

Practicing Law for Poor People

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A growing number of young lawyers express an eagerness to work for poor people. They are interested in "poverty law" because they have a moral concern which speaks against poverty and in favor of legal representation for everyone; because they have a selfish interest in their own life style; and, in many cases, because a stint working for the poor will help them become teachers or avoid the draft. For most of them, working for poor people means making somewhat less money than could be made elsewhere, but that sacrifice is a fair trade for the sense of doing what they view as morally right, and for the lack of pressure that poverty law affords when compared with Wall Street practice.

While most of these young lawyers understand that there will be a different tone and style in a poverty practice, they expect their role as a lawyer to be much the same as that of a traditional practitioner. They intend to—and by and large they do—practice law in the traditional model, except with poor people as clients.¹ Unfortunately, the traditional model of legal practice for private clients is not what poor people need; in many ways, it is exactly what they do not need.

Poor people are not just like rich people without money. Poor people do not have legal problems like those of the private plaintiffs and defendants in law school casebooks. People who are not poor are like casebook people. In so far as the law is concerned, they lead harmonious and settled private lives; except for their business involvements, their lives usually do not demand the skills of a lawyer. Occasionally, one of them gets hit by a car, or decides to buy a house, or lets his dog bite someone. The settled and harmonious pattern of life is then either broken or there is a threat that without care it may be broken. This is the law school model of a personal legal problem; law schools train lawyers to take care of such problems and to understand the role of a lawyer in those terms.

Poor people get hit by cars too; they get evicted; they have their furniture repossessed; they can't pay their utility bills. But they do not have personal legal problems in the law school way. Nothing that

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1. Jones, *Wall Street Goes into the Ghetto*, SIGNATURE, Feb. 1970, at 46.

happens to them breaks up or threatens to break up a settled and harmonious life. Poor people do not lead settled lives into which the law seldom intrudes; they are constantly involved with the law in its most intrusive forms. For instance, poor people must go to government officials for many of the things which not-poor people get privately. Life would be very difficult for the not-poor person if he had to fill out an income tax return once or twice a week. Poverty creates an abrasive interface with society; poor people are always bumping into sharp legal things. The law school model of personal legal problems, of solving them and returning the client to the smooth and orderly world in television advertisements, doesn't apply to poor people.

Additions to the law school curriculum like "Law and the Poor" serve a useful function by making it crystal clear that the remainder of the curriculum deals with law and the rich; they do little, however, to change the law schools' treatment of legal problems, or their perception of the proper roles and concerns of a lawyer. Law schools have rarely asked questions about how the law came to be as it is. They have never concerned themselves or their students with what led a client to become involved with the law, or with what happened to him after he won or lost in court.

A striking example of this omission is the total failure of most law schools, law students, and lawyers to ask what happens to a criminal once he is convicted. Until very recently, lawyers have regarded conviction (and the final appeal) as marking the end of a defendant's involvement with the "law." For the criminal offender, however, conviction is more a beginning than an end. To the great detriment of both prisoners and society, lawyers (and therefore courts) have not seen the penal system as part of the legal system. This blindness has cost prisoners fundamental rights, and has led to a recidivist rate which virtually guarantees the society and the convict that once a man is convicted of a crime, he will never again be a free or useful person.

Similarly, and with similar consequences, lawyers have not seen that what causes a client to become involved in a civil action, or what happens to him after it is over, are lawyers' concerns. No law school course, including "Law and the Poor," concerns itself with what happened to Mrs. Smith after the Supreme Court decided that Georgia could not withhold her welfare payments because she was having sexual intercourse with a man who was not her husband.² Few lawyers ask themselves whether Mrs. James has a decent place to live since a three-judge

2. *King v. Smith*, 392 U.S. 309 (1968).

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Federal court held that it was a violation of the Fourth Amendment for New York State to cut off her welfare grant when she refused to let a caseworker into her home without a warrant.³ The traditional practitioner is usually safe in forgetting about his client after the case is over and the bill is paid; but Mrs. Smith, Mrs. James, other welfare recipients, poor people who need but cannot get welfare, underpaid laborers, old or disabled people on fixed incomes, and other poor people will still be bumped and chafed and jostled by the law after the lawyers have completed their last appeal, shaken hands with those who opposed their clients, and snapped their brief cases closed.

The lawyer for poor people must understand the relationship of poor people and the law before he can decide what his practice must be like. In addition, he must face some facts about himself and his colleagues. If he is truthful, he will admit that he is unlikely to be practicing full-time poverty law for very long. The practice of poverty law is largely financed by the government, which either does not expect or is unwilling to pay lawyers to make a career of working for poor people. Consequently, there are a great many \$9,000 jobs in poverty law, but very few \$25,000 ones. The vast majority of young lawyers, though willing and eager to accept less money than they could make elsewhere at the beginning of their practice, will not accept the same amount at the middle or end of their careers. Experience in poverty law brings skills and opportunities to use them, but for the moment at least, there is very little chance for advancement.

Several other factors also serve to shorten the time one can expect a lawyer to remain in poverty practice. It is usually the government which pays a poverty lawyer; it is also often the government that a poverty lawyer will oppose in his client's interests. Thus, the more effective a poor people's lawyer, the more problems he poses for those who pay him. Even the few poverty lawyers who do decide to make a career of poor people's law face the threat that the decision is not entirely in their hands; the better they are at their jobs, the more likely it becomes that the government will eliminate their jobs.⁴

In addition to the problems of salary and job security, the frustrations of poverty law make it an unlikely career for many lawyers. The

3. *James v. Goldberg*, 303 F. Supp. 935 (S.D.N.Y. 1969).

4. See N.Y. Times, Jan. 17, 1970, at 21, col. 4, quoting criticism of legal services programs by Assistant Attorney General William Ruckelshaus; Wieck, *Justice for All on the Defensive*, NEW REPUBLIC, Feb. 21, 1970, at 12, quoting a memorandum from the chairman of the A.B.A. Standing Committee on Legal Aid and Indigent Defendants describing political pressures on legal services programs.

kind of practice which I will outline below is not intellectually stimulating. Much of it is dull and routine; the rest is exciting but requires little in the way of "brains." Challenging intellectual work can be done in appellate poverty law, but appellate practice has only a limited number of openings, and is both irrelevant and beyond the practical reach of the lawyer who develops the kind of practice which is most responsive to the needs of poor people. Though a poor people's lawyer can often win easy battles against case workers, desk sergeants, and credit managers, his struggles with other lawyers will not be so pleasant. The law is so badly slanted against poor people that they can win only if their lawyer is better than most lawyers can reasonably expect themselves to be. By delaying, by refusing to stipulate, by a hundred other techniques that take extensive secretarial and xerographic facilities, lawyers for the other side can frustrate the poverty lawyer and tax his limited office budget to the breaking point. Still more disturbing, judges often scoff at poverty lawyers, calling their arguments "garbage" and "nonsense."

Problems with other professionals are not the most serious ones; poverty lawyers find that poor people are not always delighted with their lawyers. A great many of the difficulties in poverty law can be tolerated if the lawyer can make it with his clients; but there are important problems of style, differences in income and education, frustrations and anger about failures, and a host of social, cultural and psychological differences that tend to divide rather than unite poor people and their lawyers. The lawyer who wants to help and wants to be accepted, and cannot help and is not accepted, will be frustrated, and very often he will leave.

For all of these reasons, the fact is that lawyers do not stay long in poverty practice. The lawyer who wants to build a practice that will serve the needs of poor people must be aware of this fact.

A lawyer who wants to work for poor people should also learn some facts about our society. Knowledge of these facts is not, strictly speaking, necessary to determine how a poverty law practice should be shaped; the legal needs of poor people and the scarcity of lawyers available to them pretty nearly determine the form of a poverty law practice. A realistic look at our society, however, can help the lawyer understand what he is doing, why he is doing it, and where it must lead.

Poor people are not poor by chance; they are not poor through lack of personal merit; they are not poor because it is inevitable that someone be poor. Poor people are poor because some people who are not poor believe that it is a good thing to have some poor people around. Of course, many of the people who are not poor don't believe this, but

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most of them have been led to believe that poor people are poor because they are bad, that poverty for some doesn't affect everyone, that anyway poverty cannot be stopped, and that, even if it could, it would cost too much to do it.

Poverty will not be stopped by people who are not poor. If poverty is stopped, it will be stopped by poor people. And poor people can stop poverty only if they work at it together. The lawyer who wants to serve poor people must put his skills to the task of helping poor people organize themselves. This is not the traditional use of a lawyer's skills; in many ways it violates some of the basic tenets of the profession. Nevertheless, a realistic analysis of the structure of poverty, and a fair assessment of the legal needs of the poor and the legal talent available to meet them, lead a lawyer to this role.

If all the lawyers in the country worked full time, they could not deal with even the articulated legal problems of the poor. And even if somehow lawyers could deal with those articulated problems, they would not change very much the tangle of unarticulated legal troubles in which poor people live. In fact, only a very few lawyers will concern themselves with poor people, and those who do so will probably be at it for only a while. In this setting the object of practicing poverty law must be to organize poor people, rather than to solve their legal problems. The proper job for a poor people's lawyer is helping poor people to organize themselves to change things so that either no one is poor or (less radically) so that poverty does not entail misery.

Two major touchstones of traditional legal practice—the solving of legal problems and the one-to-one relationship between attorney and client—are either not relevant to poor people or harmful to them. Traditional practice hurts poor people by isolating them from each other, and fails to meet their need for a lawyer by completely misunderstanding that need. Poor people have few individual legal problems in the traditional sense; their problems are the product of poverty, and are common to all poor people. The lawyer for poor individuals is likely, whether he wins cases or not, to leave his clients precisely where he found them, except that they will have developed a dependency on his skills to smooth out the roughest spots in their lives.

The lawyer will eventually go or be taken away; he does not have to stay, and the government which gave him can take him back just as it does welfare. He can be another hook on which poor people depend, or he can help the poor build something which rests upon themselves—something which cannot be taken away and which will not leave until all of them can leave. Specifically, the lawyer must seek to strengthen

existing organizations of poor people, and to help poor people start organizations where none exist. There are several techniques for doing this, but all of them run counter to very deeply rooted notions in law school training, professionalism and middle-class humanism. I shall say something about the techniques which have already been used by lawyers to help organize poor people; but the techniques are not nearly so important as the mentality of the lawyer who uses them. The techniques will prove unsuccessful if applied by a lawyer who misunderstands his role; and the lawyer who knows what he is about will find the techniques to do his job.

The starkest picture of the "proper" mentality for a poor people's lawyer is painted in a story told by a very successful welfare rights organizer:

I once found a recipient who worked hard at organizing, and was particularly good in the initial stages of getting to talk to new people. I picked her up at her apartment one morning to go out knocking on doors. While I was there, I saw her child, and I noticed that he seemed to be retarded. Because the boy was too young for school and the family never saw a doctor, the mother had never found out that something was seriously wrong with her son. I didn't tell her. If I had, she would have stopped working at welfare organizing to rush around looking for help for her son. I had some personal problems about doing that, but I'm an organizer, not a social worker.

I have heard this story related several times; each time, the people who have not heard it before gasp, fidget in their seats, and shrink away from the organizer. It is natural for them to be repelled, for this story embodies the very hardest line about organizing. Not everyone can handle the "personal problems" which arise from a primary commitment to organizing. The very things which make a lawyer want to work for poor people make it difficult to help them in the most effective way. Few can accept the organizer's model fully; but the more one is able to accept it, the more he can give poor people the wherewithal to change a world that hurts them.

If organizing is the object of a poverty practice, what are the methods for achieving that object? One method by which an existing organization can be strengthened is for a lawyer to refuse to handle matters for individuals not in the organization. A lawyer is a valuable piece of property in a poor community; an organization that can command his skills for its members, and deny them to non-members, has a powerful means of building its membership.

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Turning people away is difficult: The values which made a lawyer want to help poor people will make it hard to turn away a person with a problem; the professional ethic is full of talk about representing all who need representation; moreover, the government, which often pays the lawyer, has guidelines designed to ensure that all who come get served. The latter points are weakened when one realizes that there are too many poor people seeking or in need of aid to help them all. A seemingly neutral policy of "first-come, first-served" cuts against the least informed, the least mobile, and the most oppressed. Some sieve is inevitably applied to the work a poverty lawyer does; that sieve can be one he chooses consciously in order to serve a particular end, or it can be one he chooses without thinking, and with no aim at all. On the other hand, the personal problems involved in turning away people who need help are severe; even if the lawyer remembers that someone must be turned away—or left unsought—these problems will persist. He must cope as best he can, finding a blend that fits what he is as a person. He accepts some unorganized clients and sacrifices something as an organizer; he rejects some and sacrifices something as a person.

Selection of clients is only the first step; the cornerstone of a practice is the kind of service a lawyer provides for his clients. The hallmark of an effective poor people's practice is that the lawyer does not do anything for his clients that they can do or be taught to do for themselves. The standards of success for a poor people's lawyer are how well he can recognize all the things his clients can do with a little of his help, and how well he can teach them to do more.

There are several reasons for building a practice with these goals. First, there aren't enough lawyers to serve poor people, so poor people must be helped and taught to serve themselves. Second, it is better for poor people to acquire new skills than new dependencies. Third, poor people can often do what lawyers cannot or will not do. Finally, the law ought to be demystified for all laymen, but especially for the poor. More important than the specific techniques is the lawyer's belief that his clients are able to do a great many "legal" things for themselves. Most people who are not poor believe that poor people are unable to take care of themselves, let alone do work traditionally reserved for professionals. In addition to this general belief in the incompetence of poor people, lawyers are taught to believe, and have a three-year investment in believing, that what they have learned in law school was hard to learn, and that they are somehow special for having learned it. It is difficult for a lawyer to commit himself to believing that poor people can learn

the law and be effective advocates; but until he believes that, a lawyer will create dependency instead of strength for his clients, and add to rather than reduce their plight.

Four ways in which a lawyer can help his clients use his knowledge are (1) informing individuals and groups of their rights, (2) writing manuals and other materials, (3) training lay advocates, and (4) educating groups for confrontation. None is particularly glamorous, but all are extremely important.

(1) The computation of welfare budgets provides an excellent example of the value of talking about legal rights. Two computations determine the amount of money a welfare family receives—determination of need and determination of available income and resources. The rules for making these computations are frequently misapplied by case-workers.⁵ Knowledge of them can provide a big advantage for welfare recipients.

For all practical purposes, the rules are now completely unintelligible to welfare recipients. A lawyer can change that; he can talk about the rules in a way which gives welfare recipients some understanding of their rights and of some of the ways the rules are misapplied.

In Mississippi, for instance, the welfare standard of need was recomputed pursuant to requirements in the Social Security Act which mandated a cost-of-living increase on July 1, 1969.⁶ The benefits of the recomputation were given to recipients on staggered dates over a six-month period. Though some recipients lost six months of benefits because of this process, no retroactive payments were made and none are contemplated. However, any recipient who knew of the changes did not have to wait for his periodic recertification; he was able to demand that his check be figured on the basis of the updated standard immediately. An alert lawyer can be extremely valuable in this situation. The group for which the lawyer works can prove the value of belonging to the group: "Join up and we'll get you your new welfare raise now, rather than in three months."

If instead of working with the group to inform people of their rights, the lawyer were to bring suit and lose, he would have wasted much time. If he won the suit he would have gained a few very important dollars for some of the poorest people in the country, but at the end of the suit almost no poor person who got the extra money would know

5. U.S. DEP'T OF HEALTH, EDUCATION AND WELFARE & N.Y. STATE DEP'T OF SOCIAL SERVICES, *THE ADMINISTRATION OF AID TO FAMILIES WITH DEPENDENT CHILDREN* 178-186 (1969).

6. 42 U.S.C.A. § 602(a)(23) (1969).

how he got it, that it had been denied him illegally,⁷ that there was a way to challenge and beat the Mississippi welfare department, or that there will be cases in the future where he will lose what he could have won by organizing.

(2) Producing materials, however brief and poorly printed, which make the law accessible to poor people is a vital task, at times more important than speaking to groups in that larger numbers can be reached. Having a summary and explanation of the laws which affect their lives means a great deal to poor people. It means that they have a weapon with which to fight back, and knowing that they have the weapon builds the security to engage in the fight. Many poor people do not even know that they have legal rights; very few know the substance of even their most fundamental rights.

(3) The value and method of lay advocacy training is obvious; it follows directly from the notion of making the law accessible to poor people. In the Mississippi case, the lawyer could teach some members of the Mississippi welfare rights groups to teach other members and prospective members about the new rule. Not only would the information reach more people this way, but welfare recipients would have learned another way to help themselves.

If properly trained, welfare recipients can help other recipients compute their own budgets, figure their own available income and resources, succeed at eligibility interviews, win fair hearings, negotiate with merchants for credit, lobby for legislative and administrative changes in welfare, appear before hospital boards, and so on. Most often poor people can help each other better than lawyers can; they have easier access to other poor people, know the problems intimately, and can act in ways which lawyers fear to act. Moreover, the problems they work on for other recipients are still their own problems; their impatience with "the man's game" is personal and their anger does not have any of the untrue ring often present in the anger of a professional advocate.

The two biggest problems in lay advocacy training are, first, that lawyers have not begun to know all the ways, or even the most important ways, in which an advocate can help poor people; and second, that poor people and their lawyers are still not aware of all the things which poor people can do that only lawyers have traditionally done. It is only recently that lawyers for poor people have appeared before the policy or budget staffs of government benefit programs; training poor people

7. Cf. *Brooks v. Yeatman*, Civil No. 5559 (M.D. Tenn., Jan. 26, 1970).

to appear for themselves in these technical forums where the real decisions are made is difficult but must be done. Every new way which lawyers find to help poor people must be turned into a way for poor people to help themselves.

Mrs. Beulah Sanders, First Vice-President of the National Welfare Rights Organization, recently turned a self-assured HEW hearing examiner into a stammering fool by showing that she could out-talk and out-think him. She referred to decisions by the D.C. Circuit Court of Appeals and persuasively argued their applicability to her situation. The next day the Circuit Court affirmed her position at the request of her lawyers.⁸ Unfortunately, neither Mrs. Sanders nor her lawyers thought to have Mrs. Sanders herself argue before the Circuit Court, though she might have been added as a party and allowed to proceed *pro se*. No one considered the possibility that a welfare recipient should argue before a Circuit Court of Appeals, though everyone recognized the propriety of her arguing before the HEW hearing examiner. Apparently, the Circuit Court of Appeals is still too much the sphere of "lawyers' work."

(4) Finally, a lawyer can prepare poor people for confrontations with the private individuals and government officials against whom the poor people have grievances. This work is probably the most exciting because almost inevitably the lawyer will get to participate in the demonstration. The value of confrontations should be made clear. Points and concessions can often be won in ways that avoid confrontations, ways that may be easier and more successful than confrontation. But winning points and concessions, the object of the traditional practice, is very different from building organization, the object of the poor people's practice. If the lawyer negotiates the settlement of a dispute, the people will see, if anything, only that one lawyer can beat another. If the people confront those who oppose them and win, they see that they can beat those whom they will inevitably oppose again. That lesson is more valuable than anything the lawyer can win, or any ease in his style of victory.⁹

In order to go into a confrontation two things are necessary: a realistic assessment of the chances for, legal grounds for, and possible

8. NWRO v. Finch, No. 23890 (D.C. Cir., Jan. 21, 1970), expanding the coverage of NWRO v. Finch, No. 23787 (D.C. Cir., Jan. 2, 1970).

9. Of course, it is harmful for poor people to do battle and lose. Losing only confirms their worst expectations and makes future battles less likely. For this reason, professional organizers never acknowledge a defeat: every action results in a "victory." A lawyer can help in minimizing the risk of defeat, can reduce the damage of a defeat, and can prepare people for the possibilities and consequences of a defeat.

results of achieving victory, and a thorough understanding of what can happen once the action begins. If people know that there is little legal support for the demand they will make in a confrontation, they will go at the confrontation differently than if their legal case is secure. They will know how much power they have to bring to bear to win, and they will have a better idea of the seriousness of likely repercussions. From such knowledge, they can plan the confrontation to meet their needs and their resources. They know how many to bring and how far to go. People must be told when the police will arrive, and what they will do. Especially in welfare actions where almost all the participants are mothers with children, the chances, circumstances and consequences of arrest must be made clear.

These techniques are some of the possible ways in which a lawyer can help poor people to use his knowledge and skills. While these techniques are important, the most important thing for a poor people's lawyer is to avoid playing the "lawyer's game." From all that one hears in law school, one comes to believe that a lawyer is doing his job and being a good person if he is honest and works as hard as he can for the interests of his client. This technical "morality" is a fraud; it is a way to avoid, rather than to address, the real moral questions which a lawyer ought to face. It is morality within a game.

The chief theoretical justification for the game is the adversary notion of law: each side has an advocate, each advocate is competent and fully devoted to the interests of his client, and from this structure justice will emerge. Among the not-poor, the adversary system might lead to justice; the most usual criticism of lawyers from not-poor people concerns their dishonesty and failure to be fully committed and fully competent advocates.¹⁰ But if justice can be obtained for the not-poor through an adversary system of law, it is because they are involved with the law on a case-by-case basis. But a case-by-case injustice is not what poor people face; they confront a host of unjust institutions, acting for and within an unjust society. The whole notion of an adversary proceeding is unsuited to dealing with social problems. Insofar as it is used to resolve social injustices, the lawyer's game is like monopoly. The lawyers play as hard as they can; they charge whoever lands on their property as much as the rules will allow; they build houses and hotels; their actions have no consequences in the real world; in the end, they sweep the pieces and the play money into a box, and play again tomorrow.

10. Cf. M. BLOOM, *THE TROUBLE WITH LAWYERS* (1968).

Even if the game did not waste time and skill that might be better used, it is dangerous because lawyers for the poor lose too often. They lose because the rules are against them and because the most unflinching players are the lawyers for the other side—the United States Attorneys, the State Attorneys General, the landlords' lawyers, the loan companies' lawyers, and others. Our office recently litigated a case in the United States District Court for the District of Columbia; while we were waiting for a motion in our case to be called for argument, we heard the argument of another case involving a soldier who wanted to get out of the Army for religious reasons. His petition for *habeas corpus* was denied, and his attorney asked the court to prohibit the Army from transferring him to Vietnam pending the filing of an appeal. The Assistant United States Attorney on the case looked, for all the world, like an ordinary human being; yet, when the soldier's attorney asked for the stay of transfer orders pending an appeal, the Assistant United States Attorney said "I'm afraid we'd have to oppose that."

Why did the government lawyer have to oppose the motion? Surely there are enough soldiers in the Army so that this one did not have to go to Vietnam for the twenty or twenty-five days it might take for the Circuit Court to hear a motion for a stay pending appeal. No one even checked with the Army to see if it would cause a problem. The delay was opposed because within the lawyer's game it could be opposed. One little piece on the board was the U.S. Army, the other was the soldier; and the soldier's lawyer had just drawn a card which said: "ON HIS NEXT TURN THE OTHER PLAYER MAY MOVE YOUR PIECE TO VIETNAM—IT MAY BE MOVED DIRECTLY TO VIETNAM—YOU MAY NOT PASS THE CIRCUIT COURT OF APPEALS."

The poor people's lawyer will oppose a great many lawyers who play the game to the hilt. There will be absolutely no reason why both sides should not agree to take a certain action, yet there will be opposition, because the rules of the game permit opposition. Suits will be delayed because it is possible to delay them; petty rules will be relied on, because one can rely on them; discovery will be opposed, not because there is anything to hide, but because the rules permit the opposition.

Knowing that he will face an unreasoning lawyer machine, the poor people's lawyer can either make himself a better machine, which some poverty lawyers have done, or structure for himself a practice in which he will not fall into the lawyer's game. The most dangerous thing in the game itself is not the way the other side plays, but the tendency of the poverty lawyer to play the game himself. A suit can be filed, so a suit is filed; an appeal can be taken, so an appeal is taken; the little

pieces can be moved around the board and the lawyer gets trapped into moving them. This, after all, is what he went to law school to learn; it is the reason that he sat through an outlandishly long bar exam which did not test his real skills; it is the reason he went through the degrading initiation of a character and fitness examination. Moreover, since no one but a lawyer can play the game, playing it justifies the receipt of a salary far in excess of his clients' income.

It is a tempting trap, and there is much psychological reinforcement for falling into it. The other side plays the game better, but our side is usually smarter. We lose because we are playing a game and the rules are against us, but while the game is on, the other side, the judges, the clerks, even your own typists come grudgingly to see that you know the law, that you are bright, and that you are doing something "important." Everyone wants to feel that he is bright and that he is doing something important; lawyers like to feel that they "know the law." But the lawyer's game is a trap; it is a way to feel useful and not be useful.

The D.C. District Court case mentioned above asks that the Secretary of HEW be enjoined from certifying payment of federal matching funds for welfare programs in thirty states, and that he be ordered to recoup funds improperly paid to those states.¹¹ By the time the suit is finished, more than one billion dollars will be involved. I personally devised an iron-clad legal argument demonstrating that the money is being paid illegally and must be taken back. In his motion to dismiss, the United States Attorney completely misunderstands *my* legal argument. If *my* opposition to his motion is good—and it is wonderful—then the court will see that it has no choice but to grant the order. If the District Judge fails to see it, the Circuit Judges surely will. Yet one need not know anything about law or the issues involved in this case to conclude that the United States government will not be ordered to take one billion dollars from thirty states. "But, we *can* win!" I wake up screaming in the night. But realistically, we can't; I have gotten so involved in the game that I can no longer see the obvious truth: we will lose.

The time we have spent on this suit may not be entirely wasted because the organization I work for has gotten some publicity from it, and it may have helped in a series of negotiations which we have been conducting with HEW. And indeed we *might* win.¹² But the expendi-

11. *NWRO v. Finch*, Civ. No. 2954-69 (D.D.C., filed Oct. 15, 1969).

12. *Id.* (motion to dismiss denied, Feb. 25, 1970).

ture of time is not the worst of it. In preparing the suit, a lawyer in our office spent several days calling welfare recipients in the thirty states who were being hurt by HEW's illegal payment of funds to states which were not obeying the federal welfare laws. Since the issue in the case was a fairly technical one, we were interested in choosing the plaintiffs carefully, in order to show the court that real injuries were being done. At one point, the other lawyer turned to me and said, "I just talked with a woman who'd be a great plaintiff; for years she has walked seven miles to the nearest source of water, but she is finding it hard now because she just had one leg amputated. The department won't give her extra money so she can install plumbing in her house."

"Great," I said gleefully.

But it wasn't great; it was part of the horror of poverty in which I don't live, and it should have outraged me. It did not because I was playing lawyer. The game had made it better for me, the worse it was for her. The law is bad because judges do not hear poor people's cases on the merits, but must be won over through the presentation of barbarities. But the game is worse, because *by* playing it I was made to delight in someone else's pain.

Reveling in the misery of one's clients is not the only bad attitude that playing the lawyer's game draws down on a lawyer's head; the game engenders a host of others. Mrs. Johnnie Tillmon, President of the National Welfare Rights Organization, listened to a group of her lawyers explain a "very important" suit we had argued before the D.C. Circuit Court of Appeals, and then said:

The trouble with you lawyers is that you expect to change things too quickly. You think that if you don't accomplish a lot you haven't accomplished anything. Welfare was the way it is a long time before lawyers came to help us. I've been organizing recipients for six years, and I'll be happy if we can get all that you're talking about in another ten years. When we win it, no one will be able to take it away; even if you did win it now, they'd take it back and we'd only have to win it over again our own way.

We lawyers had so much ego invested in our skills, we had put so much time and effort into preparing the court papers and arguments, and we had so many laminated diplomas hanging on our walls that we could not help believing that "our" Court of Appeals case would bring about the millenium. It is hard, of course, for such gods to talk to any mere mortals, let alone poor, uneducated ones.

Most lawyers, like professionals of every kind, manage to get on with laymen by using a language that no layman can understand and by

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charging fees that only a miracle worker could deserve.¹³ The poses that the traditional lawyer adopts in order to be able to talk to his clients are called his professional bearing or manner; it is very important that a poor people's lawyer drop that professional bearing. He must realize that what make him a lawyer are accidents of birth and interest, and those accidents have not made him something special; they have only given him the opportunity to help someone else. Being in the position to help, rather than of needing help, is a privilege. The lawyer must remember that he is where he is in order to help poor people do their thing, and not in order to do his own thing. His avoidance of the lawyer's game will reflect that understanding, and the affirmative techniques of his practice should bear it out. More important than either of these, however, is that the way in which the decisions are made about what the lawyer does must reflect a full understanding that the lawyer is there to do what poor people want, and not vice versa.

The dominant attitude in law school is that the client is a troublesome pain-in-the-neck. Occasionally, the law student hears hints that he should present his clients with the legal alternatives, among which the client should choose. Many lawyers are now aware that people should control their lawyer, and are beginning to present alternatives from which their clients can choose. But the control which poor people should exercise over their lawyer is much greater than that of merely selecting among his proposals. Because he does know more about the possibilities in the law, the lawyer should present new knowledge and options to his clients; but, because they know what is helpful to them and possible for them, they can and must structure their own alternatives and make their own choices. The lawyer should not push his clients toward or away from jail. "Jail" must, of course, be read as a metaphor for the whole range of possible consequences of possible actions, of which jail is only the worst.

The last portion of the preceding sentence makes clear why a lawyer must not lead his clients. For me, as for most lawyers, jail is the worst

13. I recently talked with a "liberal" young doctor who criticized the medical profession for charging excessive fees. "A doctor should charge \$25 an hour and no more," he said. When I asked whether that wasn't rather high, he explained, "Well, plumbers make \$18 an hour." I asked why doctors should make more than plumbers. "Because they go to school for so long to learn their jobs," he replied. When I suggested that they go to learn a job they like, not to make money, he shifted to a justification based on the difference between the importance of a doctor's work and that of a plumber: "I have the responsibility for your life, and he has the responsibility for your sink." When I argued that this was not necessarily the proper basis on which to decide the question, he spluttered and called me a Communist. His attitude toward his profession strikes me as all too typical of the lawyer's attitude toward law.

possible consequence of a political action. But it is clear that jail is not the worst consequence. Welfare recipients have lost the only money they have to live because they protested the policies of welfare departments; people have lost their homes; children have been unable to obtain medical care; Fred Hampton was shot.

The lawyer must offer information so that the people can structure their own alternatives and make their own choices among them. The lawyer may know what the law can do; the people know what needs to be done, and what can be done. I can offer two illustrations of how this approach works in practice.

I went to talk to a local welfare rights group in New Jersey. While I was there, two women who were not members of the group came in. One had been denied a welfare check to which she was entitled, the other had a severely malnourished child; both had heard that the local WRO might be able to help them. The group chairwoman, Mrs. Davis, suggested that the group go with the two women, first to the welfare office, then to the hospital. (To the welfare office first, because it closed and the hospital did not—a point which had not occurred to me.)

I was asked to explain to the whole group why the lady who had been denied the check was entitled to it, and then I was detailed to check with a New Jersey lawyer on the appropriate provisions of the welfare manual. I also was assigned the job of chauffeuring the group to the welfare department.

We arrived at the welfare office and went in as a group. Mrs. Davis asked to see the director (Mrs. Davis no longer deals with the underlings). The receptionist gaspingly reported to the director that "a whole group of people are here to see you, and they're all wearing buttons." After some scuffling, threats and negotiations, we had gotten an emergency check for both ladies and taken a copy of the latest edition of the welfare manual. I had not said anything to anyone official, except to deny that I had come to see my caseworker. (Since then, whenever I see the ladies from New Jersey, they ask about my caseworker.) I was able to support the ladies with information and with my presence as a lawyer; I was fully committed to the action and never questioned the tactics or process the ladies chose.

After the welfare office victory, we went to the emergency room of the general hospital. The ladies went in and demanded that a doctor examine the baby. Flushed with the welfare office win, I went along with this tactic, although uneasily.

After a little time had passed without a doctor appearing, the women walked into the hallways of the emergency ward, and, when that did

not bring any action, they stopped a doctor and demanded that he examine the baby. The doctor, a small man who spoke English only haltingly, explained that he could only treat for poisonings and convulsions. Malnutrition was not an emergency, and the baby would have to be brought back to the clinic on Monday morning. The ladies refused to accept this answer and surrounded the doctor (a somewhat comical picture: eight big black ladies towering shoulder to shoulder around this small doctor), ordering him to examine the baby. He did so, and, though he could not be forced to prescribe anything for the baby, he was induced to write the mother a note indicating that she had been to the emergency room and should be seen first at the Monday clinic.

I was called on to do no more in the hospital than I had done in the welfare office. I remained physically with the ladies throughout the hospital action. I will not try to pick out the point at which I ceased to be emotionally in favor of the action; somewhere along the line my sympathy for people who have trouble speaking English, my faith in the doctors who had been so nice to a white boy in the suburbs, my feeling that hospital routine was more reasonable and justifiable than welfare office routine, my realization that there was "really nothing" that the doctor could do, my knowledge that we had no legal right to what we sought, and many other feelings of mine which the ladies did not share made me wish that I did not have to stay with them. Had I been able, I would have called the action off; had I realized what would happen at the hospital, I would have tried to dissuade the ladies from going there; I would never have thought of the relief that the ladies finally obtained. But forcing the doctor to write that note was a real victory for the ladies. No lawyer has a right to deny them that victory by structuring the alternatives as he sees them or by denying the ladies the chance to choose their own way and use their lawyer to achieve their end. A lawyer must help them do *their* thing, or get out.

A second illustration of this approach is perhaps more telling because it does not deal with street action where the lawyer is not expected to be an expert, but with law, where he is. The Social Security Act, under which states receive federal grants providing from 37.2% to 83.7% of the costs of the state-run welfare programs,¹⁴ requires each state, as a condition of eligibility, to institute a mandatory work and

14. NATIONAL CENTER FOR SOCIAL STATISTICS, SOCIAL REHABILITATION SERVICE, U.S. DEPT OF HEALTH, EDUCATION AND WELFARE, REP'T F-1 (CY 68): SOURCE OF FUNDS EXPENDED FOR PUBLIC ASSISTANCE PROGRAMS, Table 7 (1968).

training program (Work Incentive Program—WIP) for all appropriate recipients of Aid to Families With Dependent Children.¹⁵

I was assigned to learn the program and to prepare to teach recipients about it. Because of my background and those of the social work and organizing professionals on the staff of NWRO with whom I talked about WIP, I concentrated on learning about and developing strategies to beat the coercive aspects of the program. I then traveled around the country talking to state-wide and regional meetings of welfare rights leaders. Because WIP, especially the coercive side of it, is so bad, I got to give fairly ferocious and therefore lively talks. Some fairly good protections had been built into the program to placate the liberals who would have been upset by a naked forced labor program. From the definition of and process for appealing a determination of "appropriateness," I was able to outline a strategy of delays and appeals which virtually assured a recipient a way out of WIP. Because this strategy played "the man's game," it delighted welfare recipients; the talks were a great success, and, therefore, very satisfying to me personally. It is quite an ego trip to travel around to groups of poor, usually black, people and find that they like you. The few questions which came up about compelling the departments—welfare and employment service—to provide decent training, decent day care, an opportunity for volunteers to get into the program, opportunities for college education, and decent medical care, I answered sketchily, indicating that the law offered fewer ways to compel the government to give one benefits than to stop the government from inflicting pain. Those problems have, however, turned out to be the problems in which people are involved, and if a lawyer puts his mind to them he can suggest ways to help poor people compel the government to give them the services it has promised.

It took a long time for me to learn that because WIP was decidedly underfunded, the officials administering it were, by and large, more likely to deny people entrance to and services in WIP than to force people to enter it. I ignored the real problems of the recipients actually involved with WIP in favor of the problems which I was disposed to see, on which I could better exercise my skills, and which were more like the problems that the majority of recipients face in other areas. These biases are typical of those which make it imperative that a poor people's practice be fully controlled by poor people, not by their lawyers.

15. 42 U.S.C.A. §§ 602(a)(19), 630-644 (1969).

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I have suggested a way of practicing law which is very different from the one which law students learn and most lawyers follow. It is difficult to adhere to, still tentative in its outlines, and by any professional standard less rewarding than traditional practice. Nonetheless, I believe it is the only kind of practice which offers any hope of meeting the needs of poor people. If enough lawyers accept it and develop it, they may begin to make up for the scandalous failure of the legal profession to serve those who need it most.

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