began to operate, questions were raised whether advocacy on a case-to-case basis was succeeding in generating social and institutional change, and whether such change as had resulted would persist beyond the organizational lifetime of mobilization. One critical appraisal of NSC effectiveness concluded:

> Intervention is based on the inefficiencies of the system, and if these inefficiencies were eliminated intervention would not be necessary. What then does intervention produce?
>
> 1) It meets the immediate needs of local citizens on a single issue, single case basis.

2) It furthers the dependency of people on a new albeit transient local agency.
3) It inserts another layer of power between people and bureaucracy.
4) Since intervention takes place on the practice level (the lowest organizational level), it produces no social change. The direct service agents and their immediate supervisors have no control over policies, procedures, and institutionalized methods.
5) It provides a vehicle through which Services to Individuals and Families staff expends considerable energy, time and talent in attempting to compensate the residents for cumulative years of degradation and denial... We must admit that intervention is probably necessary in a community based organizations such as MFY. It is necessary because people want it and need it now. Intervention reflects the need to expeditiously deal with effects because causes are too overwhelming to attack directly. [1] (underlining added)

By mid-1965 it was abundantly clear that NSC advocacy was a "stop-gap" measure and was not bringing about broad changes in welfare or other institutions. Thus, despite assisting thousands of clients with the Department of Welfare:

> The practice of second rate administration and rigid conformity to ill-advised policies were continuing in every case where the social worker from the NSC was not present. Also the recipients were again relying on someone else to fight their battles and were not any more prepared on the next occasion when difficulties arose. They were still at a loss to know how to go about getting what they needed.[2]

In response to this problem, it was decided to experiment with the organization of welfare recipients. The goal was not to establish organizations of recipients as much as to develop a process of changing regulations on a mass basis. Thus, while there were no preconceived ideas of organizational strategy or specific targets for action, the organization of welfare clients was to serve the following two purposes:

> First, we are convinced that such action is necessary if bureaucratic service institutions are to be more responsive to people's needs. The second purpose is to experiment with the implementation of the hypothesis that particpation in such activities is therapeutic to the client.[3]

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[1] Mobilization For Youth, "Neighborhood Service Centers," op.cit., p. 15.

[2] Mobilization For Youth, "The Organization of Welfare Clients" (New York: 1967, unpublished draft), p. 3.

[3] Mobilization For Youth, "Neighborhood Service Centers," op. cit., p. 11.

In the fall of 1965 the first compaign was initiated. A meeting of recipients was organized, and plans were made to request winter clothing which, although provided for under minimum standards regulations, was rarely actually received in the entitled amount. The letter produced clothing in 29 out of 30 requests. The work spread quickly and soon several hundred requests had been made, and the membership of the welfare groups was rapidly growing. Three committees had been formed, and each of the organizations tended to evolve on a day by day basis, depending considerably on the ideals, goals, and personality of the community workers in the organizations and upon the spirit and determination of those clients who had become involved. [1]

Subsequently in spring 1966, new meetings were called for a compaign to bring all the recipient members up to the minimum standards of household furniture and effects provided in welfare regulations. Forms detailing household goods were drawn up and again several hundred requests were made. However, in this instance a different response occurred. Some requests were fully satisfied, others were partially fulfilled, and still others elicited no action at all. Moreover, recipients began to report harassment by welfare investigators who threatened to suspend them for continued participation in a group. At this point, a Unit attorney assisting the groups reassured members that cause for suspension was clearly defined and that any such action would be challenged in a fair hearing appeal.

As the campaign continued through the spring, cohesive organizations evolved. Leadership groups emerged, membership corporations were formed, and the leadership

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[1] Mobilization For Youth, "The Organization of Welfare...," op.cit., p.8.

were oriented to the welfare laws and regulations effecting suspensions, fair hearing procedures, and home searches. Once informed, the members began to handle many cases themselves, and began to take over the handling of minimum standards forms, contacting the Department of Welfare, requesting fair hearings. MFY staff gradually took less responsibility for the operation of the groups and served more as tactical advisors.

The groups began to initiate projects of their own. In the summer of 1966, one organization obtained funds from the Office of Economic Opportunity, hired themselves, and operated a program of summer outings for welfare mothers and day care for the children. The minimum standards campaign continued through the fall of 1966 and won from the Department of Welfare a directive stating that it was the responsibility of the caseworker to initiate a discussion of the recipient's needs relative to minimum standards when the case was opened or as a regular part of the worker's statutory visit.[1]

While the groups were unable to convince the Department of Welfare to make winter clothing or certain minimum standards grants automatic, they were successful in obtaining substantial grants for their members. For example, a MFY survey found in a nine-month period, two of the largest welfare groups had obtained $147,000 in benefits for 952 clients.[2] The minimum standards campaign has continued

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[1]Department of Welfare, City of New York, "Departmental Bulletin, No. 66-48" (November 18, 1966, unpublished document), p.1.

[2]This figure is compiled from summaries of the results obtained by two of the welfare recipient groups. The sources are as follows: Barbara Lounds, Community Organizer, Citizens Welfare Action Group, "Welfare Minimum Standards Campaign" (New York: Mobilization For Youth, Nov. 18, 1966, unpublished report), p. 4; Ezra Birnbaum, Community Development Supervisor, Committee of Welfare Families of the

through this writing.

The movement of welfare groups toward projects independent of the initial tie with MFY Neighborhood Service Centers (such as that of summer 1966) continued and by fall 1967 several groups had received their own funding from the local Neighborhood Corporation, had rented storefronts, and were offering advocate services similar to those provided by the NSC's.

The emergence of welfare recipient groups which are taking over the advocate role of the NSC's is, perhaps, one of the most important results of Mobilization's community organization efforts. These organizations are providing new, although limited, sources of employment in the neighborhood at the same time as serving the very real need for advocacy shown by the NSC's. Both professional and indigenous NSC workers interviewed agreed that welfare recipients, given some background in the law, administrative procedure, and client rights could, with a little experience, perform the advocate role as well as any on the MFY staff.

The Role of Legal Assistance in Welfare Groups

The role of legal services in the organization of welfare recipient groups has varied according to the following phases in their development: (1) the period of the organization of the groups; (2) the administration of the minimum standards campaign; and (3) on-going relations with welfare group storefronts.

The Organization Phase - According to the community organizer responsible for one of the largest and most militant welfare groups, the Unit attorney assigned to

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Lower East Side, "Report: Minimum Standards Campaign" (New York: Mobilization For Youth, Nov. 14, 1966, unpublished report), p. 2.

welfare organizations was a very important element in the group's success. In his view, the group's impact would have been severely limited without a lawyer fighting for the recipient's legal rights.[1] Clearly, in the absence of an attorney, the group would have had some difficulty in effectively utilizing the fair hearing appeal system. Moreover, the community organizer identified three important functions which the Unit attorney played for the group:

> A sense of group security - One of the most serious threats to the growth and cohesion of a welfare recipient's organization is the fear of retaliation against the membership. As already noted, it was common for a caseworker to threaten a group member with termination or reduction of benefits for continued participation. The attorney's basic contribution to the group was the sense of security he was able to provide the average member. He reassured the members that he stood with them in the event of retaliatory action; he promised support at fair hearings; and worked steadily with the group to meet crises as they arose.
>
> Tactical advice - legal interpretation - The Unit attorney assisted the welfare leadership with the selection of targets for the next group action by identifying points in the welfare system where the law was ambiguous or supported the recipient. He advised on the approach to be adopted, interpreted the law, explained administrative procedures and informed the group of their rights.
>
> Legal services - The Unit attorney also helped to strengthen the organization

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[1]The particular attorney assigned to welfare groups brought special qualifications to his work: he was a humorous charismatic leader, he was well known and respected in the Puerto Rican community, and strongly supported the concept of independent welfare organizations.

by providing assistance with a variety of problems not associated with welfare. Obviously, the fact that a participant could obtain help with consumer, housing, or divorce (etc.) problems within the group contributed to his continuing involvement.

Minimum Standards Campaign - Unit attorneys working with the welfare group have assisted the prosecution of the minimum standards campaign in several important ways. First, they have assisted in the preparation of the minimum standards form letters, the follow-up letters (when the initial grants fail to meet the standard), and fair hearing requests. The follow-up letters and hearing requests are on Legal Service Unit stationery and are signed by an attorney, so that there is no doubt as the the intent to initiate legal action if necessary. The presence of an attorney for the group is particularly important to insure that the client receives the entire amount to which he is entitled.

On-going Relationships with Welfare Recipient Storefronts - The relationship between the welfare action group storefronts and the Legal Unit is similar to that of the MFY Neighborhood Service Centers and the Unit. The staff of welfare storefronts act as advocates for their clients much the same as NSC workers. Here also the Unit provides assistance in those instances where the efforts of the workers have been to no avail and in those cases which require court appearances or complex legal procedure. As with the NSC's, the Unit enables the welfare advocate to more effectively represent his client, while conversely, the storefronts provide case screening and referral functions without which the Unit might well be overwhelmed with cases which could be serviced elsewhere.

II. B. The Relationship of Legal Services to the Community Development Program: The Case of Rent Strikes

The political organization of the poor, according to Mobilization, can be a potent lever for effecting social and institutional change. This view sees the economic issues underlying poverty as requiring political action which in turn necessitates organization, community leadership, and "grass roots" involvement.

Public and private welfare institutions affect many dimensions of the life of the poor. Such institutions, rarely responsive to individual protest, are amenable to group pressure and quickly perceive the implications of political strength. Mobilization puts this aspect of the case for community action in the following way:

> They, the poor, are the most effective source of power and the most effective means of realizing their political potential is through organized social action; such action is a source of social change ... Marshalling group support is an effective spur to institutional response. Public officials are attuned to the interests of solidarity groups representing the interests of potential voters .. and public agencies respond more rapidly and relevantly to the demands of organizations than to those of individuals.[1]

According to Mobilization, the participants in social action organizations and social protest campaigns benefit from their involvement by gaining organization experience and overcoming an apathetic acceptance of poverty-linked injustices. It is thought that once an individual participates in a successful group action, whether it be the March on Washington or a rent strike, he is likely to become increasingly involved in other community issues.

The Community Development Program is guided by the following goals:

1) To involve the residents of the Lower East Side in the political and social life of their community and to increase their affluence.

2) To arouse public awareness and action in response to the needs of the community.

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[1] Mobilization For Youth, Action on the Lower East Side, op.cit., p.68.

2) To arouse public awareness and action in response to the needs of the community.

3) To increase institutional awareness and action in response to the needs of the community.

4) To improve the competence of local leaders in defending their constituent's rights. [1]

The Housing Section of the MFY community development program has consistently worked closely with the Legal Services Unit. The cooperation between the two programs began in November 1963 with the rent strike movement in the Lower East Side, and has continued with joint work on "rent strikes" under article 7-A of the Real Property Actions and Proceeding Law. The importance of the interrelationship between the two programs is illustrated by the fact that when the MFY housing program had to close in fall 1967 due to lack of funds, the legal Unit hired several of its community organization staff in order to continue the work within the Unit.

The Rent Strike Movement

The wave of rent strikes which swept Harlem and the Lower East Side in late 1963 and 1964 exposed housing conditions which typically included abundant rats and roaches, falling plaster, garbage-strewn halls, open sewage lines, and the lack of the most primitive amenities. The disclosures created a public scandal which resulted in the passage of the remedial legislation already discussed in the chapter on private housing practice.

The housing conditions thus exposed were nothing new: they were the end product of a long process whereby the existing law had been rendered ineffective.

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[1] Ibid., p. 70.

The fact that protective housing legislation existed had little meaning to the striking tenants. The difficulties of enforcing housing legislation which prevailed at the time of the strikes is illustrated by a passage from a MFY housing report written in 1964.

> Neither RRA (Rent and Rehabilitation Administration) nor the 2040 provision proved effective in resolving tenants' complaints. The RRA, on the one hand, took months to respond and additional months to act, if it acted at all. Tenants were occasionally given a token reducion of their rent by a few dollars, and very rarely given the significant reduction of rent to $1 per month. The 2040 procedure, on the other hand, demanded time-consuming efforts by attorneys, organizers and tenants. The process was a merry-go-round of listing complaints and returning to court. Both RRA and the 2040 procedures subjected tenants to a loss of time from work, the hassle of baby-sitting arrangements, and harassing bureaucratic run-arounds. Neither was considered effective in getting immediate repairs and maintenance restored for the tenants. [1]

It was under such conditions that the MFY housing examined the effects of its programs and decided to organize rent strikes among Lower East Side tenants. The decision was reached in the following sequence.:

> A review of the two MFY housing clinics, at 4th Street and at Stanton Street, made during the first week in January, 1964, indicated that tenants were receiving limited satisfactions from their complaints. It was agreed that, without a mass protest organization of tenants supporting appropriate social action around housing problems, the MFY housing program would get nowhere. Successes of the Harlem rent strikes in organizing tenant participation for pressuring slum landlords to make prompt repairs led to a decision by the MFY housing staff and administration to organize a rent strike in the Lower East Side. [2]

The rent strikes were a logical consequence of the facts that landlords at that time could afford to ignore the law, that housing legislation was not being effectively enforced by the responsible city agencies, and that tenants, without the means of asserting their rights, had the alternative of suffering in silence or going on "strike." At the very beginning of Legal Unit work in November 1963, Mobilization

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[1] Mobilization For Youth, "Housing Efforts of the Community Development Program" (New York: 1964, unpublished report), p.4.

[2] Ibid., pp. 4-5.

was already organizing rent strikes, and an attorney was assigned to the strike organization. By March 1964, serious problems of coordination developed within the movement. Tenants lost days of work when cases were adjourned; volunteer lawyers were inadequately briefed on their cases; tenants missed their court dates; eviction notices were often received only 24 hours before they were to be answered in court; records of cases represented or dispositions received were confused or non-existent in many instances. To meet these problems the Unit attorney working with the strike was given the responsibility for coordinating the legal work with the organising effort, and devising a record-keeping system.

Aside from these organizational difficulties, the strikers were required to meet complex bureaucratic requirements in order to make use of the only legal support of withholding rent, Section 755 of the Real Property Actions and Proceedings Code:

> provides that if the appropriate city department has ordered the removal of certain violations and the tenant can prove that the order has not been obeyed, "the court before which the case is pending may stay proceedings to dispossess the tenant for non-payment of rent or any action for rent or rental value." .. Rent withholding was only a legal device to obtain a court hearing: if the hearing resulted in a ruling favorable to the tenants, they deposited withheld rents with the clerk of the court until the landlord made repairs. The law thus prescribed a bureaucratic course, and the courts interpreted it rigidly.[1]

The only evidence admitted was listed violations recorded with city agencies. Photographs, or tenant testimony on the conditions were not admissable. This required the organizers to arrange and follow up inspections and make extensive searches of public records to ascertain whether serious violations had been posted, in addition

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[1]Frances Fox Piven, Richard A. Cloward, "Rent Strike: Disrupting the System" (New York: Columbia University School of Social Work, 1967, unpublished draft), page 9.

to collecting tenants' rents, and shepherding them through court procedures. However, once an inspection had been arranged, the organizers had the problem of getting the inspector into all the apartments, and having him actually record the existing conditions, and finally getting the record of violation to court. An interim report by the Unit attorney in charge describes the problem in this way:

> ... The inspector finds some violations. However, it is my impression that the inspectors are deliberately finding only relatively innocuous violations and ones easy to comply with, for example, to paint, and totally ignoring the serious conditions, such as loose windows, one of the most common complaints, and one most aggravating to the tenants. It means even if the heat works, the cold comes in and the apartment is not warm. The most serious problem has been, however, that because of the cumbersome procedures at the Buildings Department, the most recent inspection has often not been recorded on the permanent file, so when the records are subpoenaed they arrive minus the violations from the most recent inspection. Usually the court will not grant an adjournment. The first time the attorney can learn what has happened is when the records are opened in the court during trial, after the case has been marked "Ready." There is no procedure for viewing the records prior to time of trial.[1]

Another serious problem encountered by the tenants and their lawyers was the attitudes of the judges. The general atmosphere of the court was not one of friendliness to the tenants and the limited laws protecting the tenants were not uniformly applied or upheld. For example, the same report describes the attitude of the housing court judges:

> Judge 1. holds that any violation of record, no matter how trivial, requires the entry of an order pursuant to 755. Judge 2. holds that on almost no occasion, no matter how serious the violations, is an entry of an order pursuant ot 755 justified. At one point he suggested that unless the Building Department record of the violations was marked dangerous and hazardous (to the best of my knowledge this is never done) he could not enter a 755 order. Judge 3. was at first unclear as to what he was doing. He would not enter 755 orders if the landlord would allege his willingness to make repairs.[2]

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[1] Nancy LeBlanc, Legal Services Unit, "Legal Report on the Strike" (New York: June 1964, unpublished report), p. 12.

[2] Ibid., p. 13.

Court procedure was also applied in such a way as to descriminate against the tenant and work to the advantage of the landlord.[1] A good description of this bias contained in the attorney's report is reproduced below:

> In terms of trial procedure and evidence required, Judge 1. will adjourn a landlord's case if the landlord does not have a certified copy of the City Rent and Rehabilitation Administration order setting the maximum rent on the apartment in question. The fact that he grants an adjournment when the landlord doesn't have all the required proof, but refuses an adjournment to a tenant when the building department records don't appear in response to a subpoena, or appear and are incomplete, is one example of the unequal protection given tenants and landlord. Judge 2. refused to require the landlord to prove the maximum rent.

In the light of the bureaucratic difficulties and the hostility of the courts toward the striking tenants, it is not surprising that of those cases handled by the Unit attorney plus cases recorded from mid-March to May 1, 1964, only little more than 10 percent resulted in the application of a 755 order and the deposit of rents with court. Another 20 percent of the same group of cases were dismissed because the landlord had failed to appear in court, or had some technical defect in his case. While in well over half of the cases, the courts supported the landlords.

While, with such a court record, the rent strikes did not appear on the surface to be a particularly effective method of improving housing conditions on any but the most temporary basis, they were however, valuable in three different ways: They provided important experience in the legal defense of tenants; (2) indicated the need for new legislation; and (3) created the political basis for new housing legislation.

The attorneys working with the strike learned of the absolute necessity of having posted violations before going to court, and that in the absence of such violations to advise against the strike. Moreover, the legal work involved in a

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[1] Ibid., pp. 15-16.

strike was so great that is was necessary to rely, at least in part, on a paid legal staff; volunteer lawyers could rarely spend the amount of time required on a consistant basis.

Perhaps the most important consequence of the rent strike campaign was new housing legislation. The drama of the strikes, the conditions revealed in the course of the campaign made the public aware of slum conditions. The effect of such exposures was to create a groundswell of public indignation and support for housing reforms.

At this time the Lindsay candidacy for mayor was becoming apparent, and it was known that housing legislation was planned. The Wagner administration sought to take the initiative away from Lindsay backers and also to bolster its own record among progressive voters. Both groups sensed the political support to be had in housing legislation and thus sponsored remedial legislation. Members of the New York City Bar Association were also aroused by the disclosures and sponsored a housing reform bill. Surprisingly bills supported by all three groups were passed in the summer and early fall of 1965. The end result was legislation which authorized: tenants to take a landlord to court and have a court administrator appointed to handle the repairs (Article 7-A of the Real Property Actions and Proceedings Code); a complete abatement of rent under certain conditions (Section 302 or the Multiple Dwelling Law); and an amendment to the 755 order which permits the complaining tenant to arrange and pay for repairs out of rent monies deposited with the court. Finally, the strikes did stimulate landlords to make some repairs. The Unit attorney in charge of the rent strike legal effort concluded:

> Despite the high number of final orders for the landlord, the rent strike should not be considered a failure. Even in cases where the landlord wins, there has been considerable repair work done by the landlord. Further, there appears to be a greater awareness among landlords of the need to appease tenant demands and there are many buildings on rent strike which have never appeared in Court. [1]

The rent strike experience demonstrated the central role of legal assistance in the enforcement of housing legislation. Both the 2040 criminal summons and Section 755 order were relatively unknown and little used before the rent strikes of 1964. Legal Unit attorneys were instrumental in reactivating these laws, and the success of the rent strike, before legislation explicitly recognizing it was passed in 1965 (Article 7-A), can be attributed, in part, to the legal defense accorded the strikers. By uncovering the forgotten statutes attorneys defending the rent strikes opened an avenue for the prosecution of the striking tenant's demands. Otherwise, without these legal defenses, it is certain that fewer improvements would be made, the strikers could not have been sustained as long as they were, and sizeable numbers of strikers would have been evicted.[2] Had this occurred, it seems unlikely that the strikes would have had the political impact that they did.

Although the Lower East Side Rent Strike did not survive the summer of 1964, the Legal Unit continued to work with the Housing section of the community Development Program in the prosecution of rent strikes under the 755 order and

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[1] Ibid., p. 29.

[2] The prevention of evictions is crucial to the organization of tenant strikers and the maintenance of strikes once initiated. Harlem strike organizers would sit in an apartment to prevent city marshalls from removing the furniture, or they could put the furniture back in the apartment if it had been moved out. Such tactics were successful, while in the Lower East Side, the strike in one neighborhood was broken when a family was evicted at a time when the organizers were unprepared. As a consequence, other strikers fearing similar fates hysterically demanded their rent money back, thus ending the strike in that area.

subsequently under the 7-A proceeding. The continuing work in rent strikes is of interest here because it reveals the interdependencies of the two programs and clearly illustrates the role of legal representation in the organization of tenant groups.

The Division of Work

The Housing Organizer - The community workers are responsible for all the preparatory work up to the point where the tenants decide to take legal action. The organizers inspect the building at the time of the complaint and again after the repairs have been made. They develop and maintain contact with the tenants; organize the building; find out what the tenants need and want; and interpret the tenant's demands to the lawyer as well as explain the lawyer's role to the tenant. The community workers also maintain continuing contact with the building to ensure that the repairs are adequate and are not of a temporary nature. They also advise the tenants when to sign a release for the landlord in order to prevent their signing before the work is completed. The community workers also make arrangements for the tenants to appear in court. In summary, the organizers perform all the organizational work prior to the point where legal action is commenced, and act as liasons between the lawyer and the tenants throughout the legal process.

The Lawyer - The lawyer enters the case once the tenants have been organized and have decided to go ahead with legal action. The lawyer handles the legal aspects of the case: he represents the tenants in court, prepares the necessary legal forms, and arranges to subpoena inspection records when necessary. Moreover, the lawyer is an important source of advice on the legality of proposed tactics. Community workers have found that the most important function of a lawyer in a tenant group is to reassure

the members that they are not vulnerable to retaliation by the landlord and that they will be defended whatever may happen. Just as with the welfare recipient groups, the presence of an attorney provides the sense of security which is indispensable to the survival of the group. Part of the security derives from the lawyer's explanation of the law and court procedures. In this way, much of the mystery and possible terror can be taken out of the impending court experience. Secondly, the tenants can feel secure in the knowledge that a lawyer is available should legal action be taken against them. Similarly, the lawyer can assist members of the group with other legal problems.

Community workers were asked if they could successfully organize tenant groups for rent strike action without the assistance of a lawyer. The answer was "no" for two reasons. In the first place, the striker could not be successfully defended in court in the absence of legal counsel; secondly, the availability of a lawyer has an instrumental value to the group. The process of organizing tenants would be much more difficult if legal help could not be assured in advance.

SUMMARY

The Legal Services Unit in important ways both assists and depends upon other Mobilization for Youth programs. The Unit supports the Neighborhood Services Centers by providing legal advice and back-up where necessary. The threat of litigation which the Neighborhood Service Center workers can invoke facilitates the resolution of many problems which otherwise could not be handled. Lay advocacy, in this case, is made effective by the support of legal advocacy. On the other hand, the Neighborhood Service Centers perform an important screening

function for the Legal Unit by servicing those clients whose problems don't require formal legal action.

Legal services and community organization efforts also show complementarities. Legal advocacy contributes to group cohesion and meets the formal legal requirements of community groups. Nevertheless, the community action groups can attack general problems on a larger than a case to case basis, and generate political pressures for legislative action.

The fundamental lesson here is that a legal services program, without access to community organization and lay advocacy resources, would be limited in the range of problems it could successfully prosecute, and would face a heavier caseload than otherwise necessary.

CHAPTER XIII

THE USE OF LAW AS AN INSTRUMENT OF SOCIAL CHANGE

Introduction

One of the three purposes underlying this study is to assess the relevance of legal advocacy for the poor to strategies of social change. This chapter will take up the three research questions posed in the introductory chapter. These are:

(1) To what extent can the law be used as an instrument of social change?

(2) Can the provision of legal representation in itself act as a stimulus for change?

(3) What forms of change can be attributed to the intervention of legal services? What forms require other strategies as well?

The chapter will be composed of three parts. The first will examine the Unit's experience in each area of the law from the following two perspectives: (1) To identify instances of change and the character of such change; (2) to ascertain the extent to which the Unit's activities represent a form of service previously not available. Part II of the chapter will discuss the problems of the use of law as a strategy for effecting social change. Both the procedural difficulties as well as problems of a more general character will be considered. The concluding part of this chapter will analyze the forms of change which require that the legal Services Unit work in conjunction with other programs. The discussion will be

based upon the analysis in Chapter XII of the Unit's inter-relationships with the rent strike and welfare minimum standards campaigns.

Functions of Service and Social Change

At the outset, before examining the experience of the Legal Unit, it is helpful to differentiate between Unit functions which are primarily of a service nature and those which involve some form of change. The service function of a legal service program can be defined as those activities which do not have effects beyond the service of an individual client. Conversely, those activities necessary to the use of law as an instrument of social change make up the social change function of the Unit. The bulk of the Unit's work would thus have to be characterized as service in nature. Examples of the service activities of the Unit would be the assistance provided in criminal cases, divorces, the representation of victims of consumer fraud, or the counsel provided to tenant groups with holding rent under the Article 7-A proceeding. In each, a particular set of legal needs are met without reference to settling broader issues.

It should be noted at this point, however, that many of the service activities of the Unit represent forms of assistance not previously available and as such are themselves forms of change. The organization of the Legal Unit itself is an example of institutional change. Nevertheless, while many of the activities of the Unit constitute new legal resources for the neighborhood, and as such can be equated with change, they still conform to the above definition of service in that their impact is limited to the individual case. For the purposes of this discussion, assistance provided by the Unit which was previously unavail-

able will be classified as the service function.

Before examining the function of the Unit as a catalyst of social change it is helpful to set forth what is meant by change. For the purpose of analyzing law as an instrument of social change, it is necessary to differentiate non-specific forms of social change from institutional change. As noted in the introductory chapter, the former would include:

> --Changes in the relationships between classes of individuals such as landlord and tenant;
>
> --Changes in the relations of individual clients with public institutions;
>
> --Reduction in the incidence of consumer fraud, etc.

For the present discussion, institutional change will be defined as change either in programatic content or procedure of an institution. Institutional change of this kind would include the addition(or elimination) of a particular program activity and change in the internal administrative processes for dealing with the institution's clients. Illustrations of this form of change would include modification of the Tenant Review Board Hearings (eviction) in public housing or the right to pre-hearing discovery in welfare Fair Hearings.

The Unit's function as a catalyst of social change discussed in Chapter XI involves a commitment to change through the law, involvement in community action campaigns, a search for test issues and cases, activities related to the preparation of test cases, and finally instances where the bringing of a test case has resulted in change. However, activities which involve change are difficult to separate from general service functions of the Unit for two reasons. First, cases

which raise promising test issues are comparatively rare and are closely related to the volume of cases serviced. Secondly, aside from the assistance to community action groups, and general forms of change which result from the presence of legal advocates for the poor, Unit activities directly associated with change (research, writing briefs, etc.) are derivative of test cases.

A dichotomy between service and change exists, perhaps, with respect to questions of the resource priority between change and service. Thus, resources can be committed to activities which are of a service nature or those more closely related to change. The latter would include the preparation of test briefs, legal research related to test cases, and in some cases representation at administrative appeals. The following discussion will identify the instances and forms of change encountered in each area of Unit practice. In addition, aspects of Unit work which constitute service not previously available will also be noted.

I. Review of Social Change by Area of Law[1]

A. Social Change: Private and Criminal Law

Criminal Law

Unit work with criminal cases is a service. The Unit provides more intensive legal representation, closer follow-up on its clients, plus social work services. This form of comprehensive, highly personal, service is a new resource

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[1] Unit practice in areas of the law not related to public service institutions will be examined first.

for the community. However, the Unit has had no criminal case as of Spring, 1968 which has produced change. A recent challenge to the bail system was recently denied certiorari by the Supreme Court. A second test which involves a challenge to state law prohibiting the possession of marijuana is awaiting the response of the Supreme Court to the petition for certiorari. To date, no substantive or procedural change has been won in this area of the law.

Consumer Law

Here the Unit provides another resource for combatting unethical business practices. The assistance is made more accessible to local residents, but does not significantly differ from that provided by other agencies. Aside from making use of remedies already provided by the law, there are no instances of change associated with Unit activities in this area of the law.

Private Housing Law

Unit work with housing cases represents another form of service. The provision of counsel to tenants has the effect of enforcing existent housing legislation. However, aside from removing the most serious violations, Unit practices have had little impact upon the very serious housing problems in the Lower East Side. While little change in substantive housing conditions has been observed, the response of local landlords to legal action has profoundly changed. Prior to to the passage of the housing legislation passed in response to the rent strikes, landlords tenaciously fought the cases brought by Unit attorneys. Currently, at the first indication of legal action, the large majority of landlords agree to make repairs in return for having the action dropped. This is the result of there being

both the legislation which supports tenants and legal assistance to enforce the legislation. Without the legislation, Unit attorneys would continue to meet with very limited success in court as was the case with the rent strikes; without the legal resources, the new housing law would have likely suffered the same lack of enforcement suffered by earlier legislation. The change has been in the attitude of landlords toward legal action: whether this is translated into treatment of tenants who do not make use of legal counsel is not known.

B. Public Institutions and Social Change

Public Housing

The Unit's work with public housing applicants and tenants has yet to produce change. Unit attorneys have enabled some tenants to retain their apartments who otherwise would have been evicted. Similarly, a small number of eligible applicants have obtained units through intervention of Unit attorneys. In each case, the Housing Authority has been unwilling to risk a court test of the particular case and has given way. Finally, while the representation of tenants in eviction hearing may reduce their disadvantage somewhat, there has been no change in the procedure itself.

Unit test cases have been rendered moot by the compliance of the Housing Authority. The cases which have reached the courts have been rejected on the grounds that no constitutional issues were raised, and the authority was consistent with its own rules (Manigo) and have been subjected to extraordinary delays (Holmes) to date. The test case has not been a satisfactory vehicle of change in public housing law.

Family and Domestic Law

The net effect of Unit work with family and juvenile cases has been to provide a more comprehensive form of assistance than would otherwise be available. The social work component of the Unit offers follow-up services to the client, or in-depth case work assistance for deeply troubled families. Because the Unit can provide service which reduces the load on other public agencies, many clients are not placed in institutions or are not sentenced to jail. Legal counsel for juvenile or indigent adult defendants has the effect of reducing the disadvantages of the absence of formal legal protections observed in adult criminal proceedings. Nevertheless, Unit efforts to obtain substantive or procedural change have been complicated by the emphasis on the therapeutic nature of the proceedings, and the small number of cases which present test issues.

School Suspension Cases

The Unit has yet to establish the right to provide counsel to students in suspension hearings. The Madera case which raises this issue is at present being appealed to the Supreme Court. If Madera is successful, other issues of due process will remain in suspension hearings. However, the issue of representation must be resolved before other issues can be taken up.

Welfare Law

Unit representation of Welfare recipients has produced institutional change of both a procedural and substantive nature. Large numbers of clients have received assistance and the impact on the Department of Welfare has been considerable. Perhaps, the most instrumental form of change which can be

attributed to the intervention of the Legal Services Unit is the activation of a relatively dormant welfare Fair Hearing system which has provided the framework within which all subsequent change both procedural and substantive has taken place. Equally important is the role of the Fair Hearing in enforcement of established client rights. As it was shown in the discussion of Unit welfare experience, the threat of a Fair Hearing appeal was usually sufficient to settle all cases except those where the controlling federal and state regulations were unclear. The importance of the Fair Hearing to representation of welfare recipients cannot be overstated. The Fair Hearing has been the instrument by which the Unit has been able to perform many of the functions outlined in Chapter XI for welfare recipients: assertion of rights to benefits, defense against improper treatment, protection of constitutional rights. While such effects are largely unseen, they signify that the welfare worker can now be held responsible for his decisions or, conversely, the recipient no longer is subject, within the limits of the hearing, to the exercise of the worker's discretion.

Legal representation of Welfare recipients has brought about both procedural and substantive change in welfare administrative practice. The specific instances of change can be categorized as follows:

--Definition of Procedure:

1) Pre-hearing discovery establishes the right of recipient's counsel to examine welfare records to be used in Fair Hearing.

2) The right of a recipient to be accompanied by a person of own choice to welfare intake interview.

--Clarification of Welfare Regulation (Man-in-the-House Rule):

In matter of C. won the right of man resident in a household not to contribute earnings to children other than his own.

--Defeat of an Illegal Practice:

The right to telephone - formal recognition of the recipient's right to a telephone - prohibition of the suspension of welfare benefits for the possession of a telephone.

--Enforcement of Welfare Legislation:

1) Welfare Abuses Act - Defeated practice of denying benefits for lack of a plan of support and denial of emergency assistance without applicant's agreement to return to point of origin. Won new set of guidelines prohibiting such presumptions and establishing criteria of accepting new cases.

2) Welfare Minimum Standards: Unit assistance to welfare groups contributed to Departmental recognition of responsibility to initiate inquiries into a recipient's household needs.

C. The Relation of Formal Appeal Systems to Institutional Change

A question arises as to the reasons underlying the extent of change in welfare administrative practice brought on by legal intervention. Why has welfare, among the public institutions whose clients have benefited of legal counsel, been the locus of change? The reasons can be found in two features of the federally supported public welfare system. The first is the presence of a highly articulated set of regulations which define in detail, among other things, criteria for the determination of recipient eligibility, specification of cause for the suspension of benefits, and the definition of appeal rights, standards of benefits, and general administrative guidelines. Such regulations are set forth by the Federal Government and are binding upon local welfare agencies which receive Federal contributions.

The second feature of the welfare system which is strategic to the potential for institutional change is the federal requirement for the Fair Hearing appeal system. The extreme importance of the Fair Hearing appeal, as already noted, is that it provides the context within which the administrative practices of the local agency can be measured against the federal guidelines.

The important point here is that the ability of welfare recipients to assert their rights and combat illegal practices requires a combination of the following three components: (1) clearly defined standards of assistance and procedure; (2) an impartial appeal structure by which such standards can be enforced; and (3) knowledgeable advocates to support and, where necessary, articulate recipient appeals.

Clients of other public institutions do not benefit from the convergence of this peculiar combination of protective devices. In public housing, for example, the regulations which guide the administration of housing projects constructed with federal funds are designed to protect the local housing authority more than the tenant. Month to month leases are sanctioned to facilitate the quick removal of troublesome tenants; federal regulations leave admission criteria and procedure to the discretion of local authorities; eviction procedure and criteria are not clearly defined. Consequently, the appeal process of the New York City Housing Authority does not provide a tenant advance notice of the reasons for the eviction proceedings or allow him to confront the sources of allegations against him; the tenant is simply presented with an omnibus record of misbehavior. The right to appeal is not established by law and consequently, the hearing is conducted on an informal basis without

clear standards of evidence. More fundamental, the case is not heard before a neutral outside arbitrator who renders a decision based on clearly defined guidelines. The absence of binding federal standards of admission or eviction criteria, administrative guidelines, or the definition of an appeal system, renders legal advocacy ineffective as a means of effectuating change in the policy or procedure of the public housing authorities. Cases which involve improper use of authority, therefore, must be brought in the court system, which itself presents significant constraints upon change.

Many of the same points apply to the school suspension hearing which fails to provide the student with even the minimal right of presenting his side of the story. Evidence is anecdotal; the student or his parent is given no opportunity to question the evidence presented against them. The hearing is administered by school staff and appears to be less a hearing than a forum for the justification of a suspension decision to a student's parents. Neither of the requirements for effective legal intervention are present. Standards of student conduct or school obligation are not clearly defined, and there is no neutral context within which behavior can be measured according to a body of principles.

In summary, then, the public welfare system offered opportunities for successful legal intervention in part because a comprehensive body of regulatory standards could be applied to administrative practice and enforced within relatively impartial quasi-judicial setting. And secondly, a variety of improper welfare practices had evolved in the absence of an effective use of the Fair Hearing system. It may be that the pace of change will slow as the most flagrant violations

of federal and state standards are removed, and subsequent challenges deal with more ambiguous issues.[1]

II. Problems of Social Change

In light of the limited change effected in every area of Unit practice except welfare, it is appropriate to consider the constraints upon the use of law as an instrument of social change. The discussion will consider first the practical problems of the test case as a vehicle of change. The problems are similar for tests brought in both public agency administrative appeals and in courts. Secondly, some of the more general restraints of legal tradition which limit court response to test cases will be examined.

The Test Case

The significance of the test case lies in its potential for establishing precedent by which similar cases in the future can be decided. A great deal of attention is focused on the development of test issues because of the possibility of obtaining broad change. The Brown vs. Board of Education decision of 1954 is a classic example of test case which has had profound and far reaching effects on public schools across the country. Another illustrations of the power of the test are the Miranda decision which required the police to inform defendants of their rights, and Gault vs. Arizona which held that indigent juvenile defendants were entitled to be provided with legal counsel when the case could result

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[1] A point suggested to me by Brian Glick, former Director of the Center for the study of Welfare Policy and Law, Columbia University School of Social Work.

in jail terms. However, such successful test cases are rare; the following discussion will present some reasons why this is so.

Practical Problems of Developing Test Cases

The most basic difficulty in developing a test issue is finding a case which combines the right set of circumstances to raise the issue in the clearest possible form. Such cases are relatively uncommon. Some Unit attorneys report having handled hundreds of cases over a several year period without encountering one potential test case. Thus, for example, the attorney responsible for Family Court cases had had four possible test cases in nearly two years. The infrequency of test cases varies of course according to the area of law. For example, only a few test strategic issues remain in criminal procedural law (bail, material witness) while the absence of clearly defined procedural guidelines in tenant hearings or the admission process in public housing provides a range of possible due process test issues. If the Madera case is successful, the school suspension hearings may generate a series of due process questions.

A second requirement for a test case, aside from the best combination of circumstances, is a client who is willing to risk a higher probability of loss, and is prepared to endure a lengthy, time-consuming appeal process. In some areas of law, where the issues bear serious consequences for the individual, securing a willing client can be difficult. This is particularly true for criminal and family law cases where an adverse ruling could mean some form of incarceration for the defendant.

The length of time required to adjudicate a test poses another problem.

Frequently it takes two to three years to complete the appeal process. The Holmes case is a good example. Legal action was initiated in mid-1967 and in the fall of 1968 a Federal Circuit Court of Appeals is expected to rule whether the district court can try the case or whether administrative and state court remedies must be exhausted first.

Another common difficulty of test cases is the danger of pre-emption. Public institutions are often unwilling to risk a court test of an administrative practice, and will, as a consequence, capitulate on the individual case while at the same time maintaining the practice in other instances. Public housing cases have followed this pattern. In criminal cases, when a case involves a test issue, the prosecuting attorney has the resources to undercut the test by offering the defendant a suspended sentence in return for an agreement not to appeal the case. The same process can occur within the Welfare Fair Hearing system; the Department of Welfare will settle a doubtful case rather than risk losing a hearing. Thus cases which raise powerful test issues are particularly vulnerable to being "bought out" by the opposing side. This poses a serious ethical problem for the attorney who, while being committed to raising test issues, is bound by legal canon to put the best interests of his client before all other considerations. The pre-emption of test issues is most common in criminal, public housing, domestic relations, welfare or criminal cases; it is usually not a problem where the "rule of law" is being extended or new legislation is being test for the first time (Madera).

General Constraints on Tests

The Courts and the Administration of Public Institutions

The most serious problem of legal challenge to the practices of public agencies is the unwillingness of the courts to interfere in matters considered to be the administrative prerogative of the agency. As noted in the discussion of school cases, the courts are reluctant to substitute their discretion for that of the responsible institution. Were the courts to interfere in administrative issues with any frequency, it is felt that public institutions would soon be robbed of any initiative in the handling of their own affairs; top level discussions affecting the establishment of administrative principle and procedure could, in effect, be ultimately transferred into the courts.

As a consequence, the courts impose two tests upon any review of public administrative action. First, the courts inquire as to whether the agency has been consistent with its legislative mandate or with its own rules and regulations. A practice may be struck down on the basis that it violates the administrative guidelines of the institution itself. The second requirement is that the practice does not violate the constitutional rights of the individual. The constitutional issues most often raised by administrative agencies are those provided under requirements of due process of law as established under the Fifth (for federal programs) and 14th (for state activities) constitutional ammendments. However, the general requirements of due process are not agreed upon and the treatment of the issue varies widely according to context.

The Unit pursues most tests of public administrative practice on the grounds

that they fail to meet the requirements of due process. This would include procedural issues such as notice, non-prejudiced appeal and clear standards of evidence, and issues of the arbitrary nature of a particular action. Decisions which can be shown to be arbitrary or unreasonable can also be challenged as violating an individual's right to due process under the law. It is not possible to examine issues of due process in detail here, except to note that the courts have not been sympathetic to due process issues raised in Unit cases, and have thereby refused to intervene. As a consequence of the difficulty of moving courts on issues of due process in public institutions, the major tests of the Unit have been defeated. This would include Manigo in public housing, and Cosme in school hearings. Madera may prove to be the exception: a Federal District Court found that due to the possible serious consequences for child and parent, the denial of counsel in suspension hearing was a violation of due process. This decision was reversed by a Federal Circuit Court of Appeals which did not perceive the consequences of the hearing in the same way and considered it entirely within the prerogative of the schools to hold the hearings without permitting counsel for the student.

The Madera case provides an illustration of another constraint upon extending the rule of law into the procedures of public institutions. Where the proceeding is intended to serve a therapeutic purpose, the interjection of an adversary system is felt to be inappropriate. Thus, the courts are generally reluctant to extend formal principles of due process into administrative matters which are therapeutic in nature in the belief that adversarial confrontation would obscure the best interest of the individual concerned.

The courts are hesitant to overturn legislation in much the same way as they are to intervene in administrative matters. Here, too, the courts are unwilling to substitute their judgment for that of the legislature. If the legislation is within the legitimate purview of the legislature, is not arbitrary or unreasonable, and does not violate constitutional protections, the courts will not act. The judicial review implies the application of neutral, historical principles to a given issue and, ideally, is to be value neutral; it is not a prerogative of the judges to impose their own beliefs. As a consequence, the successful test is the product of a rare combination of circumstantial factors, historical timing, and the predispositions of the courts to select from common law tradition those principles or implications which support change.

Aside from the difficulties of successfully prosecuting test cases, there is one more fundamental limitation upon the use of law as an instrument of social change: it is that while the need is for an affirmation of social obligations through law and legislative action, the role of the legal tests is largely a negative one - it involves the protection of individual rights, and the enforcement of legislative intent.[1]

The Legal Strategy and Legislative Change

Understandably, in the light of these factors, Unit test cases have not met with much success. It may be that the use of law to effect broad change is a less effective strategy than those which focus on the legislative process itself.

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[1]This point was suggested to me by Harold Rothwax, Director of the Legal Services Unit.

Case materials presented in Chapters IV through X indicate a wide range of social needs which includes new units of low income housing, revision of the welfare system, additional community institutions, improvement in the public school systems, additional social and psychiatric services in the courts - all of which requires legislative action. The Unit can relate to the legislative process by providing important evidence on the performance of the law and public programs. The problems brought to the Unit are perhaps the clearest and most specific indications of the need for legislative action or the revision of present laws or programs. A systematic use of such material as the basis for testimony at public hearings, and as the basis for the drafting and proposing of legislation, could educate both the public and law makers to the need for change. Thus, the Unit could, in addition to its legal reform orientation, play a greater role in bringing the dimensions of poverty as expressed by its clients before the legislature.

The use of Unit materials to promote legislative action is related to the process of creating pressure for change - through dramatic community action. The rent strike and welfare campaigns are excellent examples of instances where legal services in conjunction with group action was successful in stimulating change. It is clear here, however, that legal representation could not have gone beyond a case-to-case basis, and conversely, the community campaigns depended heavily upon legal support. Each strategy in isolation would have been more limited in impact. Both campaigns, however, can go beyond the immediate problems of housing repair or provision of minimum standards to create pressures for new legislation. In this way, the rent strike movement led to new legislation

which is the basis for continued remedial housing action. The minimum standards campaign has led to the development of strong welfare recipient groups which are forming a nationwide movement. One persuasive argument holds that by asserting rights to full benefits, a massive welfare movement could generate the political pressure for a guaranteed annual wage.[1] The strategic role of legal services in such a campaign is evident from the experience of the Legal Services Unit. Perhaps, the combination of the legal and community organization strategies will prove to be the most effective method of generating the political momentum needed to produce legislative action. Thus, the need for new law can best be met through group pressure supplemented by legal assistance. Perhaps the issue reduces itself to the political problem of devising strategies for creating a public commitment to provide the resources necessary to eliminate poverty. An important political role of legal services, as illustrated by the experience of the Legal Services Unit with the rent strike and welfare campaigns, is to facilitate the group action of the poor. Thus Legal Services can relate to the legislative process directly by documenting the problems of poverty and by promoting political action of the poor.

Summary

The experience of the Legal Services Unit with the use of law as an instruement of social change has shown both the difficulties associated with change

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[1] Cloward, Richard A Piven, Frances Fox, "A Strategy to End Poverty," The Nation, May 2, 1965.

as well as the opportunities for change. Perhaps, the most fundamental conclusion is that the most serious problems of poverty require legislative action. Secondly, legal services in isolation play at best a defensive role; that aside from change associated with such new forms of service, successful intervention has been limited to the institutional context where clear guidelines and appeal processes provide a structure for legal action. Another fundamental lesson is that the law provides a structure both for legal intervention and social action. Change of the law via a legal strategy is constrained by the limited scope of judicial review and a general unwillingness of the courts to substitute their judgment for that of the legislature. The difficulties of bringing about change through the law lead to the conclusion that legal services can more effectively contribute to change through the legislative process. Legal services can contribute to legislative action directly through testimony at hearings or proposing remedial legislation, and indirectly through strategic support of community political pressure groups which must be mobilized if the new legislation and social programs so desperately needed are to be forthcoming.

CHAPTER XIV

LEGAL SERVICES FOR THE POOR IN BROAD PERSPECTIVE

Introduction

Previous chapters have focused upon the functions of a legal services program within a context provided by Mobilization For Youth in the Lower East Side of New York City. The purpose of this chapter is to expand that context to examine functions of a legal services program within a major urban policy framework.

The first part of the chapter will examine the relation of a legal services program to the goals elaborated in the Model Cities Act of 1966. There are two reasons for the choice of the Model Cities Program as a policy framework for discussion. First, the Act requires that the demonstrations be comprehensive, which in turn requires that complementarities of the individual programs be well worked out. Second, the Act permits a great deal of felxibility in program development, and encourages each community to work out a combination of programs best fitted to meet its own particular needs. The Act also provides a general structure within which specific action programs can be undertaken. The emphasis upon comprehensiveness and diversity of approach is ideal for this discussion in as much as it permits an examination of the ways in which a legal services program might contribute to a wide variety of possible programs.

The extent to which the MFY experience can be generalized will be considered in part two. The relevance of a legal services program to broad program strategies

raises the question of whether the experience of the MFY Legal Unit can be replicated elsewhere. Strategic institutional, environmental or programmatic factors in the MFY experience will be identified and examined for the degree they can be found elsewhere. A discussion of the overall significance of the experience of the Legal Services Unit and a presentation of some research questions suggested by the latter conclude the chapter and volume.

Part I Demonstration Cities and Legal Services

The Demonstration Cities Act of 1966 represents an effort to overcome the limitations of previous federal urban programs. Programs are to be comprehensive rather than single purpose. They are to be well coordinated not isolated, and are to be consolidated within one administrative framework. Moreover, the Act was designed to minimize federal direction and encourage local initiative.[1]

A. Legal Services and the Goals of Demonstration Cities

A legal services program meets the goals of the Demonstration Cities Program in several important ways. For example, model neighborhoods to be selected for improvement should be in part

> hard-core slums in which low income families are concentrated. These areas are characterized by social and economic pressures resulting from such factors as overcrowding, poverty, unemployment, dependence on welfare payments, low educational and skill levels, poor health, crime and delinquency.[2]

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[1] Ralph H. Taylor, George A. Williams, "Comment on Demonstration Cities Program," Journal of the American Institute of Planners, Vol. XXXII, No. 6, p. 366.

[2] Department of Housing and Urban Development, Improving the Quality of Urban Life: A Program Guide to Model Neighborhoods in Demonstration Cities (Washington, D.C.: U.S. Government Printing Office, 1966), p.6.

The relevance of legal services to the wide range of problems associated with such a neighborhood is obvious. If the MFY Legal Unit experience can be any guide, legal representation of the poor should be an important component of any program for a low-income area.

A second goal of the Demonstration Cities Act is to stimulate the development of programs which treat all the facets of poverty. While a great variety of program strategies are considered appropriate, they are to be put together in such a fashion as "to be truely comprehensive both in range and completeness of the activities proposed and in the resources brought to bear .." [1] Grants are to be made to enable the city to make general improvements in the living conditions for the people in these areas. The programs could include housing efforts, education, manpower training, recreational or cultural programs, or improved public services. These physical and social programs are not to be divorced from each other, for as President Johnson's Congressional message says

> We must link our concern for the total welfare of the person, without desire to improve the physical city in which he lives. For the first time, social and construction agencies would be joined in a massive common effort, responsive to a common local authority. [2]

The point here does not need to be over-emphasized; if a Model Cities Program is to have a comprehensive approach to the problems of a poor neighborhood, it must include some form of legal assistance program. There are too many legal problems associated with poverty status for a program to be termed "comprehensive" in the absence of a legal component. Thus, while a person's housing needs may be affected, local schools are improved, job training provided, he still may be victimized by consumer fraud, be

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[1] Ibid., p.8.

[2] United States House of Representatives, 80th Congress, 2nd Session, Doc. 368, "Message from the President of the United States Transmitting Recommendations for City Demonstration Programs," (Washington, D.C.: U.S. Government Printing Office, Jan.26, 1966), p.6.

improperly denied welfare benefits, or wrongfully evicted from public housing. These are very real dimensions of poverty and are not reached by service programs or efforts to reconstruct the physical environment. In addition, legal services programs, like few others, can affect nearly every aspect of a low income individual's life: his dependency upon public institutions, his housing, his child's treatment at school, his experience with an unscrupulous merchant or his fate in a criminal or family court proceeding. For this reason, a legal services program would be a critical element in a comprehensive program strategy for attacking the problems of a poor neighborhood.

Similarly, if the goal is to "make marked progress in reducing social and educational disadvantages" of the residents of the area, a legal services program can play a central role in the program.[1] As shown in the functional analysis of legal advocacy for the poor, a legal services program can reduce the discriminatory effects of bias in the law, enforce protections of the law otherwise ignored, and police dependency relationships in the welfare state. Each of these areas reflects educational and social disadvantages associated with poverty status and in each, advocacy performs a unique role, not easily assumed by another form of service. For example, a legal program can reduce the disadvantaged position of the poor by asserting their legal rights, defending their interests, or redressing the adverse "favored party" balance between the indigent tenant and slum landlord or the low income consumer and the slum merchant.

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[1]Committee on Banking and Currency, U.S. House of Representatives, "Demonstration Cities and Development Act of 1966, Public Law 89-754" (Washington, D.C.: U.S. Government Printing Office, 1966), p.1.

B. Program Interrelationships

Growing out of the emphasis upon the comprehensiveness of a Demonstration Cities Program is the requirement that the activities be well integrated and coordinated. The relationships between programs can be anticipated and programs designed to support or supplement each other. A demonstration program cannot be comprehensive simply by offering a variety of social, economic and physical improvement activities which are carried out in isolation from each other. The program guidelines describe the standard in the following terms:

> Components should be developed into interrelated systems. Each component should be comprehensive so that projects and activities within each component reinforce each other, and interrelationships between components should be developed so that projects and activities in one can provide reinforcement and support to those in others.[1]

The experience of Mobilization For Youth indicates some of the interrelationships which might develop between a legal services program and other programs. The legal advocacy could back up neighborhood advocates by establishing the possibility of litigation. The threat of legal action as shown in Chapter XII provides the lay advocate with sufficient authority to win an accommodation in the large majority of cases. Or, as in the MFY rent strikes campaign and welfare recipient organizations, legal advocates can play a strategic role in community organization projects. Legal services can also contribute to efforts to reduce youth crime and delinquency. Where follow-up or post-parole assistance is provided, the possible sources of recidivism can be reduced. Moreover, efforts to limit an individual's involvement with the law are likely to be more effective if the first encounter with the law is one in which the justice and rationality

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[1] Department of Housing and Urban Development, op. cit., pp. 10-11.

of the process is made clear. The work or job training program can also benefit from the presence of a legal services program which provides trainees with assistance in court proceedings. The work of such programs can be facilitated to the extent that youthful defendants can be kept out of jail and in such programs. A legal services program performs similar functions for other activities. For example, a domestic relations counseling service would be of limited value in the absence of legal services for those cases which had to go to court. Some families might avoid dissolution if the counseling and legal representation were integrated and provided on a continuing basis. Legal advocates for the poor can complement a wide variety of programs which provide services up to the point of involvement with the law or services which are ineffective once legal action is necessary. Many of the illustrative programs listed in descriptions of the Model Cities social services component would be in this category. These would include consumer counseling, credit assistance, a complaint bureau, neighborhood information services, or assistance to deprived and neglected children. Each provides information or a service in an area where involvement with the law is common but does not meet the need for legal assistance. It may be asked for example, what happens to the client of a consumer counseling program who is nonetheless a victim of fraud? What is the fate of the member of a credit assistance program who is victimized by a loan shark? How is the complainant who brings a problem requiring legal action to a neighborhood complaint bureau to be serviced? What happens to a family in a situation where a neglect petition wrongfully accuses parents of the abuse of their children? Obviously, a legal services program would significantly

complement these programs by taking up a client's problem once legal action has begun or is required. As a consequence of the all-encompassing nature of the law, a legal services program can perform complementary functions for a wide variety of programs which are likely components of a demonstration cities program. Thus, by reason of possible program complementarities, a legal services program would be a critical part of the social services component of a demonstration cities program.

C. The Communication Function of a Legal Services Program

A coordinated and consolidated attack on the problems of the model neighborhood is strengthened by establishment of a single authority which would join together the activities of other agencies; i.e., urban renewal, the board of education, the welfare department, city code enforcement agencies, manpower programs, etc. The authority would be responsible for the coordination and consolidation of these activities in the model neighborhood. To be able to perform this role on a continuing basis, the Model Cities agency will require information on program performance. There will be a need for a periodic and systematic review of the public activities in the model cities area. In part, this function would be performed by the local representatives on the Model Cities Board. Such individuals hopefully would be accessible to the residents of the area and would be in a position, by virtue of their ties to the community, to evaluate the work of the public programs.

A second source of quantitative information on program performance could be a computer-based Planning, Programming and Budgeting System (PPBS) which has been successfully employed by the Department of Defense. The application of PPBS techniques to social programs has been widely discussed, and efforts to convert the system for the

use of municipalities is well under way. The great value of such a technique would be its capability for the systematic organization of large amounts of quantative data. Nevertheless, the PPBS is subject to the same constraints which confront less sophisticated varieties of cost-benefit analysis: the difficulty of quantifying abstract items such as a program's goals, lines of staff behavior not amenable to division into computable units or the quality characteristics of a program's mode of operation. Miller and Rein summarize the limits of the application of cost-benefit analysis to social programs in this way:

> It (cost benefit analysis) suffers from technical limitations, it can lead to a quantitative mentality. The issue of operational feasibility is ignored; it has no ready-made response to the basic question of what costs and what benefits; goals are fifficult to delineate; it does not deal with the issue of competing goals. Values inevitably and surreptitiously creep in and democratic discussion is limited.[1]

While it is not possible to discuss computerized cost-benefit analysis in any depth here, the important point is that such forms of program performance feedback can offer information of a particular but limited sort, and do not deal with other important dimensions of program activity. For example, it would be difficult to devise measures which would adequately portray the way in which a welfare recipient is treated by a department of public assistance, or the quality of a youthful offender's experience in juvenile court or aspects of a tenant's relationship with a slum landlord. Any one of these are important dimensions of life in a poor neighborhood and reflect on the effectiveness or lack of effectiveness of public programs in the area. On the other hand, a PPBS could provide information on the amount and kinds of public assistance extended in a

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[1]Rein, Martin, S.M. Miller, "Poverty Programs and Policy Priorities," Trans-Action, Vol. 4, No. 9 (September 1967), p. 23.

given time period, or the characteristics of youthful offenders, the disposition of their cases and their recidivism rate, or the condition of the housing stock, rents paid, extent of overcrowding, etc.

A legal services program could, if properly organized, compensate for the constraints of a computer-based information system, and the limited information available to neighborhood representatives on the Model Cities Board. Because the victims are often the most isolated and the least articulate or organized members of a low income community, many problems of a poor neighborhood are largely unseen. In some instances, the dependence of the poor upon public institutions or private individuals silences protest. In others, the sources of local problems are located outside the neighborhood and are, because of the distance, less susceptible to protest based solely in the area. Examples of such problem sources might be an urban renewal agency, a public welfare institution or other municipal service agencies -- all of which would likely be more responsive to intervention through the city council than to direct neighborhood pressure. And while the Model City agency might provide entrance to the city council not otherwise available to a low income neighborhood, there remains the problem of presenting the non-quantitative or the qualitative aspects of a program's performance, or of a particular problem in the area.

A legal services program can contribute information of this kind because it assists individuals whose problems expose the need for action by public institutions or the need for new legislation. Legal cases frequently offer detailed information on the question of public programs in the neighborhood and present examples of the impact of particular laws upon the poor. A legal program could, therefore, serve as a source of program or policy evaluation.

The MFY experience shows how a caseload of a legal services program might indicate among other things:

-- the desirability of re-examining suspension procedures and policies in the public schools;

-- the need to eliminate abuses in the administration of welfare assistance;

-- the lack of effective code enforcement on the private housing stock;

-- the persistance of questionable managerial practices in public housing projects;

-- the demand for community treatment facilities for youthful offenders or families in need of special assistance;

-- the need for revision of court processes which handle consumer problems;

-- the need for change of existing public programs or the establishment of new facilities and programs.

The case materials present graphic evidence of community problems as well as demonstrate the need for change.

There are two constraints upon the use of case materials as a means of evaluating program performance. First the anonymity of the individual client must be protected at all costs: the information should not be used in any way which might damage the client's best interest. This requirement might,in some instances restrict the use of some materials. Second, staff resources must be available to organize case information in a systematic fashion to document community problems. A consistant limit upon MFY attempts to record the dispositions of cases was the work pressure upon the attorneys. The task of servicing a large number of clients can prevent a line attorney from expending much time on the organization of case records. As a consequence, resources must be assigned exclusively to the function of program or legislation evaluation and feedback.

The legal reform section proposed by the Legal Services Unit would perform such

a feedback function by preparing test cases, providing testimony at public hearings or drafting legislation designed to meet community problems. In each of these situations, the resolution of a neighborhood problem requires intervention at a point outside the area. Thus, the resolution of some problems would necessitate the formulation of new legislation or the revision of state or federal policy, and therefore would lie beyond the scope of a demonstration cities program. On the other hand, problems which can be settled by intervention at the municipal level would be approached through the model cities framework. Thus, a legal services program could police the activities of municipal agencies and communicate its findings through the model cities structure to appropriate city officials. The model cities program might exert pressure upon city agencies in situations where legal action in isolation would be ineffective. The relation between legal services and a model cities program is complementary with respect to program feedback: legal services provide substantive evidence of community problems, and a model cities agency could bring such documentation to bear more effectively upon responsible city agencies.

Closely related to the potential feedback role of legal services is the impact of legal advocacy upon the practices of public service institutions. The MFY experience illustrates the effect that the militant advocacy on the behalf of welfare recipients can have on a public assistance program. Legal advocates who are willing to challenge procedure and policy of public agencies can police their activities in the model neighborhood. Such challenges can have much the same impact as effective program feedback.

More importantly, a legal services program can compensate for the fact that most poverty programs tend to accept the status quo of public administrative practice. Miller

and Rein describe the failure of poverty programs to promote change:

> the primary thrust of the war on poverty is to improve the opportunities rather than the institutions which share them...
>
> Our refusal to face social change is revealed in our unreserved willingness to give funds to institutions that have time and again failed with the poor. Most educational systems, employment services and social agencies have a sorry record of inadequate and low quality service to the poor... The need is for change - in goals, in organization, in personnel, in practices... Existing agencies are not geared to working effectively with the poor. They need to be jogged, helped, checked and pressured into doing effective work.[1]

With the exception of community organization efforts, few other poverty activities can act as direct catalysts of change in the same way as legal advocacy can. For this reason, legal services can fill the need for institutional change in public activities. With adequate resources, the systematic use of case materials, and a commitment to the use of law as an instrument of change, a legal services program can provide program feedback and generate legal pressure required to police public activity in the model neighborhood.

Part II. The Mobilization For Youth Experience: Parochial or General?

The central question here is: can the MFY experience be replicated elsewhere? More specifically, what circumstances must be present for a legal services program to carry out the same functions as the MFY legal unit? The requirements of a successful legal services program (on the MFY model) can be divided into the following three categories: (1) the nature of the support services available to the program; (2) the policy-making independence and case-control of the program; and (3) the commitment of program policy and staff to the use of law as a technique for social and institutional change. Each

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[1] Martin Rein, J. M. Miller, "Will the War on Poverty Change America," Transaction, Vol. 2, No. 5 (September 1967), p. 23.

element strongly affects the character and the function of the program. For this reason, it is important to consider each requirement in some detail.

A. The Role of Support Services in a Legal Services Program

The MFY Legal Services Unit benefits significantly from the availability of a number of support activities in the neighborhood. First, its work takes place within the context of a large infusion of specialized social services of Mobilization For Youth. This includes the Neighborhood Service centers and community development programs already discussed as well as youth training programs, psychiatric services, community education programs, and the resources of private service agencies in the area. The Unit staff also contains professional social workers and community organizers. Each of these offers important forms of support to the legal program.

The following is a brief discussion of the role of supporting services in Unit work. The NSC screens out large numbers of cases which don't necessitate legal intervention and in this way releases resources for legal research, preparation of test cases, and more extensive group representation. A reduced case load also permits the provision of higher quality of legal representation inasmuch as more time can be devoted to each case. The availability of community organization resources enables the Unit to enter cases where the presence of legal advocacy alone would be insufficient to establish the basis for legal action. Rent withholding under Article 7-A proceeding is an example of a case where considerable preparatory work must be done before legal counsel becomes relevant. Without supporting organization work, the Unit would be unable to use this form of tenant protection. MFY work training programs raise the quality of Unit representation by providing placement opportunities for youthful

defendants in criminal court proceedings. MFY psychiatrists provide the Unit with an independent diagnostic resources and assist in developing solutions sensitive to the special needs of troubled clients. The availability of Unit social workers has the effect of enlarging the range of cases the Unit can effectively service. Such cases involve situations where the legal problem is an outgrowth of a social problem which must be resolved if the legal problem is not to recur. Moreover, the presence of the social work perspective, although it sometimes produces conflict, contributes to the quality of service which can be accorded the individual client.

In the absence of such supporting services, or their local equivalents, it may be expected that a legal services program would be burdened with an unnecessarily large case load, have a limited capability for assisting clients with serious social problems, face organizational barriers to utilizing the full protections of the law, and offer a lower quality of service. Obviously such a legal program would have less relevance to the full range of legal problems associated with poverty status. Thus, a replication of the MFY experience would depend upon, in part, the availability of supporting social service resources.

B. Case Control and Policy-making Independence

The Legal Services Unit retains the right to determine how its resources are to be distributed among the areas of law actively practiced. Policy is established by the supervisory board which is insulated from outside interference. No public or private institution can limit the Unit's policy-making prerogatives or restrain it from independently initiating legal action. Equally important, the Unit retains complete control of the cases it handles. Unit attorneys are not subject to any outside authority with respect to their

representation of an individual. For these reasons, no institution or set of individuals can determine what kinds of cases the Unit may represent, force the Unit to drop a controversial issue, or change the way in which a Unit attorney counsels a given client.

Independence in policy matters and case control was won early in the Unit's practice. As noted in Chapter II, and detailed in Appendix II, in May 1964 the New York City Department of Welfare attempted to pre-empt a challenge to the administration of the Welfare Abuses Act by attacking Unit representation of welfare clients. Members of the Unit's faculty supervisory committee successfully defended the Unit's right to determine the cases it could handle, and no serious threat to Unit independence has occurred since that time.

The impact upon welfare administrative practices would have been foregone had the city prevented Unit intervention in behalf of welfare recipients. If the precedent of interference were to be established, subsequent threats of legal action might well lead to similar interference and, as a consequence, public housing tenants and applicants, or any other client group of a city institution might also be denied Unit assistance.

A second important factor underlying Unit independence is the absence of interference by the local bar. The Association of the Bar of New York City had an instrumental role in the court authorization of Unit practice, and has to date, made no attempt to intervene in Unit affairs. This situation sharply contrasts with that found in other cities where hostile bar associations have placed severe limitations on the work of neighborhood legal programs.

Although a thorough analysis of the factors which have supported Unit independence would require considerable added research, it is possible to propose some reasons why the Unit has been able to challenge powerful institutions and interests without

compromise. In the absence of additional research, the discussion will have to be suggestive at best.

New York offers a permissive political and institutional environment for the development of legal advocacy for the poor. The attitude of the New York Bar and the lack of effective retaliation by threatened public institutions can be traced to the size, and decentralized character of the New York political environment. By virtue of the great number of powerful competing interests, public institutions in New York City are not able to wield the influence available to similar institutions in smaller cities where political power is much more centralized. This fact makes the exercise of influence a much more difficult task than in a smaller political structure where an offending organization is more immediately evident and quickly controlled. New York City also lacks a single ghetto area which is the focus of attention. The complexity of competing interests, the decentralization of power, and the lack of a single focus of interest groups all contribute to the development and maintenance of an organization which challenges the status quo.

The relative neutrality of the legal community derives from its specialized nature, the structure of interests within it, and its size. Much of the opposition to legal services for the poor in other cities has originated with neighborhood lawyers whose practices depend upon low income clients, and from lawyers whose primary clients are businessmen or landlords with interests in poor neighborhoods. Both groups are less influential in the New York City legal community than they are elsewhere. The bar in New York has a strong representation of highly specialized attorneys associated with the corporate and Wall Street economic activities of the city. This group exercises a strong influence

on the bar and is not directly threatened by legal advocacy in behalf of the poor. In less economically specialized cities, the proportion of the bar which is comparable to New York corporation and Wall Street lawyers would be much smaller, and consequently the possibility of serious opposition to legal service for the poor, and the imposition of crippling restrictions upon the practice of poverty law would be more likely. The fact that the New York Bar contains a smaller and less influential proportion of attorneys who represent slum clients, is an important reason explaining the absence of interference with the policy-making independence and case control of the Unit.

Just as the proportion of the bar whose interests are threatened by legal services for the poor is less significant in New York City than in other cities, the same can be said of the economic interests which are directly affected by such a program. While their power is not negligible, slum landlords and commercial interest groups do not possess the same influence they do in a smaller, less complex urban economy. For example, despite the serious opposition of landlords, New York is the only major American city to maintain rent control in housing since the Second World War. In the New York political context then, one factor which has permitted the development and survival of legal services for the poor has been the relative inability of the interests most threatened to command the necessary political resources to neutralize the program. Both the composition of the bar and political ineffectuality of slum interests are dimensions of the same fact: because New York political and economic structure is so complex, highly differentiated, and political power is decentralized, an environment is created which is considerably more permissive of actions taken in behalf of the poor.

Conversely, in other cities where political power is more concentrated in a given set of groups (Chicago, New Haven, Boston), it is less likely that significant legal

action for the poor which challenges important interests would be allowed to develop. The experience of the legal services program in New Haven is a good illustration of political problems associated with asserting the interests of the poor. The program was limited in the types of cases it could service, was not allowed to make itself visible or easily accessible in its neighborhood, and suffered direct interference by its parent poverty organization in a controversial case. The local bar with the support of the political power structure was able to impose the damaging restrictions on the program and to interfere with individual cases through the poverty program. The lessons of this experience strongly influenced the early development of the MFY program.

Finally, the very size of the New York Bar provides the Unit with a source of legal talent unmatched by any other city. Large numbers of attorneys are trained and practice in New York City. The Unit benefits from a wide selection of talented and experienced attorneys committed to working with the poor. The relatively greater supply of such legal resources is of critical importance to Unit effectiveness.

C. The Commitment to Social Change

Much of the MFY experience is related to the definition of legal advocacy as a technique for effecting social or institutional change. The parameters of legal intervention are extremely wide; Unit attorneys examine each problem for its legal implications and where desireable and possible initiate appropriate action. As a consequence, the Unit is willing to attack the administrative practices of a public institution, support rent striking tenants, assist welfare recipient groups, contest the decisions of private charity organizations as the Society for the Prevention of Cruelty to Children as well as to constantly seek out test issues.

Without this emphasis, the Unit would have provided the poor with a new, more comprehensive form of service but would have had little impact beyond a case-to-case basis. In the absence of a commitment to change, it is unlikely that the Unit would have represented welfare recipients with the same effect, challenged the application and eviction prodecures of the New York City (public) Housing Authority, intervened in school suspension cases, or provided assistance to welfare or tenant groups. The commitment to change is a critical dimension of the MFY experience.

Of course, the Unit's emphasis upon change reflects the relative permissiveness of the New York political environment discussed immediately above. Were slum interests more influential in New York politics it is unlikely that the Legal Services Unit would have survived without making some damaging compromises. For this reason, both the policy-making independence and the social change orientation of the Unit are strategic factors underlying the nature of its experience. Whether legal services programs can play a similar role to that of MFY will depend in large part upon the attitude of the local bar and political power structure toward legal actions in behalf of the poor. This,in turn, is likely to be a function of the relative importance of slum interests in the urban economy. The issue of program independence is a far more difficult issue to resolve than that of providing essential social support services for the legal advocates. While such supplementary programs could be offered through the Model Cities Program, the neutralization of threatened interest groups in order to protect program independence is a far more problematic, though equally necessary, task.

D. Possible Future Problems of the Legal Services Unit

It is worthwhile to consider some problems which the Unit may encounter as it

becomes more established. It may be that as time passes, the excitement of extending the rule of law into the welfare state or the faith in the use of law as a technique of social change will diminish. Associated with this development, would be a routinization of the Unit's work and a corresponding lessening of the Unit's involvement with test issues and other change-related activities. The Unit, as a consequence, might fail to attract high-caliber young attorneys. The loss of attorneys committed to change would deal a severe blow to the Unit's orientation to change and profoundly affect the nature of the Unit's work.

Bureaucratic problems might well accompany both a de-emphasis of change and an increase in the scale of the program. The emergence of a bureaucratic atmosphere could reduce the Unit's responsiveness to the neighborhood and lead to a more formal and probably less creative style of operation. If more inflexible organizational modes of operation replaced the present informal style, the Unit could exhibit the similar characteristics to the public institutions presently challenged by the Unit. Such characteristics might include: disregard of the dignity of the client, insistance upon a code of etiquette between client and attorney, an emphasis upon client dependency, less concern for standards of high quality service, and the impersonal processing of large numbers of clients. Such a development would diminish the Unit's advantages of accessibility and negate the value of Unit resources for in-depth, comprehensive service.

Another problem which cannot be discussed in much detail here, but nevertheless should be mentioned, is the potential conflict between community representatives on a supervisory board and the staff of the Unit over program policies.

This possibility would increase were the program to grow more bureaucratic and less committed to change. A serious conflict may develop as the neighborhood becomes increasingly informed of their legal rights while conversely, the program staff becomes less willing to challenge vested slum interests. This problem also raises the legal ethics issue of whether lay direction of professionals can be accepted within legal tradition. Suffice it to note here that the question of the extent to which the local low income community is to participate in the determination of legal services program priorities is yet to be resolved.

The major potential problem areas can be summarized as:

(1) Bureaucratization of the program: routinization of the work development of anti-client bias, indifference, and program inflexibility.

(2) Decline in the commitment to social change: assumption of a service orientation, avoidance of controversy, less young talent.

(3) Community control issues: who determines program priorities? What is the role of lay community representatives?

(Note: The problem of securing adequate funding on a continuous basis at either the local or national level is assumed.)

E. Research Issues

The introductory chapter describes this research as hypothesis-seeking rather than hypothesis testing. It is also noted that this volume is ideally the first part of a two-part study which would include an exploration of the responses to legal advocacy for the poor. A first set of hypotheses relates to the second part of the study:

A. Maintenance of dependency relations or procedural advantages in public institutions:

It is hypothesized that public servants respond to the presence of legal advacates on the side of clients by devising means of reasserting a dominant relationship with the client. Public institutions would likewise seek to defend procedural advantages over the client and his

advocate or to re-establish such advantage when diminished.

B. The Relation of increased ability to master the environment to self-defeating attitudes of the poor:
It is hypothesized that the new resources for the poor to control their environment will encourage the development of attitudes of self-confidence and reduce feelings of powerlessness, fatalism, despair, and self-hatred which are so often associated with poverty status.

C. Legal advocacy and political alienation:
It is hypothesized that the presence of legal advocates who strive to win a just legal resolution of a client's problem will reduce distrust and alienation from government insitutions.

The remaining hypothesis relates to Unit strategies for providing legal counsel to indigent clients.

D. Unit representation of defendants in criminal proceedings and rates of recidivism:
It is hypothesized that defendants who benefit from Unit personal service, guidance through legal proceedings, and follow-up help will show a lower recidivism rate than defendants who do not enjoy such support.

These are meant to be merely suggestive of some areas of investigation which might throw light on the role of legal advocacy in attacking problems of poverty. To be of any use, each hypothesis would require considerable clarification.

A comparative evaluation of the advantages and disadvantages of different systems of providing the poor with legal assistance would also be a useful addition to the study of poverty law. Comparative case studies of a neighborhood law firm, judicare and multi-service center legal programs would seek to identify both the functions and the weaknesses of each system. This volume is one small step in that direction.

Part III. Poverty Law Applied: Summary of Findings

The experience of the Legal Services Unit of Mobilization For Youth with providing legal assistance to low income residents of the Lower East Side of New York

City has been examined from three perspectives: (1) to identify the functions legal advocacy can perform for the poor; (2) to evaluate the potential of the use of law as an instrument of social and institutional change; (3) and to determine the relationship of legal services to other program strategies for dealing with urban poverty.

The analysis shows that legal advocates can perform the following functions for the poor: reduce the effects of discriminatory biases in the law, make use of protections provided by the law, assert entitlements to public benefits, defend against abuse of constitutional rights, enforce the intent of welfare legislation, and reduce dependency on public servants. Legal services also offer valuable sources of evaluation feedback on the performance of public service programs or laws which affect the poor, and relate local social services programs to the judicial process.

Unit experience indicates law as an instrument of social change is limited by the unwillingness of the courts to substitute their discretion for that of public institutions or the legislature. Preparation of test cases is also constrained by the infrequency of cases which raise test issues, delays in the prosecution of such cases, and the preemption of test issues through advance settlement by the institutions concerned.

The most significant institutional change has occurred in the public welfare system where a clear set of standards and an impartial appeal system made effective legal advocacy possible. The presence of legal advocates, in itself, has also produced related change in the behavior of slum landlords and merchants.

It is found that legal advocates provide strategic support to tenant rent strikes and welfare recipient groups. The role of legal services consists of the following supportive functions: establishing a sense of security against retaliation, providing tactical advice

and legal interpretation, serving the other legal needs of group members. It is also shown that legal services increase the effectiveness of the Neighborhood Services Program of Mobilization For Youth. Legal advocates support neighborhood workers by making credible the possibility of legal action. Many cases were resolved by neighborhood lay advocates because they could meaningfully threaten court litigation. Conversely, the NSC's assist the legal program by screening large numbers of cases to identify those which require legal intervention and those which can be serviced without further recourse. The MFY Community Development program also supports the Legal Services Unit by handling the organizational work required for the tenant and welfare campaigns.

Legal services programs are found to have a high degree of relevance to comprehensive urban programs such as that provided by the Model Cities Act for the following reasons: (1) legal services meet a range of needs associated with poverty not met by other program strategies; (2) a legal service program can provide important feedback on the performance of local programs and provide the basis for a coordinated effort by the Model City Agency; (3) legal services complement the work of other programs.

Finally, the extent to which the legal services program can be generalized is examined, and it is found that the replication of experience will depend in part on: the availability of important support services, the attitude of the local bar and the political structure toward legal actions taken on the behalf of the poor, the policy-making independence of the program, the supply of skilled attorneys willing to work with the poor, and the orientation of the program toward the use of law as an instrument of social change. The decentralized multi-focal character of power distribution in New

York City was found to provide a permissive environment for the development and persistance of a legal program which challenges established public institutions and powerful vested interests.

This study is considered to be suggestive of further research required to specify the role of legal advocacy in poverty strategies and evaluate the relative merits of alternate systems of providing legal assistance to the poor.

APPENDICES

APPENDIX I

CASELOAD SUMMARY[1]

I. Jan. 1, 1964 - Dec. 31, 1964

Case Area	Number of Cases	Rate per Month	Percentage Change in Monthly Average	Percentage of Total Caseload
Welfare	N.A.	N.A.	--	N.A.
Domestic	N.A.	N.A.	--	N.A.
Criminal	128	10.6	--	18.9%
Housing[2]	307	25	--	44.5%
Consumer	54	4.5	--	8%
Miscellaneous[3]	82	6.8	--	12%

II. Jan. 1, 1965 - Dec. 31, 1965

Welfare[4]	105	10.5	--	11.7%
Domestic	N.A.	N.A.	N.A.	N.A.
Criminal	246	20.5	+93%	23.1%
Housing	254	21	-20%	23.8%
Consumer	118	39.8	+118%	11%
Miscellaneous	288	24	+256%	27%

APPENDIX I (CONT.)

III. Jan. 1, 1966 - Dec. 31, 1966

Case Area	Number of Cases	Rate per Month	Percentage Change in Monthly Rate from Previous Period	Percentage of Total Caseload
Welfare	329	27	+236%	12.3%
Domestic	N.A.	N.A.	N.A.	N.A.
Criminal	563	47	+129%	21.2%
Housing	614	51	+242%	23%
Consumer	172	14	+ 46%	6.5%
Miscellaneous	984	82	+241%	37%

IV. Jan. 1, 1967 - Dec. 31, 1967

Welfare	1094	91	+336%	22%
Domestic	699	58[5]	N.A.	15%
Criminal	759	63	+ 33%	15%
Housing	1135	95	+ 86%	23%
Consumer	378	32	+128%	7.7%
Miscellaneous	880	73	- 11%	18%

APPENDIX I (CONT.)

[1]The figures presented here are drawn from monthly caseload summaries of the Legal Services Unit of Mobilization For Youth. They represent broadly defined categories of the primary legal problems involved in each case. The figures (as noted on each Unit monthly caseload summary) do not:

> "include representation provided to tenant groups and groups of welfare recipients . . . at other centers in this area, nor does it include the numerous clients who simply sought and received legal advice from attorneys by telephone or by visiting the offices."

[2]The housing cases which make up this figure include clients with problems in both public and private housing.

[3]Miscellaneous here includes a wide variety of legal issues. Cases incorporated in this category include but are not limited to the following kinds of problems:

> workingman's compensation, disability insurance, mental commitment proceedings, unemployment insurance, social security payments, change of name, wage garnishing, income tax.

[4]The figure here represents the welfare cases handled by the Unit from March through December 1965.

[5]Domestic relations case figures are available for February through December 1967. The monthly average is computed on the basis of a 12-month year including an estimate for the month of January, 1967.

APPENDIX II

A Strategic Element of the Legal Unit Experience: The Struggle for Policy-making Independence

Introduction

In January 1964, a policy memorandum entitled "Poverty, Law, and Social Welfare" which envisioned the provision of legal assistance to clients of public programs, was approved by the Faculty Supervisory Committee. Clearly the initiation of legal action on the behalf of a welfare recipient or an applicant for a public housing unit could bring the Unit into serious conflict with the agencies responsible for servicing such clients. For this reason, "Poverty, Law, and Social Welfare" opened the way for activities which were to bring about the first and most serious threat to the policy-making independence of the Legal Services Unit.

The Welfare Abuses Act

After the writing of "Poverty, Law and Social Welfare" the Unit Director met with MFY staff to identify problems which, because of their serious and pervasive nature, required immediate attention. Practices of the New York City Department of Welfare were the first to be challenged. The administrative practice first to be contested was Section 139a of the "Welfare Abuses Act" which provided that a welfare applicant can be found ineligible for assistance if it is ascertained that he came to New York for the express purpose of receiving welfare benefits. MFY workers indicated that the statutory criteria were not being observed, and reported a certain helplessness in coping with the situation.[1]

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[1] Edward V. Sparer, "Poverty, Law and Social Welfare," (New York: Mobilization for Youth, Jan. 1964, unpublished memorandum), p. 6.

The "Welfare Abuse Law" was selected as the first test for the following reasons:

1. The MFY social workers were clear that it was a serious problem with hundreds of clients being turned away in the most inhuman fashion;

2. It involved an apparent misapplication of the law;

3. There was a chance of winning the issue;

4. It was felt that the political and moral questions favored the Legal Unit's action.

After meeting with MFY social workers, a group of six cases which dramatically illustrated the unjust way in which Section 139a was being applied, were selected for testing. Concurrently, legal research was conducted into state and welfare law and the use of the fair hearing procedure to challenge unlawful determinations of the Welfare Department. At the time few at MFY had heard of the fair hearing procedure. Although the hearing is explicitly guaranteed by federal welfare legislation, few clients had used it. While the welfare challenge was being prepared, other attorneys of the Legal Services Unit were already handling the litigation for MFY-organized rent strikes. Both the welfare challenge and the housing cases led to a direct challenge to the independence of the Unit.

Due to the possible political consequences of challenging practices of the Department of Welfare, the Unit Director informed the executive leadership of MFY of the impending action. Although the legal action was supported, he was advised to seek the cooperation of the Department of Welfare. Indeed, several attempts were made to get that cooperation on the welfare abuse test cases. However, after initially welcoming a challenge of a law which he had originally opposed, then Welfare Commissioner Dumpson warned MFY administrators that the legal representation of welfare claimants seriously threatened the friendly relations extant between the two agencies. He also claimed that

the Department of Welfare was responsible for all cases and the intrusion of attorneys upon welfare proceedings was not in the best interests of the client. Nevertheless, MFY was already committed to providing legal representation to the poor and intended to see the cases through. In late April 1964, after a series of exchanges in which the Legal Unit refused to drop the welfare fair hearing appeals and as the number of rent strikes organized by MFY were increasing, city representatives on the MFY Board of Directors decided to investigate both activities to determine how they might be controlled. The work of both the Legal Services Unit and the Community Development program was to be examined by the Committee on Direct Operations in May of 1964.

Perceptions of the Importance of Policy-making Independence for the Legal Services Unit

Prior to the intervention of city representatives through the investigation, the Unit Director had come to favor the separation of the policy-making structure from that of MFY. From the beginning the Director insisted that MFY could not direct the Legal Unit; there was to be no interference with the conduct of individual cases - or any dilution of the best defense of a client's interests. While the emphasis upon the primacy of a client's interest can be traced to underlying legal ethics, it is also a product of the first director's observation of the consequences associated with the subordination of a legal program to the political interests of its parent poverty program. In early fall of 1963, the Director, a member of the still-to-be-formed Faculty Supervisory Committee and a MFY administrative officer, visited the legal program of Community Progress Incorporated in New Haven, Connecticut. They found a severely limited program. The attorneys were not permitted to publicize their services; they were not permitted to play an adversarial role for neighborhood groups; the cases they were allowed to service were narrowly defined. Members of

the Yale University Law faculty complained that the director of the poverty agency had threatened the legal staff with summary dismissal if they were to act in an adversarial role for the neighborhood. The group met with administrative officials of the parent organization who claimed that there was no conflict of interest with the legal program and others who justified the restrictions on the basis of political necessity (such as the hostility of the local bar to legal services for the poor). The effect of this experience was to strengthen the Director's determination to maintain the Unit's independence. The New Haven experience clearly illustrated the significance of reserving policy-making independence and case control to the legal program itself.

Attempts to Formalize Unit Independence From Mobilization For Youth

From the very beginning, then, the importance of policy independence was recognized. Thus, while drawing up the petition for the court authorization of the Unit, the Director anticipated that with city membership constituting one third of the MFY Board, it would be impossible for the Legal Unit to retain its independence and at the same time represent clients whose interests were in conflict with those of city institutions. He believed, for example, that in order to provide legal representation to clients of welfare programs, the Legal Unit must be free from interference by the Welfare Department, and, for this reason the Unit could not be completely free to provide legal representation regardless of the issue involved or institution affected unless program independence was ensured.

The court petition, as approved, established program independence and case control of the Legal Services Unit with the following points:

1. The basic policy decisions of the Legal Unit will be made by a supervisory committee made up of faculty from Columbia Law School;

2. The day-to-day operation of the Legal Unit shall be the responsibility of the Legal Director;

3. There will be no interference in the conduct of particular cases by lay members or officers of MFY.[1]

Thus, the formal recognition of the MFY legal program recognizes its independence from the parent organization. The importance of this fact for the subsequent experience of the Legal Services Unit should not be underestimated.

Additional Efforts to Protect Unit Independence

Despite the binding provisions of the Unit authorization, the Director still had reservations about the advisability of the tie with Mobilization For Youth. His fears of interference with Unit prerogative increased throughout the negotiations with the Department of Welfare as conciliation and compromise were urged upon him. The Director concluded that the Unit could be best protected if it existed as a separate corporate entity from MFY. He was supported in this by members of the President's Committee on Juvenile Delinquency and Youth Crime (a sponsor of MFY) who felt the separation of the Legal Unit from MFY would absolve them,to some extent, of political problems which might arise from the activities of the Unit.

In April 1964, a memorandum supporting the reorganization of the Legal Unit as a separate corporation, was prepared by the Director. He proposed that the Faculty Advisory Committee become a board of directors and that the Legal Unit be funded ind ependently of MFY. The issue of separate organization generated a serious controversy on the Faculty Advisory Committee and it quickly became apparent that an independent corporate organization would not be approved. The prevailing argument was that as an experimental

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[1]Mobilization For Youth, "Petition To Appellate Division of the Supreme Court of New York," (January 1964, Unpublished Petition For Court Authorization of the Legal Services Unit), p. 3.

program, the Legal Services Unit should strive for autonomy within MFY for a trial period before divesting itself of MFY ties.

Still unsatisfied with the organizational protection against political interference in Legal Unit policies, the Director drew up a policy statement to act as an additional buffer against interference with Unit activities. It contained the following principles governing the operation of the Unit:

1. The Unit was to provide direct legal representation of clients in welfare, housing,and related matters.

2. Policy-making independence of the Legal Unit and prohibition of any interference with such independence by staff or lay members of MFY was to be guaranteed.

3. Complete control of individual cases was reserved to the Legal Unit.

Despite the fact that the last two points were binding clauses of the court authorization of the Legal Unit, it was reasoned that a confirmation of them by the Board would serve to blunt emerging attempts to limit the Unit. A statement confirming the above points was approved by the Faculty Advisory Committee in late April 1964, and became the center of controversy when city representatives on the MFY Board began seeking ways to control the Legal Unit.

The Committee on Direct Operations: The Investigation

Throughout the spring of 1964, there were mounting pressures upon MFY to curtail activities which were beginning to generate political controversy. MFY's participation in the organization of rent strikes was one source of political irritation; the Legal Unit's representation of welfare clients and striking tenants was another.

One expression of the growing pressure on MFY took the form of an investigation within MFY of the offending activities, undertaken at the initiative of representatives of city programs on the MFY Board. The Committee on Direct Operations, chaired by Henry Cohen, who as Deputy Administrator for the City of New York, and the member of the MFY Board in charge of liaison with the city administration, was responsible for the investigation. Still bitterly opposing the legal representation of welfare clients, Department of Welfare representatives on the MFY Board actively supported the investigation. Cohen, as a representative of the city, was critical of the Legal Unit because of its potential for political disruption, and its intent to represent clients in actions against city programs.

The Faculty Statement which affirmed Unit policy-making independence and case control became involved in the city investigation almost immediately after it was adopted. In order to establish the principles of independence prior to the investigation, Sparer sought to present the Faculty Statement to the MFY Board for quick approval. Nevertheless, at the insistence of Henry Cohen, Sparer was informed by the chairman of the Board that the statement first had to be approved by the Committee on Direct Operations. At this point, the issue of the Unit's independence was joined.

The Meeting of the Committee on Direct Operations

In June 1964, the Committee on Direct Operations met to consider the Faculty Advisory Committee's statement. The meeting in effect served as a showdown between representatives of city government interests and those defending the independence of the Legal Services Unit. As such, it illustrates both the dangers of po-

litical interference with programs committed to significant social change, and the reverse side of the coin, the importance of independence from such pressures. Present at the meeting were Cohen, Commissioner of Welfare Dumpson, Chairman of the MFY Board Winslow Carlton, a representative of the city probation department, a local priest, Judge Florence Kelly of the Family Court of New York, Sparer, and Marvin Frankel, a faculty member of the Columbia Law School and Chairman of the Faculty Advisory Committee of the Legal Unit. Judge Kelly, a well-known liberal jurist, was invited to the meeting by the Welfare representatives in order to counter the expertise of the Legal Unit proponents.

Marvin Frankel opened the meeting with an explanation of the faculty policy statement and a strong defense of its major points. He asserted that attempts to influence the lawyer-client relationship would violate legal ethics, and moreover, the court authorization of the Legal Unit specifically prohibited "interference on the conduct of particular cases by lay members or officers of the Petitioner." Frankel argued further that the petition placed the responsibility for the policy of the Legal Unit solely in the hands of the supervisory committee, and while the MFY Board could establish administrative guidelines for the Legal Unit, it could not make policy nor could it intervene in a particular case.

Henry Cohen and Commissioner of Welfare Dumpson answered with the following points: (1) A variety of professions were involved in MFY, each with its own set of ethics and its own definition of the client's interest, and because MFY was a cooperative effort and had to be flexible, no profession could remain pure in terms of its own set of ethics. Compromise and responsiveness to the demands of other professions were a necessity, if MFY was to work. (2) City agencies were as interested

as MFY in the best interests of the poor, and inasmuch as men of good will were present on both sides there was no need for adversarial confrontations. In view of the equal commitment to the poor, it was possible to make compromises and work together on a given problem. By implication, such compromises could not only affect how far a lawyer might pursue an individual client's interest, but presumably could also affect the nature of the policies defining which kinds of cases would be serviced.

Judge Kelly, in an unexpected statement, stressed the inviolability of the lawyer-client relationship and asserted that no special interest was to interfere with it. After a see-saw battle, the Faculty Advisory Committee's Policy statement of May 15, 1964 was approved by a 4-0 vote with 3 abstentions. Later in June the report was presented to the Board and accepted without controversy. By this time it was early summer, and a great deal of work, including the welfare abuse challenge, remained to be done. The Unit Director was convinced at the time that the Legal Unit's effectiveness would have been destroyed had not the memorandum been accepted. Without emphatic assurance of the Legal Unit's independence, he was prepared to resign.

Conclusion

The controversy surrounding the policy-making independence of the Legal Services Unit was a crucial test. It is likely that had the city representatives prevailed, the experience of the Unit would have been similar to that of the New Haven Program. In this case, city institutions whose interests were threatened by legal action could pre-empt such challenges through the MFY Board. Were this form of in-

tervention to be established, it is unlikely that the Unit could have provided assistance to rent strike groups, public housing tenants or applicants, welfare recipient organizations and unemployment insurance beneficiaries for very long. The range of problems met by the Unit could have been under these circumstances little different than that of the Legal Aid Society. The extension of legal scrutiny to the affairs of public programs which are an important feature of the low-income person's existence would have been thus defeated. For this reason, policy-making independence and case control have been strategic ingredients of the Legal Services Unit experience. Both are, in no small way, key prerequisites for the wide, often innovative, impact the Unit has been able to exert.

APPENDIX III

The following case summaries* illustrate the psychiatric examination practices of the New York Department of Welfare before they were challenged by the Legal Services Unit and a new procedure was negotiated.

Case 1: Mrs. J., a Harlem mother of eight children, was waiting at her apartment for a visit from her worker concerning a special grant request made over two months earlier. The investigator came with a co-worker and a psychiatrist. The psychiatrist came unannounced and neglected to inform her as to the reason for his visit. He asked her three or four preliminary questions, whereupon Mrs. J., indignant at the unannounced visit and examination, asked her visitors to leave. The visitors left. Mrs. J. later went to her unit supervisor to whom she complained about the lack of prior notice for, and the necessity of, the examination. She was told to go home. At home she was soon confronted by a number of policemen who took her to Bellevue.

The examining doctor's certificate acknowledged that he had been with Mrs. J. for only a few minutes. It stated that she could not function in the community, that she was homicidal, and that hospitalization was urgent. After nine days at Bellevue she was released due to the absence of a need for hospitalization.

Case 2: Mrs. M., the mother of two children and living on the Lower East Side, had problems with her investigator in part due to the latter's failure, after two months, to secure for her a much needed apartment. Without prior notice of any intent to examine her, Mrs. M. was seen at the Welfare Center by a psychiatrist for 15 minutes. The doctor found her to be schizophrenic, paranoid, and unable to care for her two children, She was sent to Bellevue where she stayed for 12 days. The Bellevue psychiatrist found her not to be psychotic and released her. After a lengthy examination a psychiatrist at MFY found that psychiatric treatment and referral were not appropriate and concluded with a diagnosis of "situational maladjustment".

A day after Mrs. M's release a neglect proceeding was initiated by her investigator. Mrs. M's children had been taken from her when she went to Bellevue. At the hearing the referring psychiatrist testified to Mrs. M's incompetence in caring for her children.

Case 3: Miss S., a mother of three children lives with her father on the Lower East Side and has had frequent arguments with her investigator. Late in May, without notice, she was visited by her investigator and a psychiatrist who, according to Miss S., identified himself as a social worker. After a five minute examination, during which

the client was asked a few questions, the doctor conferred with the investigator and then left.

On the basis of this examination the doctor felt qualified to conclude, in his referral letter to Bellevue, that the client had a history of lesbianism, neglected and often deserted her family, was emotionally unstable and frequently hysterical, was unable to function in the community, and was a danger to herself and others.

Bellevue released Miss S. after holding her two days. An MFY psychiatrist examined her soon after and found that she was not in need of hospitalization and that with casework assistance she could adequately care for her children.

Subsequently Miss S.'s father was informed that if he did not appear at the Welfare Center for psychiatric examination his checks would be stopped. On advice of counsel the father refused to be examined.

Case 4: Mrs. F., a Brooklyn mother of eight, was visited without notice in early June by caseworkers, police and a psychiatrist, the latter of whom asked her a couple of questions and left. She was brought to Kings County Hospital and after two hours, released. Mrs. F. reports that the doctor at the hospital assured her that she did not require hospitalization. At a neglect hearing, proceedings for which were initiated the day after Mrs. F.'s release, the attorney from the Welfare Department, when asked by the Judge about the client's mental competence, declined to offer into evidence anything about the examination or its conclusions.

Mrs. F. was subsequently seen by an MFY psychiatrist who recommended that her children be returned to her and that she receive casework assistance.

Case 5: Mr. S., an 18 year old residing in the MFY area, was receiving HR from Welfare and was attending the MFY Teen Service Clinic. Mr. S.'s attorney was aware of the Department's desire to have the client examined by a psychiatrist and in April notified the Department, i.e., the Deputy Commissioner, the Administrator and the Unit Supervisor, of the attorney's desire to have an examination by an independent psychiatrist before the Department attempted to have Mr. S. committed. Despite this knowledge Mr. S. was induced, by a false pretense, to come to the Welfare Center where he was examined and committed to Bellevue. After four days at Bellevue he was released.

Case 6: Mrs. G., a woman in her late sixties, receiving AD, had difficulty with the Department relating to her two-party checks to Con Edison. During an unannounced and brief visit a Welfare psychiatrist examined Mrs. G. and found her dangerous to herself and in urgent need of hospitalization. Bellevue refused to admit her.

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*The summaries are contained in a letter from Harold J. Rothwax to Honorable Mitchell Ginsberg, Commissioner, Department of Welfare, August 8, 1966, pp. 2-4.

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