

President Nixon's first significant exposure to the Legal Services Program of the Office of Economic Opportunity may well have occurred on May 12, 1969, at a Cabinet meeting called to discuss food stamp legislation. As Secretary of Agriculture Clifford Hardin opened his presentation on food stamp benefits, he mentioned in passing that he was "at this moment" being sued by food stamp recipients who were represented by Legal Services lawyers. Immediately two other Cabinet members interrupted Hardin to complain that they too were being sued by recipients of federal benefits who were represented by these "government-funded" lawyers. A torrent of resentment and criticism burst forth from Secretary George Romney of the Department of Housing and Urban Development and Secretary Robert Finch of the Department of Health, Education and Welfare, and from other Department heads at the meeting, as the President allowed the discussion to range freely around the table. Finally, Donald Rumsfeld, the Director of the Office of Economic Opportunity, attempted to deflect the complaints with a remark about the lawyers funded by his agency: "It looks like I'm the only one at this table not getting sued, and that's because they're my own lawyers."¹

The image of federally-funded attorneys in neighborhood law offices suing the government and stirring up litigation left a strong impression on the mind of the President. Since its establishment in 1966 as an agency designed to "further the cause of justice among persons living in poverty" by providing "legal advice and legal representation,"² the Legal Services Program of the Office of Economic Opportunity has drawn substantial criticism from segments of the organized Bar, officials of state and federal agencies, and even bureaucrats in other branches of the Office of Economic Opportunity.³ Some of these confrontations received considerable publicity. Governor Ronald Reagan's veto of the funding grant for California Rural Legal Assistance, for example, provoked editorials in the *New York Times*, articles in *Newsweek* and *The New Republic* and a national protest.⁴

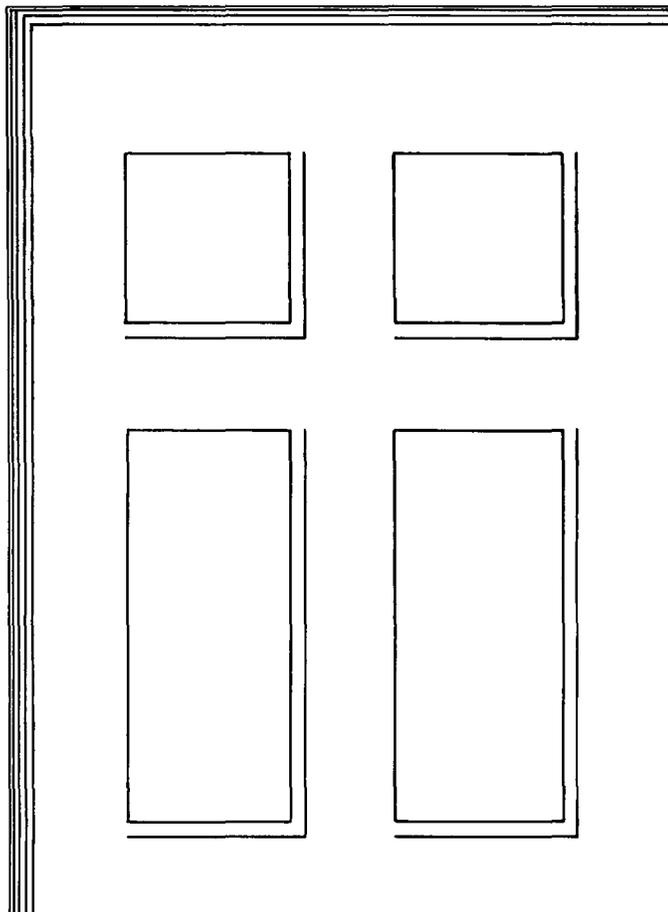
Although less publicized than the California battle, criticism of legal services programs has been equally vehement, and the consequences equally grave, in such places as Houston, Texas, New Orleans, Louisiana, Camden, New Jersey and Baltimore, Maryland.⁵

In fact, the growing crisis in legal services—and the charges of political interference with their programs made by poverty lawyers—impelled concerned members of Congress to propose the creation of an independent National Legal Services Corporation. The Nixon Administration submitted its own proposal, a compromise was worked out in committee, and the legislation was passed by Congress late in 1971. President Nixon vetoed the measure on December 9, 1971, however, claiming that restrictions on the President's power to appoint members of the Corporation's board of directors provided insufficient Executive

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Legal Assistance is Dying in New Haven

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control over the program and was “an affront to the principle of accountability to the American People as a whole.”⁶ The measure was re-introduced, but when Legal Services supporters sought to insure *some* representation of the poor, the organized Bar, and the public-at-large on the Corporation’s board, the Administration maintained that there should be *no* restrictions *of any kind* on the President’s appointment power and threatened to veto the entire \$6 billion two-year Economic Opportunity bill, of which the Legal Services Corporation was a part.⁷ In the face of such Administration recalcitrance, and under pressure to salvage the rest of the Economic Opportunity program, the House-Senate Conference Committee finally struck the entire National Legal Services Corporation provision from the Economic Opportunity bill.⁸

Political opposition to legal services is not limited to large programs like California Rural Legal Assistance, nor even to programs in large cities. Moreover, attacks on legal services programs are not limited to threats to funding under the Economic Opportunity Act, nor were such attacks unknown even before the creation of the Office of Economic Opportunity in 1965. Quite the contrary: opposition to legal services may center on programs in relatively small cities, it may threaten programs through a number of funding sources or through the local Bar, and it apparently began the moment lawyers for the poor moved out of centralized legal aid bureaus and into neighborhood offices in the ghetto. Using the history and present experience of the New Haven Legal Assistance Association as a case in point, this article will suggest that political opposition may be an inevitable response to any program which attempts to vigorously defend the rights of the poor. The New Haven case indicates that recent opposition to effective legal assistance programs is more determined than it has been in the past, and is threatening the very existence of legal services to the poor.

Legal assistance for the poor in New Haven dates back to the 1920’s, when students in a Yale Law School fraternity established a service similar to the Harvard Legal Aid Society. In 1927, with the help of local attorneys, the students were able to persuade the city administration to create by ordinance a Municipal Legal Aid Bureau, to provide “legal aid and advice to any person who is financially unable to employ counsel and who is a resident of the City.”⁹ In 1962, the Ford Foundation, as part of its experimental urban redevelopment efforts, made a grant to Community Progress, Inc. (CPI), for a coordinated anti-poverty program aimed at the inner-city. A central element of the “broad roster of community services” which CPI envisioned was the concept of the neighborhood lawyer.¹⁰

The CPI neighborhood lawyers soon were embroiled in controversy. Early in 1963 one of the neighborhood attorneys became involved in the case of a black man accused of raping a white nurse, serving as liaison between the Public Defender and the defendant’s family.¹¹ The lawyer was Jean Camper Cahn, and it was an article which drew on her experience which later

proved a key influence in the creation of the Legal Services Program of OEO.¹² Ms. Cahn’s work resulted in her being seated at the defense counsel’s table during the trial, and during the course of the litigation she developed evidence seeking to raise the defense of consent. This not unusual defense tactic was greeted with something less than enthusiasm by the Bar, a large portion of the community, and the local press. Shock and indignation were the order of the day. Mayor Richard C. Lee had been instrumental in developing the CPI program, and because of the CPI neighborhood lawyer’s participation in the case, the mayor’s Human Relations Advisor also became involved. All this resulted in severe public criticism of the mayor approximately six months before the municipal elections. The Executive Director of CPI criticized Ms. Cahn and issued interim rules explicitly ordering the neighborhood attorneys to refrain from any litigation, including sitting at the defense counsel’s table. Later in the spring, the Executive Director requested the Board of Directors of CPI, if necessary, to cease the legal program. Ms. Cahn left CPI in the summer of 1963.¹³

Between January, 1962, and June, 1962, the second neighborhood attorney had been involved in a number of cases strongly suggesting violation of due process rights in Juvenile Court. He was restrained from bringing complaints in these cases by the Executive Director, since CPI was attempting to negotiate an independent probation program, and required the good will and agreement of the Juvenile Court. During that summer, the future of the legal services component of CPI was in doubt. There followed the formation of a legal advisory committee to CPI to plan basic policy for the legal services program, and meetings with the National Legal Aid and Defender Association and the Ford Foundation in order to obtain financial support. These resulted in the decision to establish a legal assistance organization independent of CPI and to include criminal defender services in accordance with NLADA policy guidelines.¹⁴ On April 8, 1964, New Haven Legal Assistance Association, Inc. (LAA), was incorporated as a non-stock, private, charitable corporation. Prominent on its board were a number of leading local attorneys. In the fall of 1964, the New Haven County Bar Association responded to the question of Bar approval of the new program by appointing a special committee to investigate LAA. The report of the committee was presented at the Bar Association meeting in November, 1964.¹⁵

The committee report was deeply suspicious and strongly critical of the legal assistance program. It raised several vital substantive issues: whether LAA would be engaging in the unauthorized practice of law; whether it was using unprofessional means to obtain business or to stir up litigation, in violation of the Canons of Ethics; whether neighborhood lawyers employed by a private corporation would be subject to private or public accountability for their professional conduct; where “matching funds” and future financial support of the

program were expected to be secured.¹⁶ Late in the evening of the November meeting one of the supporters of LAA raised the economic issue, which was underlying the entire discussion but which had remained unstated: would LAA “deprive members of the Bar of matters that might otherwise be theirs?”¹⁷

[One] thing I have tried to do and a certain handful of members with me, is get across to the public that lawyers aren't a collection of ogres who have padded their own pockets and would like to step all over everybody around them . . . I can consider myself still a young lawyer and one of those whose pocketbook would be effected [sic] if this thing was going to be so terrible in its far-reaching consequences. [The proponents of LAA] are not interested in giving you a hard time or taking clients away from you or taking the money away from you that are so concerned about.”¹⁸

The members of the Bar heard statements in support of legal services for the poor from the Chief Judge of the Circuit Court and the Acting Attorney General of the United States. But members of the committee challenged even the basic proposition that there was a need for additional legal services for the poor in New Haven. One member of the committee declared:

Lawyers have traditionally, and with pride, aided persons in need of their help, with little and often no charge. There is no reason to feel that the members of our Bar will fail in the future to meet this professional duty. The Executive Director of New Haven Legal Assistance Association, Inc., has stated that his organization does not know the extent of a need for such assistance as his company contemplates, whether it exists or not and that his company wishes to collect statistics to find out. It is clear that so far as the citizens of New Haven County are concerned, there is no indication whether any need or demand exists for such services or not or that if it does, that the existing machinery of justice maintained by our state under the supervision of our Courts could not accommodate it.¹⁹

Yet an outline of its program sent by LAA to members of the Bar prior to the Bar meeting documented the general dimensions of the need for legal assistance in New Haven. In the Legal Aid Bureau, a single part-time attorney and some student clerks were attempting to handle more than 2,000 cases in 1963. On the criminal side of Circuit Court, of 11,890 non-motor vehicle cases in 1963, in more than 75% of the cases there was no record of representation by an attorney. A sample of 302 non-motor vehicle offenses revealed representation

in only 38 cases. In one instance, a six-month sentence was incurred by an unrepresented defendant on a breach-of-peace charge. In Superior Court, the Public Defender and his assistant represented more than 200 felony defendants in 1963. About 10% of the cases reached trial and no appeals had been taken in recent years. The Public Defender readily acknowledged the need for pre-trial investigation and legal research resources.²⁰

Perhaps the most significant aspect of the proceedings was the outright hostility displayed by many members of the Bar toward the proposed program and its stated goal, which stifled rational discussion of the issues. One attorney declared:

. . . We are told that we are lucky in being guinea pigs for the rest of the United States. The taxpayers have an interest, too, for the Ford Foundation will likely withdraw and we will be asked to continue supporting it. Now, nobody has asked for it. You haven't had any delegation come from any town and ask for it. You haven't had any depressed [sic] ask for it. The depressed classes need more medical care, but not more legal aid. Now it's a presumptuous criticism of us gentle members of the Bar to say we do not take care of the needy. All of us see numbers of people during the week and render services free of charge. You are not going to charge in some of these situations. This [is] the glory of the Bar. This is what makes it a profession and not a business.²¹ The one thing I fear as I have gone through life, is a private body undertaking public works. Now, when you have a situation that you have in New Haven, with a good Legal Aid Bureau, when the surrounding towns don't even feel the need for it, when the Courts give public defenders, what is the point of having a private body come in and add to that situation?

Another attorney charged that “LAA and CPI formed this [proposed program] and created it in secrecy and dedicated it to the proposition that this Bar Association in all its entirety had too much naivete and too much apathy to protect their own professional codes in promulgating this program.”²² Still another attorney, referring to the outline of the proposed program submitted by LAA, professed ignorance and objectivity:

I had no opinion on this until I got this so-called brief in the mail this afternoon, and I had no knowledge until tonight from whom that brief came until Mr. Watrous gave us the genesis of it, and as he put it, and I think he also went from Genesis to Exodus on it, but he certainly covered the way that report came out and I think the report is a self-damaging document. It is about as full of holes as Swiss cheese. . .²³

In a roll call vote, the Bar Association voted to oppose the proposed program. The proponents of LAA appealed to the Connecticut Bar Association, which approved the program in March, 1965, the president of the Connecticut Bar noting that “This program and plans of its type are operated in the best interests of both the bar and the public.”²⁴



“Legal services attorneys have taken unfair advantage of representatives of the state and have ‘filed every motion in the practice book’ in critical matters.”

Within a few years, there were eight other legal services programs operating in Connecticut. LAA and these other programs have suffered attack from several sources. In 1967, Connecticut became one of the first states in the nation to provide financial support for legal services projects, through its Department of Community Affairs (DCA). During 1970, for example, DCA provided \$462,384 in support of legal services projects. Of this total, \$170,231 comprised one-half of the non-Federal share required by OEO grants and thus helped to secure \$1,334,173 in Federal funds. The balance supported civil and criminal work in legal services programs throughout the state. But by late 1970, resistance to some aspects of legal assistance programs had begun to harden. Several of the issues were noted in a memorandum from the director of the Bridgeport Legal Services Committee (BLSC) to the directors of other Connecticut programs. One problem was DCA funding of criminal defender services:

My CAP [Community Action Program] officials had a meeting in Hartford with Commissioner Jones of DCA late in October. They urged the Commissioner to refund BLSC's criminal program. Jones is in favor of criminal practice by legal services programs at this time, and said DCA will approve the program but there is opposition from within the Attorney General's office. BLSC's grant has been approved at the DCA field level but was returned from the Office of the Assistant Attorney General with a suggestion that the grant be resubmitted as two grants, one civil and one criminal. There is a clear inference that following such action, the civil grant would be approved and the criminal grant disapproved by the Assistant Attorney General.²⁵

DCA officials claimed that it was inappropriate for the state to support both prosecutorial and defense efforts in criminal cases involving indigents. Moreover, they claimed (often without realizing the contradiction of their first argument) that the state-supported Public Defender adequately handled defense functions for defendants unable to employ private counsel. On the other side, supporters of neighborhood criminal defender services argued that the state was required by law to provide defense services to indigents charged with serious crimes, that the criminal defender services were a necessary component of a neighborhood law office if the office was to develop the trust of the community, that the Public Defender could not come close to meeting the need for services, and that neighborhood residents preferred neighborhood lawyers over the Public Defender by about 2 to 1 (During 1970, for example, 2643 neighborhood residents sought legal assistance in criminal matters from LAA, and 2299 were eligible for service. The Public Defenders in Circuit and Superior Courts, who were available to defendants in all these cases, handled slightly more than half that number of cases, and the 1200 or so cases taxed the resources of the Public Defenders to full capacity²⁶).

The Bridgeport director's memorandum also mentioned the “welfare suits that have been filed against the State.”²⁷ Several suits initiated by Connecticut legal services programs, such as *Shapiro v. Thompson*²⁸, have become landmark decisions in protecting the rights of welfare recipients. DCA officials objected to such “law reform” efforts on a number of grounds: emphasis on “causes” instead of individual cases, neglect of clients' interests, professional misconduct. The more cynical of the legal services attorneys claimed that the Connecticut Attorney General's embarrassment at losing to young poverty lawyers in the federal courts may have had something to do with the state's objections to law reform work.

Several of the sources of friction the Bridgeport director mentioned were less tangible. He wrote that a highly placed official in DCA told him that “there is a tendency among legal services staff people to reduce all issues to moral issues, and to view their position or the position they are advocating as ‘right’ and the opponents' position, often times the State's position, as ‘wrong.’”²⁹ The official also said that “legal services attorneys had taken unfair advantage of representatives of the State or had ‘filed every motion in the practice book’ in criminal matters. He stated that many people in State service were keeping a record of these things and that we ought to be aware of it.”³⁰ Finally, the official noted that poverty programs were still politically weak, that there were only eighty thousand black voters in the State, and that they were “not as active in politics as they could be.” Politicians in the State and around the country are beginning to realize that they can get away with ignoring the minority community, he indicated. He hoped “the poverty programs, and the legal services programs, would stop fighting each other and DCA and realize that we are all faced with serious political problems.”³¹

Opposition to legal services programs at the time of the Bridgeport memorandum was generally manifested through delays in refunding programs, rather than outright vetoes of program grants. Such delays nevertheless had serious consequences for the programs, since salaries and bills had to be paid whether the grants came in on time or not. Most programs were forced to take out commercial loans in order to meet expenses, but with no provision in their budget for the interest charges for such loans, the programs were doomed to cash shortages at the end of every year.

LAA experienced particularly egregious delays, with grants often running a year or more behind schedule. The reasons for the delays ranged from the trivial to the absurd. 1971 grant applications, computed on a twelve-month budget according to DCA requirements, were later sent back because DCA changed its policy and wanted six-month applications. Refunding was also delayed because one assistant Attorney General assigned to "advise" DCA claimed that a Connecticut Supreme Court case prohibited a corporation from practicing law and that LAA was a corporation within the terms of the court opinion.³² He neglected to mention that the Connecticut Bar Association specifically gave its approval to LAA in 1965, seven years after the cited decision. He also ignored the facts, summarized in an article at the time in *The New Republic*, that:

... 1) the Legal Services offices had been validly chartered as nonstock corporations by the state for the specific purpose of furnishing legal services, 2) DCA had been regularly funding them over the past 3 years, 3) the Legal Services programs had already expended funds for the first 9 months of 1970 based on past practice and letters of intent to fund from DCA, and 4) nearly all state legislatures, including Connecticut's, have approved the use of the corporate entity for the practice of law, and courts have recognized the propriety of nonprofit legal service corporations.³³

The same "adviser" to DCA asserted, "It is questionable whether or not the contemplated use of office space and other facilities, personnel and equipment is consistent with OEO regulations. It is my understanding that the enforcement of OEO requirements that federal funds not be used for criminal defense in any way calls for a physically separate site of operation. This should be resolved between the applicant and OEO before we proceed further concerning this application."³⁴ But the Assistant Attorney General's understanding of OEO regulations was at variance with OEO's understanding of OEO regulations, since OEO had approved LAA's office arrangement every year since federal funding began in 1966.

LAA even met opposition to its efforts among members of the state judiciary. One especially galling example is the practice of state judges, particularly in Circuit Court, of denying indigent defendants leave to proceed *in forma pauperis* when they are represented by any attorney other than the Public Defender (e.g., a legal services attorney). The issue was the focus of United States District Court Judge Blumenfeld's opinion in *United States v. Rush*.³⁵ The policy of the state as construed by the Connecticut Supreme Court in *State v. Hudson*³⁶ is to waive jury fees, entry fees or costs only for indigent defendants represented by the Public Defender (or Special Public Defender). Thus a defendant unable to employ a private attorney *may* obtain counsel free of charge; to deny him counsel because of his inability to pay would violate his constitutional rights. If he chooses free counsel supported by the state Judiciary Department (Public Defenders), he will be exempt from court costs and fees; *but* if he chooses free counsel supported by the Federal government, the state Department of Community Affairs, and the New Haven

community (legal services attorneys), he must pay the court costs and fees. "In cases in which the defendant is represented by private counsel as distinguished from the public defender, the trial court is without power to except even an impoverished accused from the payment of the court fees prescribed by statute or to bring about the same result by ordering reimbursement for such payment."³⁷ In *State v. Clark*, the statement was continued, "and we feel that this should apply to private organizations who provide counsel free of charge, for the defendant does not have the right to counsel of her own choice so long as she claims to be indigent."³⁸ About this incredible state of affairs, Judge Blumenfeld concluded:

Even to assume that Connecticut courts would somehow tortuously construe [their] own rules to embrace a power in a public defender to obtain a waiver of court fees for an indigent [habeas corpus] petitioner, this would not justify imposition of the condition that she must seek representation by a public defender. Although an indigent accused has no constitutional right to arbitrarily reject the services of a public defender and compel the state to engage and compensate counsel of her choice, . . . neither does the state have the right to condition an indigent's access to its courts by compelling her either to be represented by a public defender or proceed pro se. . . . Indigents may be represented by lawyers provided without charge through Neighborhood Legal Services, funded by the Office of Economic Opportunity under the Federal Poverty Program as in *State v. Clark*, or through the Legal Aid Department of the City of Hartford, funded by community contributions as in this case, or through anyone else.³⁹

However, presumably out of judicial courtesy, and because the implications of the decision's reasoning were clear enough, Judge Blumenfeld stopped short of explicitly saying that Connecticut trial courts must waive court costs and fees for indigents represented by legal services lawyers, as they do for those represented by the Public Defender. Yet at the present time, Circuit Court judges still routinely refuse to waive costs and fees for indigent defendants represented by LAA attorneys and the Connecticut Supreme Court has refused to halt the practice.⁴⁰

In the past year, LAA has been subjected to a new round of opposition. However, having weathered previous attacks by the Bar and by state officials—indeed, perhaps *because* it successfully endured attacks in the past—the program has now found that the stakes have been raised. No longer is the issue local Bar approval or funding delays, which entailed significant consequences which weakened the program but did not threaten its basic existence. Now the critics of LAA are seeking to cut the program at its source by direct vetoes of grants and denials of refunding.

One critical source of opposition has been the Connecticut Planning Committee on Criminal Administration, which makes grants throughout the state of federal Law Enforcement Assistance Administration funds, under authority of the 1968 Omnibus Crime Control and Safe Streets Act. At the meeting of the Executive Committee of the Connecticut Planning Committee on January 11,

1972, a grant of \$35,000 to the City of New Haven, for payment to New Haven Legal Assistance Association, was approved, under the grant category "Equal Administration of Justice," which was designed to provide "support for additional full-time legal staff and supportive service to be used in improving the pretrial services offered indigent defendants by the public defender system and the legal services programs at the option of local units of government."⁴¹ LAA, faced with funding delays and a substantial deficit from the previous program year, was in sore need of the money. However, at the Executive Committee meeting on February 29, 1972 (by which time half of the grant had been paid), one of the co-chairmen of the Committee raised a number of "definite questions" concerning LAA, which "should be resolved, through audit and thorough investigation"⁴²:

1. Whether the funds granted will be used exclusively for defense in criminal proceedings and not to at least partially defray the expenses of a broad legal practice which includes divorces and other domestic relations matters, civil actions and workmen's compensation claims;

2. Whether the funds granted will be used solely for the defense of truly indigent persons and not for the benefit of those who own property or who, with some effort and inconvenience, could engage private counsel;

3. Whether the program actually is directed toward the defense of those believed to be innocent or is, to a large extent,

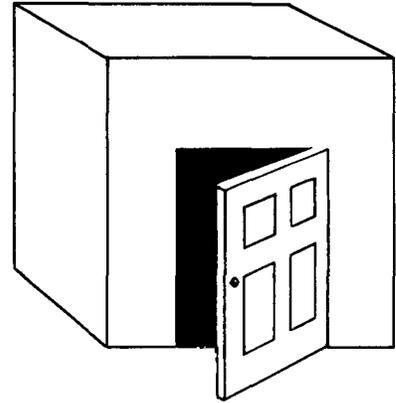
engaged in delaying, impeding or preventing the conviction of every person arrested, regardless of circumstances or merit, by clogging the criminal courts ad nauseam with massive stacks of mimeographed motions, most of which have been previously denied in similar cases, by needlessly protracted voir dire [sic] of jurors, by the needless ordering of voluminous transcripts of proceedings and by frivolous appeals—all, of course, at the expense of the taxpayers of the State.⁴³

The co-chairman was vague as to who initially raised these "questions"—citing "attorneys, judges, prosecuting attorneys, public defenders, family relations and adult probation officers and others engaged in the administration of justice in Connecticut"⁴⁴—but his concern was evident:

The accused indigent has every right to be defended by competent counsel, but the public defenders, appointed by and responsible to the State, are bound to use some care and discretion in determining what defenses and appeals are truly meritorious and worthy of being financed by the State in order to obtain true and equal justice. In practically every criminal case, the court's charge to the jury contains substantially the following language:

"The State of Connecticut is just as much concerned in having an innocent person acquitted as in having a guilty one punished, but for the safety and well-being of society and the protection of the life, property, safety, health and morals of its citizens, the State also is deeply concerned in securing the prompt conviction of persons who have been proved by the evidence beyond a reasonable doubt to have been guilty of committing a crime. The law is made to protect society and innocent persons and not to protect the guilty ones."

I submit that such a philosophy must be equally binding upon a State organization dedicated to the administration of criminal justice.⁴⁵



Accordingly, he thereby moved:

1. That the balance of \$17,500 included in this grant, be withheld pending further action by this Committee;
2. That an attempt be made, if feasible, to recover the \$17,500 already paid under this grant, to be withheld pending further investigation and consideration by this Committee; and
3. That this particular category in our 1972 plan be modified to omit the words "and the legal services program at the option of local units of government."⁴⁶

The action passed.

At the co-chairman's request, a committee was formed to investigate specific charges against LAA. It was composed of designees of the Chief Judge of Superior Court, the president of the Connecticut Bar Association, and the president of the New Haven County Bar Association.

The investigating committee issued its report on May 16, 1972. It noted that a "very fair, thorough and conscientious investigation" was made of each of the complaints against LAA. Specifically, it found that "of 31 cases investigated, 24 revealed no impropriety whatever; 3 cases accepted by LAA should have been rejected and referred to private counsel; and in the other 4 cases, acceptance or representation by LAA was of debatable propriety."⁴⁷ In general, the committee concluded that

the complaints reveal that, while several errors of judgment have occurred, LAA has not been shown to have acted improperly or irresponsibly in the area of maintaining and enforcing reasonable eligibility criteria, and on the contrary, has been discharging its duties effectively and properly. The several mistakes which have occurred should be viewed in the context of the fact that LAA attorneys represent approximately 11,000 clients a year.⁴⁸

However, the committee's report did not end the matter. Quite the contrary. The third part of the motion that had been passed by the Executive Committee of the Planning Committee on Criminal Administration on February 29, 1972, technically removed legal services programs from the category of eligible recipients of Committee funds.⁴⁹ LAA on the other hand, assumed that the first part of the motion was controlling; i.e.,

“The Nixon landslide... may have sounded the death knell for aggressive and effective legal services for the poor.”

that the money would be withheld “pending further action.” When the investigating committee gave LAA a clean bill of health, the program assumed that the funds would be forthcoming. But on July 11, 1972, LAA was notified that the balance of its grant would be withheld indefinitely. As the executive director of the Planning Committee explained to inquiring New Haven Mayor Bartholomew Guida, “The reason why no money can be awarded to LAA (i.e., that there is no category for it in the 1972 Comprehensive Plan) . . . is not changed by the report of the Committee which reviewed the operations of LAA.”⁵⁰ LAA protested, but on September 12, 1972, the Executive Committee voted specifically not to award LAA the balance of the \$35,000 grant,⁵¹ and LAA has received no further funds from the Planning Committee.

LAA is also experiencing funding difficulties with the state Department of Community Affairs. The bones of contention are the lawsuits initiated by legal services programs against state agencies, particularly the welfare department.⁵² Governor Meskill and DCA have previously attempted to write restrictive clauses into DCA grants to legal services programs which would prohibit suits against state agencies or state officials,⁵³ and Governor Meskill recently urged other governors to take similar steps.⁵⁴ Now DCA has written such restrictive clauses into two LAA grant contracts, one from 1971 and one for 1972. LAA’s objections were fully detailed in a letter from the executive director of Community Progress, Inc. (an intermediary agency and the technical recipient of the grants on behalf of LAA), to the commissioner of DCA, returning the grants with the restrictive clauses removed. They are worth quoting at length:

The 1971 contract was validly executed by DCA and CPI in September of last year. Services have been performed in accordance with its provisions and LAA has irrevocably committed its funds. It is therefore impossible and meaningless to alter its terms. DCA has a clear obligation to comply with the contract according to its terms, and we expect that the balance owed, now long overdue, will be forwarded without delay.

With respect to the 1972 contract, I am likewise constrained to reject the restrictive clause. State statute requires the state, through DCA, to fund LAA’s one-half non-federal share application subject only to reasonable financial and related controls. That statute specifically prohibits DCA from altering the federally approved content of the program. Federal statutes and regulations also prohibit the kind of limitations contained in the restrictive clause. Moreover, the Canons of Professional Ethics will not permit an attorney to forego any

avenue of relief which his client wishes to be pursued and which, in the attorney’s professional judgment, constitutes a proper and ethical course of action. Needless to say, a lawsuit against the state or its officers or political subdivisions may be a proper and ethical course. Finally, the proposed restrictive clause is in derogation of an indigent client’s right to peacefully petition for redress of grievances and, by denying that right only to indigents, is in violation of their right to equal protection of the law. In its present form, therefore, the clause is illegal under state statutes, illegal under federal law, unethical under the Canons of Professional Ethics, and in violation of the United States Constitution. I am certain that DCA does not intend to impose illegal and unconstitutional conditions on programs which it funds, nor to encourage unethical conduct on the part of legal services attorneys.⁵⁵

Moreover, the Director of OEO had notified the commissioner of DCA as far back as 1970 that any such restrictive clause was “in direct conflict with OEO policy” and “could not be agreed to by any organization desiring to qualify for assistance under the Economic Opportunity Act.”⁵⁶ The OEO policy was reaffirmed in 1972.⁵⁷ DCA, however, has remained adamant,⁵⁸ and LAA was finally forced to sue the State over the disputed funds. In approving placement of VISTA lawyers with LAA *only* on the condition that they are not active in suits against the state, Governor Meskill has recently declared that “the State will not fund LAA while litigation is pending, nor encourage federal funding until the issue is resolved.”⁵⁹

Attacks on legal services programs may perform a unifying function, consolidating staff support in the face of the opposition. But LAA has been at the center of the whirlwind since its creation, and there are signs that its opponents are accomplishing indirectly what they cannot achieve directly. By May of 1972 it was clear to LAA administrators that, given the conflicts with the state Executive, protracted delays in the funding process, and the failure of the local community to provide a sufficient base of financial support, the program was operating at a level at which expenses would outstrip income by several hundred thousand dollars by year’s end. LAA administrators made a number of hard decisions in order to cut expenses: several staff members were terminated, including lawyers, legal workers, and secretaries, and others left voluntarily and were not replaced; scheduled pay raises for attorneys for 1972 were eliminated, and most staff attorneys received salary cuts; the number of summer law student positions was reduced.⁶⁰ Three of LAA’s six neighborhood offices stopped accepting new clients—the doors of one remain closed, and another is accepting only welfare cases. The budget cuts aroused considerable hostility among staff members;⁶¹ some called for the resignation of executive director Frederick W. Danforth, Jr., and a new direction for the program.⁶² In an effort to meet staff criticism and to inject new energy into the program administration, Danforth has sought to revamp the administrative structure and reallocate responsibility for program operations.⁶³ His efforts have met with limited success at best, with one potential appointee

rejecting a new position because of what he perceived to be constraints on his authority,⁶⁴ and another able to work out a definitive and mutually-acceptable delegation of program responsibility with LAA's board of directors only after considerable negotiation.⁶⁵ Thus LAA's funding difficulties have been exacerbated by a resulting crisis in program leadership, and for four months there was a nearly complete paralysis of program administration and program fund-raising.

In a recent letter to members of the Forum for Contemporary History, John Hersey noted that two recent developments give the New Haven situation particular significance. In June, 1972, the United States Supreme Court, in *Argersinger v. Hamlin*⁶⁶ ruled that

Or will it be seen that that route can only lead, in the long run, to warped perceptions of justice on everyone's part, to frustration and cynicism, to more and more alienation of the poor, to fear, mistrust, and not less but more violence on city streets? Will it be seen, eventually, that a defense of the poor fully as vigorous as that routinely given those who can afford private attorneys is the only way to win over the poor to belief in the rule of law?⁷⁰

At present there are no clear answers to Hersey's questions, but the outlook, for LAA and for legal services programs nationally, is not hopeful. In a recent issue of the *American Bar Association Journal*, Vice-President Agnew called for restrictions on law reform work by legal services attorneys, closer supervision by Bar associations, "professional control and

"What we may be on the way to creating is a federally-funded system manned by ideological vigilantes."

every poor person facing a jail term has a right to free counsel, whether accused of a felony or a misdemeanor. In July, 1972, the Connecticut Planning Committee on Criminal Administration awarded a grant six times as large as that denied to LAA to the state public defender system (which immediately announced that it planned to open several neighborhood offices).⁶⁷ Yet public defenders, (who in Connecticut are appointed by the State Judicial Department) have been severely criticized for expending less energy and resources on behalf of their clients than private attorneys or LAA lawyers, for providing less effective representation in court, for showing a callousness toward poor defendants, for dealing with heavy caseloads by "bargaining" their clients' guilty pleas in exchange for reduced charges (regardless of the individual's guilt or innocence), for being "court-oriented" rather than "client-oriented."⁶⁸ In contrast, recent studies indicate that LAA spends approximately five times as much in representing its clients as does the public defender system, that LAA clients have their cases dismissed more often and are sent to jail less often than were those represented by the public defender, that defendants personally believe that LAA lawyers work much harder for them than do the public defenders, and that when given the choice, two out of three choose to be represented by LAA lawyers rather than by public defenders.⁶⁹ Hersey saw the New Haven situation as presenting a "national choice":

As the states meet the obligation laid down in *Argersinger*, which of the two philosophies we have seen in collision in New Haven will prevail?

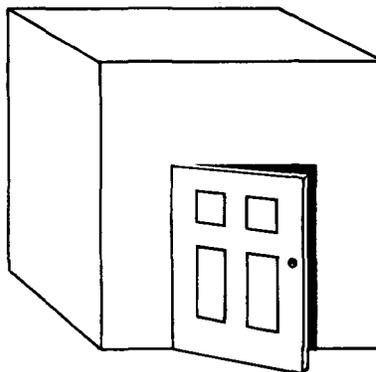
Will the rush be toward a court-oriented or a client-oriented solution?

Will the courts go forward in New Haven's present direction, preferring the use of public defenders who are kept firmly under the state's thumb, and who, working closely with prosecutors, stay abreast of clogged dockets by going in for more and more plea bargaining and less and less client-oriented service?

disciplining at the individual project level," and changes of "basic attitudes" within the program, away from the conception of poverty lawyers as "social engineers." The Vice-President raised the specter of radical lawyers, supported by OEO, beyond accountability and out of control:

What we may be on the way to creating is a federally-funded system manned by ideological vigilantes, who owe their allegiance not to a client, not to citizens of a particular state or locality and not to the elected representatives of the people, but only to the concept of social reform.⁷¹

Agnew's attack follows a familiar pattern. Philosophical issues are neither raised openly, nor formulated precisely; nor are grant vetoes or other threats kept in the background as a last resort, to be used only after a fair inquiry in the entire situation. Rather, the initial step is often an attack on the program itself and a direct threat to its existence; philosophical issues are raised only later, as justifications for the original attack. In such circumstances, any rational discussion of the issues is lost in the tumult of charges and counter-charges. If Vice-President Agnew speaks for the Administration, then the Nixon landslide on November 7 may well have sounded the death knell for aggressive and effective legal services for the poor.



This article draws to a considerable degree on unpublished materials such as letters, memoranda, reports, and notes of the author. All such materials are on file with the *Yale Review of Law and Social Action*.

1. Interview with Richard Blumenthal, former Staff Assistant to the President, in New Haven, Connecticut, Sept. 18, 1971.

2. Economic Opportunity Act of 1966, Act of Nov. 8, 1966, Pub. L. No. 89-794, § 222(a), 80 Stat. 1451 (codified at 42 U.S.C. § 2809 (1970)).

3. See Note, *The Legal Services Corporation: Curtailing Political Interference*, 81 Yale L.J. 231 (1971).

4. See N. Y. Times, Jan. 3, 1971, at 10, col. 1; Newsweek, Jan. 18, 1971, at 18-19; Barnes, *Reagan Versus the Poverty Lawyers*, The New Republic, Jan. 23, 1971, at 15; N. Y. Times, Dec. 30, 1970, at 29, col. 1; N. Y. Times, Feb. 8, 1971, at 24, col. 1; 117 Cong. Rec. § 3603 (daily ed. Mar. 23, 1971) (remarks of Senator Cranston).

5. Note, *The Legal Services Corporation: Curtailing Political Interference*, *supra* note 3, at 246-59.

6. *The President's Message to the Senate Returning S. 2007 Without Approval*, 7 Wkly. Comp. Pres. Doc. 1634 (Dec. 9, 1971).

7. 7 *Econ. Opportunity Rep.* 1 (Aug. 14, 1972).

8. Letter from Paul Newman, Director of Legal Services, Region 1, to All Project Directors in Region 1, Aug. 16, 1972.

9. C. Parker, *Is New Haven the Yardstick*, 1970 (draft of article for Conn. B. J.).

10. C. Parker, *The New Haven Neighborhood Model*, 23 Brief Case 164 (1965).

11. *Id.*

12. E. Cahn & J. Cahn, *The War on Poverty: A Civilian Perspective*, 73 Yale L.J. 1317 (1964).

13. R. Brooks, *History of LAA*, 1964 (unpublished report).

14. *Id.*

15. There was good reason to expect a lack of consensus at the meeting. In its Annual Report 1961-1962, the Legal Aid Committee of the New Haven County Bar Association had proudly compared the Bureau's operations to the minimum organizational requirements adopted by the NLADA and approved by the American Bar Association for cities with greater than 100,000 population. The requirements for independent office, full-time secretary, governing body, written policies of eligibility and operating practice, and monthly service and annual financial reports were all met. There was no established publicity program, but it was pointed out that the Bureau had received favorable coverage in the newspapers and in the

New Haven County Bar Bulletin from time to time. The NLADA required a full-time attorney for the first 750-1000 cases per year, and an additional full-time attorney or equivalent part-time attorneys for each additional 1,200 cases. The Bureau had a part-time attorney and about 40 law clerks during the law school term, and a student clerk in the summer. The NLADA required 35 office hours per week. The Bureau was open 40 hours per week. If the Annual Report presents a rather limited definition of what constitutes adequate legal aid facilities, it similarly strongly preferred negotiation to litigation. In advising student law clerks as to operating policies of the Bureau, the Report declares: "While it would be unethical to represent different interests which are antagonistic, hostile, or in conflict with each other, one of the chief functions which Legal Aid can serve is to prevent such litigation by accepting the role of umpire or arbitrator, instead of advocate, whenever the opportunity presents itself and circumstances permit"¹³ (emphasis in original). Legal Aid Committee, New Haven County Bar Assoc., Annual Report 1961-62, at 2-3 (1962). Certainly the limited resources of the Bureau would not permit an abundance of litigation to protect clients' interests, but one might question whether a person requesting legal assistance, like a client employing a private attorney, expects (and is entitled to) an advocate rather than an arbitrator. Certainly a program created to provide advocates in neighborhood offices would cause consternation in some circles.

16. New Haven County Bar Assoc., Verbatim Proceedings: Meeting of New Haven County Bar Assoc., 16-17 (Nov. 16, 1964).

17. Letter from Herman M. Levy, President, New Haven County Bar Assoc., to Milton P. DeVane, Esq., Nov. 16, 1965.

18. New Haven County Bar Assoc., Verbatim Proceedings, *supra* note 16, at 55-56.

19. *Id.* at 14.

20. New Haven Legal Assistance Association, Inc.: Program for the Improvement of Legal Aid and the Administration of Justice for the New Haven Area in Both Criminal and Civil Matters. Questions and Answers Submitted By and To the New Haven County Bar Association and the Junior Bar Section, at 1 (1964).

21. New Haven County Bar Assoc., Verbatim Proceedings, *supra* note 16, at 31-32.

22. *Id.* at 39.

23. *Id.* at 40-41.

24. Connecticut Bar Association Press Release, Mar. 16, 1965.

25. Memorandum from James Trowbridge to Project Directors DCA Criminal Committee, Nov. 2, 1970.

26. New Haven Legal Assistance Association, Inc. 1970 Summary of Applicants and Clients, Civil and Criminal Cases; Circuit Court Public Defender, Quarterly Reports, (1970).

27. Memorandum from James Trowbridge, *supra* note 25.

28. 394 U.S. 618 (1969).

29. Memorandum from James Trowbridge, *supra* note 25.

30. *Id.*

31. *Id.*

32. *State Bar Assn of Conn. v. Connecticut Bank & Trust Co.*, 145 Conn. 222 (1958).

33. Hall, *Last Minute Rescue for Legal Aid?*, The New Republic, Nov. 21, 1970, at 14.

34. Memorandum from F.D. Neusner, Assistant Attorney General, to John C. Pickens, (Jan. 7, 1971).

35. 281 F. Supp. 779 (D. Conn. 1967)

36. 154 Conn. 631, 636 (1967).

37. *State v. Reddick*, 139 Conn. 398, 400 (1953).

38. 4 Conn. Cir. 570, 571 (1967).

39. *United States v Rush*, *supra* note 35, at 785.

40. See *Cooper v. Matzkin*, 160 Conn. 334 (1971).

41. Statement of Justice Herbert S. MacDonald, Connecticut Supreme Court, co-Chariman, Connecticut Planning Committee on Criminal Administration, at meeting of the Executive Committee of the Connecticut Planning Committee on Criminal Administration, February 29, 1972.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* LAA sought advice concerning its legal position, and possible non-legal strategies to be employed, from a number of sources. A member of the faculty of Yale Law School noted:

Justice MacDonald's second question appears to proceed on one or both of two assumptions: (i) that a different (and higher) quality of defense service is owed by an attorney to a client he believes to be innocent than toward one he believes to be guilty; or (ii) that a publicly-funded legal assistance program has a different (and lesser) obligation in respect to the defense of clients not believed to be innocent than a private attorney would have to the same clients under similar circumstances.

Citing the American Bar Association Minimum Standards on *Providing Defense Services*, adopted in February, 1968, *Standards Relating to the Prosecution Function and the Defense Function*, approved by the House of Delegates of the American Bar Association on February 8, 1971, the American Bar Association Canons of Professional Responsibility, and the leading report, *Equal Justice for the Accused* (1959), prepared jointly by The Association of the Bar of the City of New York and the National Legal Aid and Defender Association, he concluded:

We have found nothing in the law or in the canons of professional ethics to give the slightest support for either of these "unequal justice" assumptions. The precedents are all the other way. It would be dismaying indeed, and no doubt unconstitutional, were Connecticut to pioneer a new concept of justice which imposed on lawyers generally, or on legal aid lawyers in particular, a lower standard of fidelity or advocacy in the protection or assertion of rights of accused persons whom the attorney did not "believe" to be innocent. The question rests on a fundamental misconception of the role of defense counsel in the American adversary system of criminal justice.

Memorandum from D.J. Freed, Yale Law School, to Board of Directors of New Haven Legal Assistance Association, Inc., May 2, 1972.

47. Letter from Anthony E. Grillo, Judge, Superior Court, Charles G. Albom, Esq., and James R. Greenfield, Esq., to Hon. Herbert S. MacDonald, Justice, Supreme Court, State of Connecticut, May 16, 1972.

48. *Id.*

49. See text at n. 46, *supra*.

50. Letter from H.R. Sterrett, Executive Director, Connecticut Planning Committee on Criminal Administration, to Hon. Bartholomew F. Guida, Mayor, City of New Haven, July 31, 1972.

51. Letter from Frederick W. Danforth, Jr., Executive Director, New Haven Legal Assistance Association, Inc., to Donald F. Keefe, Esq., Sept. 15, 1972.

52. See text at nn. 27, 28, *supra*.

53. Hall, *Last Minute Rescue for Legal Aid?*, *supra* note 33, at 14.

54. New Haven Register, July 8, 1972, at 1, col. 1.

55. Letter from Milton A. Brown, Executive Director, Community Progress, Inc., to Mr. Ruben Figueroa, Commissioner, Department of Community Affairs, June 7, 1972.

56. Letter from Wesley L. Hjernevik for Donald Rumsfeld, Director, Office of Economic Opportunity, to Mr. Leroy Jones, Commissioner, Department of Community Affairs, Dec. 15, 1970.

57. Letter from Paul Newman, Director of Legal Services, Region I, to Frederick W. Danforth, Jr., Executive Director, New Haven Legal Assistance Association, Inc., May 26, 1972.

58. Letter from Ruben Figueroa, Commissioner, Department of Community Affairs, to Mr. Milton A. Brown, Executive Director, Community Progress, Inc., June 16, 1972.

59. Letter from Thomas E. Meskill, Governor, State of Connecticut, to Mr. Romero Cherry, Program Analyst, ACTION/VISTA, Sept. 18, 1972.

60. Memorandum from Fred Danforth, Executive Director, New Haven Legal Assistance Association, Inc., to All Staff, May 26, 1972. *cf.* Memorandum from Resources Committee to All Staff, May 3, 1972.

61. See, e.g., Memorandum from David M. Lesser to All Staff, June 21, 1972.

62. Memorandum from Stuart Bear, Tom Corradino, Bill Clendenen, Dave Lesser, Jon Waxman, Barry Johnson, Ed Dolan, Peter Loeb, Fran Wickstrom, Mike McTighe, and Frank Cochran, to The Staff, July 31, 1972.

63. Memorandum from Fred Danforth to All Staff, June 30, 1972; Memorandum from Fred Danforth to All Staff, July 25, 1972. These administrative changes were designed to clearly separate program and funding responsibilities. By assigning full program responsibility to another member of the staff, Danforth hoped to be free to raise money and to fend off political intrusions.

64. Memorandum from Bill Clendenen to All Staff, July 21, 1972.

65. Interviews with Thomas N. Wies, in New Haven, Connecticut, Sept. 25, 1972, and Nov. 6, 1972.

66. 407 U.S. 25 (1972)

67. Letter from John Hersey to Members of the Forum for Contemporary History, Aug. 11, 1972.

68. *Id.*

69. *Id.*

70. *Id.*

71. Agnew, *What's Wrong with the Legal Services Program*, 58 A.B.A.J. 930, 931 (1972).