

OEO LEGAL SERVICE PROGRAMS AND THE PURSUIT OF SOCIAL CHANGE: THE RELATIONSHIP BETWEEN PROGRAM IDEOLOGY AND PROGRAM PERFORMANCE†

TED FINMAN*

In 1965 the Federal Government's Office of Economic Opportunity (OEO) instituted a program to make legal services available to the poor. This, to be sure, was not the first effort to provide lawyers for people unable to afford them. There have long been individual practitioners who serve the poor without fee.¹ Legal Aid offices, financed primarily through private charity, have been providing services since the 1890's.² And, in recent years, there have been a number of experimental programs—the Mobilization for Youth Legal Services Unit in New York, the New Haven program, Boston's and others.³ The OEO program, however, was a significant departure from its predecessors.

It was the first time the federal government had made a major venture into the legal services field. And in sheer dollar expenditures, this federal venture dwarfed all prior efforts, public as well as private.⁴ Size, moreover, was not the program's only differentiating feature. It was also the first attempt, on a nationwide scale, to implement a number of important conceptions concerning the structuring and role of programs providing legal services for the

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* Professor of Law, University of Wisconsin. B.A., 1950, University of Chicago; LL.B., 1954, Stanford University.

1. For a recent study of services provided by private practitioners, see D. MADDI & F. MERILL, *THE PRIVATE PRACTICING BAR AND LEGAL SERVICES FOR LOW-INCOME PEOPLE* (Am. Bar Foundation 1971).

2. E. BROWNELL, *LEGAL AID IN THE UNITED STATES* (1951, Supp. 1961).

3. See, e.g., U.S. DEPT. OF HEALTH EDUC. & WELFARE, *THE EXTENSION OF LEGAL SERVICES TO THE POOR* 71-93 (1964) (proceedings of Conference on the Extension of Legal Services to the Poor, Nov. 12-14, 1964, Washington, D.C.); P. WALD, *LAW AND POVERTY: 1965*, at 69-85 (1965) (report to National Conference on Law and Poverty, June 23-25, 1965, Washington, D.C., cosponsored by OEO and the Dept. of Justice).

4. From Sept. 1965 to Aug. 1966, OEO grants for civil legal services exceeded \$27 million, a sum that is more than six times the \$4.3 million that legal aid societies expended on such services in 1965. *FIRST ANNUAL REPORT OF OEO LEGAL SERVICES PROGRAM TO THE ABA* 1, 3 (1966). By 1968, the OEO expenditure was up to \$38 million, and by 1970 to \$53 million. *Hearings on the Legal Services Program of the OEO Before the Subcomm. on Employment, Manpower, and Poverty of the Senate Comm. on Labor and Public Welfare*, 91st Cong., 2d Sess. pt. 2, at 342 (1971).

poor. Thus the program's law offices were to be placed not in a central downtown location but in a city's poverty areas, sometimes in a neighborhood multiservice center together with other anti-poverty agencies.⁵ Further, neighborhood residents—the poor themselves—were to select some, possibly even a majority, of the members of their program's governing board.⁶ And perhaps most important of all was the OEO view of the program's goals: legal services were to function not only as a treatment for the symptoms of poverty—a remedy, so to speak, for the lack-of-a-lawyer pain—but also as an active agent in the struggle against the poverty disease itself.⁷

OEO saw one aspect of this struggle as reforming and refashioning the law. As they stood, the rules that regulated important facets of the poor man's life failed in many ways to protect his vital interests.⁸ Indeed, poverty consisted in part of the very conditions countenanced and sanctioned by those rules—delapidated housing conditions, for example, seemed to rest on a network of rules that provided no effective remedy against landlords who failed to main-

5. OEO, COMMUNITY ACTION PROGRAM GUIDE—INSTRUCTIONS FOR APPLICANTS 27 (1965); OEO, GUIDELINES FOR LEGAL SERVICES PROGRAMS 27 (c. 1966).

6. GUIDELINES, *supra* note 5, at 10-14.

7. This was the announced purpose of the community action program of which the legal service program was a part. COMMUNITY ACTION PROGRAM GUIDE, *supra* note 5, at 7, 27. The OEO publication dealing specifically with legal service programs similarly speaks of the extension of legal services as an aspect of a "comprehensive attack on the causes and effects of poverty . . ." GUIDELINES, *supra* note 5, at 1.

In the years immediately preceeding the launching of OEO's legal services program, the idea that such a program could and should be used to attack the causes of poverty received considerable attention and acceptance. See, e.g., THE EXTENSION OF LEGAL SERVICES TO THE POOR, *supra* note 3; WALD, *supra* note 3; Cahn & Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317 (1964). For a description of the development of the legal services program within OEO, see Pious, *Policy and Public Administration: The Legal Services Program in the War on Poverty*, 1 POL. & SOC'Y 365, 366-74 (1971).

Whether, and to what extent, a government financed legal services program should direct its energies toward promoting social change rather than toward meeting the immediate needs of individual clients is a question beyond the scope of this study. Though a position on this issue seems unlikely to bias research on the questions of concern here, my view, for whatever relevance it may have, is that programs should direct a considerable portion of their energies toward social reform. For discussions of the role of legal services programs, see J. CARLIN, J. HOWARD & S. MES-SINGER, CIVIL JUSTICE AND THE POOR (1967); Cahn & Cahn, *supra*; Hannon, *The Leadership Problem in the Legal Services Program*, 4 LAW & SOC'Y REV. 235 (1969); Hazard, *Law Reforming in the Anti-Poverty Effort*, 37 U. CHI. L. REV. 242 (1970); Hazard, *Social Justice Through Civil Justice*, 36 U. CHI. L. REV. 699 (1969); Pye, *The Role of Legal Services in the Antipoverty Program*, 31 LAW & CONTEMP. PROB. 211 (1966).

8. See, e.g., WALD, *supra* note 3, at 6-41; Symposium, 54 CALIF. L. REV. 319 (1966).

tain their premises in a safe and sanitary state. One task OEO set for its legal service program was to reform such law, to bring test cases or seek legislative change in order to establish the legal bases for fundamentally improving the situation of the poor.⁹

The poverty community's need went far beyond this, however. On the legislative front, there was a need to struggle not only for reforms in existing rules but also for new laws giving the poor new rights and opportunities. Moreover, legislatures and courtrooms were only two of many forums important in the formulation of law and policy. The city council hearing, the school board meeting, the administrative proceeding to fix utility rates, television and newspaper debates—here, too, questions of vital concern to the poor were taken up, and if the interests of the poor were to count in those considerations, if they were to be weighed by the decision makers and be reflected in the decisions made, advocates would be necessary. OEO believed that legal service programs, as agents in the war on poverty, should fill that need.¹⁰

Finally, the OEO also saw legal service programs as instruments for helping the poverty community develop its own political and economic resources, so that the poor would have power to act effectively on their own behalf. Many organizations of poor people—tenants' unions and councils of welfare recipients, for example—had already formed to seek self-betterment, and others would be formed in the future. The profession's long experience in acting for other interest groups—trade associations, labor unions, large corporate enterprises—suggested many ways in which lawyers could help the poor. Existing groups might need advice and assistance in bargaining situations, representatives in court, and general legal

9. GUIDELINES, *supra* note 5, at 23.

10. The only relevant general statement in the GUIDELINES, *id.* at 22, is vague on this point: "All areas of the civil law should be included and a full spectrum of legal work should be provided: advice, representation, litigation, and appeal." At another point, however, the GUIDELINES urge programs to involve themselves in broad-gauged efforts to "protect low-income individuals from economic exploitation," *i.e.*, overreaching by merchants and finance companies. *Id.* at 29-30. More detailed statements concerning the role of OEO's legal services programs as spokesmen for poverty community interests will be found in WALD, *supra* note 3, at 66, 69-73, 82-83, and in *Tentative Guidelines for Legal Service Proposals to the OEO*, reproduced as an appendix in *id.* at 112, 116-18.

The first director of the legal services program, E. Clinton Bamberger, made the point clearly in speeches before bar associations:

We want lawyers to be not only advocates for individuals . . . but to be the articulate spokesmen for the fifth of our population who suffer from being poor—invisible, inarticulate, unrepresented, depressed and despairing . . . Lawyers . . . can speak for the inarticulate, can challenge the systems that generate the cycle of poverty, can arouse the persons of power and affluence.

. . . We want lawyers to be advocates for a class of people who are inarticulate and unsophisticated—and who do not have advocates. Lawyers will be a voice of the poor in the community. . . .

Quoted in Pye, *supra* note 7, at 248 n.163.

advice. Individuals who wanted to form an organization would want to know about the alternative legal structures available to them. Moreover, it might sometimes be appropriate to suggest to individuals who had sought legal assistance—two or three tenants from a housing project, for example—that they could best promote their own interests by joining others who had similar problems.¹¹

The approach to implementing this broad-gauged legal services project was quite simple. Federal financing would be made available for programs that had been initiated and were to be controlled at the local level, but only if the design and purposes of the program, as proclaimed in the proposal submitted for funding, were consistent with OEO conceptions. Some slippage between proclamation and performance was anticipated, of course, and the individual programs were expected to vary somewhat in this respect. The extent of the slippage, however, both generally and in any particular program, was important, for, from OEO's viewpoint, the legal services project could never be considered successful if local programs focused solely on the problems of individual clients and failed to enter actively into the battle against the social conditions that constitute poverty. Consequently, it became necessary to inquire into the factors that affect program performance, to identify the forces that determine the extent to which a program will be active on behalf of social change. Such was the purpose of this study.

One potentially important variable was whether OEO at the national level would be vulnerable to political pressures. An aggressive legal service program was bound to generate hostility and opposition at local and state levels, and, as a consequence, there would be efforts to control local programs by applying pressure at the top. For purposes of this study, however, the national structure of OEO is taken as a given rather than as a variable to be investigated,¹² since our question is whether differences in the local programs themselves lead to differences in program performance.

The overall method of the study was to examine closely the oper-

11. The GUIDELINES, *supra* note 5, at 21, speak generally of providing service to "organizations composed primarily of residents of the areas and members of the groups served." The earlier *Tentative Guidelines* were more specific:

It is desirable that representation be provided for organizations of the poor such as credit unions, cooperatives, and block clubs. Such representation may include helping such organizations to start, advising them concerning the organization's objectives, and representing them in litigation.

WALD, *supra* note 3, at 112, 116. See also *id.* at 82-83; COMMUNITY ACTION PROGRAM GUIDE, *supra* note 5, at 27 (listing assistance to "such groups as tenants' organizations and organizations of welfare recipients" as one function of a legal service program).

12. For examples of how political pressures have operated on the OEO legal service program, see Pious, *supra* note 7, at 383-85.

ations of five OEO programs, LSPs-A, B, C, D and E.¹³ Preliminary inquiries had indicated that these programs differed both in performance and in respect to various factors that might influence performance, for example, whether their offices were located in multiservice centers, the extent of poverty community representation on their governing boards, and their links with preexisting Legal Aid organizations. Consequently, they provided a basis both for five individual case studies and for comparisons that might indicate whether performance variations were related to differences in program history and structure.^{13a}

The studies of the five programs began with an examination of the various documents prepared in the process of seeking OEO approval and funding: the final application for funding, earlier drafts, memoranda by OEO personnel, letters to OEO from people supporting and opposing the program, and so on.¹⁴ After this background

13. The persons interviewed as part of this study were promised anonymity. Disclosure of a program's identity would often be tantamount to disclosure of the name of an interviewee. Therefore the programs and the communities they serve will be referred to as A, B, C, D, and E. Similarly, the appropriate letter designation will be substituted for a community's true name wherever that name appears in quotations, titles of city institutions (e.g., City C Legal Aid Society), materials cited in these footnotes, etc.

Since the purpose of the study is not to provide information on or an evaluation of specific programs, but to examine why programs in general perform as they do, my ultimate conclusions can be fully expressed and understood even though the identities of the studied programs are withheld. The reader may want to consider, however, whether differences in program performances can be better explained by differences in the communities they served than by the theory I will suggest. While I cannot provide all the information relevant to that question, it is appropriate to note that the programs selected for study were chosen in part because the communities in which they are located had a number of basic characteristics in common. All are located in the north: B and E in the east; C and D in the midwest; A on the west coast. Although there are variations in total population, all five communities fall in the 400,000 to 900,000 range. City C is the largest, about 880,000; A and D are next with about 750,000 each; E's population is about 520,000; B, with about 400,000, was the smallest of the five. Cities A, B, C, and D were typically urban and metropolitan in character. E differed somewhat. It was composed of a number of contiguous municipalities (all within a single county) rather than being a single city, and while urban in some respects was suburban in others.

On request, further information will be provided to those researchers whose needs and intended uses make it possible, in my judgment, to do so without violating my obligation to the interviewees whose cooperation was so essential to this study.

13a. As will appear, one program was exceptionally active in pursuing social change, two others devoted considerable energy and resources to this effort, and two focused almost exclusively on individual service. There is no reason to suppose that these five programs constitute a representative sample of program activism. It is unlikely, for example, that one-fifth of all OEO programs are as active as LSP-A, the most reform oriented of the five studied here.

14. Most such materials were obtained through an examination of OEO's Washington files; some were provided by the local programs. Copies of all

inquiry, about three weeks were spent in each of the five communities interviewing program personnel, members of boards of directors, people working in other antipoverty programs, activists and militants from the poverty community, lawyers in private practice, and others. The interviews with legal service program personnel were quite extensive, often as much as a full day in the case of lawyers in the neighborhood offices. Other interviews varied greatly in length. All were open ended. And in all instances but one (a person not connected with the legal service program) the interviewees cooperated fully. Further, pertinent documentary materials (including the public and private reports and memoranda issued by the program director, the minutes of the board of director's meeting, and the summaries prepared for each of the cases that passed through the office, showing something about the client's problem and what was done to help him) were obtained. Finally, when it was feasible and seemed important to do so, I examined documentary material and conducted followup interviews to see how the programs progressed in the period subsequent to my initial interviews.

No attempt has been made to apply rigorous quantitative techniques to this data. In several respects, it is not susceptible to that kind of analysis.¹⁵ Instead, conclusions are based on the impressions and judgment of the researcher.

The research revealed certain basic conclusions. Innumerable factors, including chance, can and do influence program performance. In any given instance, a full explanation of program behavior would have to take all such factors into account. It is not the purpose of this study to account for program performance in so detailed a fashion. Putting aside such details, and focusing on the basic character of performance—whether a legal service program will be little, moderately, or highly active in promoting social change—the data from our five programs suggested a conclusion not anticipated at the beginning of the study.

the items cited in subsequent footnotes are in my files. Since the identity of the program to which the cited documents relate will not be shown (*see* note 13 *supra*) the reader will be unable to find and examine them for himself. The citations, however, will serve the purpose of showing the bases of the statements to which they relate. As noted at the close of note 13 *supra*, requests for further information may be directed to the author.

15. Both the quality and the quantity of data collected varied from program to program. Some had fairly informative information on the individual cases that had been handled; others had only rough statistical summaries. Even the most complete data left much to be desired; terms used to indicate the nature of a case and the way in which it was handled were sometimes highly ambiguous, and consequently two cases that appeared to be the same when one looked at the written summaries were really quite different, because the summaries had been written by lawyers who used the same terms in different ways.

In each community, most of the work associated with developing a legal service program—the drafting of a proposal, generating local support for it, negotiating with OEO for funding—is carried on by a small group of people, sometimes only two or three. These individuals—the program promoters—share an ideological perspective that directly and indirectly bears on the function and role of a legal services program. This perspective differs, sometimes strikingly, from one promoter group to another, and the basic character of program performance will vary directly with these differences in ideological perspective: when the promoters' orientation implies a limited role for a legal service program, performance will be correspondingly limited; if their perspective calls for activity aimed at social change, the program will perform accordingly. Moreover, and most important, this relationship is a causal one: ideological perspective operates in a number of ways to exert a critical, perhaps dominant influence on the shape of performance.

It is this relationship between the ideological perspective of promoters and program performance that will be explored in the pages that follow.¹⁶ This exploration will necessarily include a look at some other factors that might affect performance so that we can consider their force relative to that of ideology and examine important interrelationships. In the first section we will trace the development of ideology and describe performance in each of our five legal service programs. Then we will show how ideology operates to determine the basic character of performance.

I. FROM PROMOTERS TO PERFORMANCE

The key ingredient of a legal service program's ideological perspective is the role it assigns to the program itself. In addition, this ideology may include beliefs about the causes and cures of poverty, a rationale for government financing of legal assistance, and related matters. Ideology exists both as reality and image: the ideas actually dominant within the organization, and what others assume to be the program's guiding principles.

This perspective originates with the promoters. By becoming members of the program's governing board and through their role in selecting other members, they implant their ideology in the body vested with formal authority over the program's operations. Then, through the selection of like-minded program executives, this ideology is carried into the actual management of the program. At this point the program has acquired an ideological perspective, for

16. At another level of explanation, one might inquire into the relationship between program performance and the various sociological, psychological, and economic variables that might account for promoter perspective itself. The research here was not directed to that question, however, and consequently our data on such variables is too scant even to permit speculation along those lines.

those with authority and power to hire other program personnel, direct program operations, and otherwise act to determine performance have been selected, and, to some extent, a program image is being projected to outsiders. The ideology that began with the promoters has come to occupy a central position in the running of the program.

In examining each of our five legal service programs, we will look first at this process of ideological development and then turn to program performance. Two main aspects of performance will be examined: representation of poverty community interests in law- and policy-making processes and the promotion and development of political and economic resources within the poverty community. The next few pages describe these aspects of performance in general terms.

In order to provide a basis for comparing program performances, our descriptions of work in the law- and policy-making arena will focus primarily, though not exclusively, on program handling of the problems faced by tenants, consumers purchasing on credit, and clients or potential clients of welfare, public housing, and other governmental programs.¹⁷

Perhaps the most common way legal service programs act to move law or policy in directions beneficial to the poverty community is by seeking changes in specific rules of law, usually through litigation but occasionally by promoting legislation. While the lawyer who drafts legislation is consciously seeking law reform, an attorney engaged in litigation may assert a novel claim or defense even though his only concern is with the case immediately at hand.

17. The programs did considerable work in these problem areas that, though important for other purposes, is peripheral here. In the landlord-tenant area, many clients wanted only to know what the law provided, e.g., when an eviction notice would take effect; others needed to obtain a measure of grace from a landlord, e.g., a few days beyond what the eviction process allowed so that they could find other housing. All the programs acted to fill these needs. Similarly, all programs arranged easier periodic payment plans for many of their debtor clients, and all would call the welfare department to make appointments for clients seeking benefits. Though this aspect of program performance does not directly concern us, it is worth noting in passing that performances varied, and that the programs that accomplished the most when working on behalf of individual clients were also the ones most involved in promoting law reform. Perhaps a program that raises new legal contentions and presses them in litigation acquires a reputation that gives it special bargaining leverage even in the cases it handles routinely. Moreover, in many situations under the long established and generally accepted rules of law, the poor man's claim or defense is simply untenable. If the lawyer does not look beyond those accepted rules, he will see his client's case as hopeless and, more likely than not, advise him accordingly. Thus, in many situations whether a legal service program can be of assistance may depend on whether it will undertake to challenge existing rules. Absent such a challenge, even if the lawyer tries to act for his client, he is likely to have little leverage at the bargaining table and no chance in court.

The scope of his concern is important, for unless an attorney is focused on law reform he may fail to see the various obstacles that may prevent cases that raise important questions from becoming precedents that answer them. Mootness, for example, is a frequent risk. Inconsistencies between the individual client's needs and the use of his case to test a principle can also be a problem, though one that may often be solved by the way in which litigation is structured. A client's reluctance to involve himself in lengthy litigation may be a hurdle, but not necessarily an insurmountable one if matters are fully explained. Only an attorney who sees law reform as one of his objectives will be aware of such problems and take the appropriate steps to solve them. Consequently, in considering whether a program will contribute to social change, efforts consciously directed toward law reform deserve more weight than ad hoc challenges to established rules.

Pressing test cases and drafting legislation to change specific rules of law are not the only ways in which a legal services program can seek to affect law and policy. Other approaches are sometimes helpful, even essential. For example, it may be appropriate or necessary to appear before a school board or city council or to testify or arrange for others to testify at legislative hearings; the newspapers, television, and other public forums can be used to promote understanding of poverty community problems and urge action to solve them; program lawyers can join with other poverty community workers in developing broad, coordinated approaches to public officials from whom redress is being sought. While some clients may ask for such help, other opportunities for action will be lost unless the program itself seizes the initiative. Therefore, the extent to which a program sees and responds to such possibilities is critical to the quality of its performance as a representative of the poverty community in law- and policy-making processes.

The second major category of program performance—promoting the development of political and economic resources within the poverty community—encompasses a number of possible activities. Since local organizations—the tenants' union, block club, welfare mothers' group—represent a major source of community development, one must ask whether our legal service programs served such groups, both by helping them to form and by providing the advice and representation they needed to act effectively.

Program initiative is important if poverty community organizations are to be served. Some groups will come to a legal service program on their own, but most often an attorney-client relationship will arise only as a consequence of other contacts through which members of the organization have come to know, understand, and trust the program. One reason for this is that the poor, no less than others, have little conception of the many ways lawyers can act to help them, nor do they appreciate the flexibility of law

and the tactical and strategic importance of this flexibility in conflict situations. Perhaps more important, poverty community organizations, especially in the black ghetto, tend to see legal service programs as part of the "establishment" and consequently view them with suspicion. Moreover, activists may see resort to lawyers as inimical to their overall goal of building strong, self-reliant organizations. One such person put it this way: "The problem I have with the whole legal process is whether it is beneficial to building a tenants' organization. You don't get any organizational benefits when lawyers solve the problem, because the people you are trying to organize may not see that the strength of the organization contributed to bringing about a solution."¹⁸ Given these difficulties, if a program is to represent poverty community organizations, it must take the initiative, contact community groups, let them know it shares their concerns, and give them some idea of the ways in which legal services can be helpful. Consequently, we will ask whether a program engaged in such activity.

Finally, our examination of performance will consider whether a program involved itself in the development of economic enterprises within the poverty community. Here, program attorneys could be useful not only by providing the skills usually associated with business lawyers, but also by bringing to community attention opportunities for federal financing that might otherwise not be recognized.

A. *The City A*¹⁹ Legal Services Program (LSP-A)

IDEOLOGY

The development of the OEO legal services program in City A involved a bitter struggle, based on conflicting views of the role of the poor in formulating and controlling such a program, and emotionally underpinned by fears, suspicions, and animosities. On one side of the battle were the leaders of the Legal Aid Society and of the bar association—what might be called the legal establishment. In opposition was a group brought together through the initiative of one young lawyer and consisting of several attorneys, activists from the poverty neighborhoods, and the local chapter of the National Lawyers' Guild. The latter group ultimately prevailed, but not before the struggle for OEO funding had become a matter of

18. Another activist's position was described as follows: "He wants to build a powerful organization, and thus sees a courtroom focus as removing the struggle from the community. So he will be picky about using the legal service program." The quotations in the text and in this note are from interviews conducted as a part of this study. Because of the need for confidentiality discussed in note 13 *supra*, these and similar quotations cannot be cited in the traditional manner. Therefore, in the footnotes that follow, they will be cited as "Interview."

19. The use of this designation rather than the true name of the city is explained in note 13 *supra*.

common knowledge within the bar of City A and even beyond, especially among persons interested in the OEO program. As a consequence of this controversy, the activists and the program they promoted came to be seen as having an especially strong commitment to a social action orientation. Because this image played an important role in the development of LSP-A, we will look briefly at the controversy that produced it before describing the activist promoters themselves.

The first proposal for a City A legal services program came from the local Legal Aid Society, which asked for funds to add one attorney, a stenographer, and two investigators to its staff so that it might better serve its existing caseload; the Society also expressed a willingness, if further funds were made available, to hire additional lawyers and place them in such neighborhood centers as might be opened as part of the antipoverty program.²⁰ Under this proposal, the Society's policy of accepting cases for "affirmative relief" only where it found "social need" and "legal merit" would have continued. And the Society urged that its economic criteria, rather than the more liberal standards of City A's Council for Economic Opportunity (CEO), be used in determining whether an applicant for service was financially eligible.²¹

20. Community Action Program to Provide Adequate Civil Legal Aid in City A, Dec. 23, 1964.

21. In accordance with standard procedures, the Legal Aid Society submitted its proposal to City A's CEO, the agency with overall responsibility for local community action programs. Earlier in the year, CEO had established a Legal Services Task Force to undertake responsibility for developing a legal services component within the community action program. The Task Force, which was chaired by the chief counsel of the Legal Aid Society (who also prepared and signed the minutes of Task Force meetings) seems to have been the vehicle through which the Legal Aid Society sought to influence CEO. In all events, the Task Force reviewed the Legal Aid Society's proposal and recommended to CEO that the proposal be approved and funded. Minutes of Task Force Meeting, Dec. 22, 1964, at 3. (Interestingly, assuming the minutes and proposal both were accurately dated, the Task Force approval occurred one day prior to the actual issuance of the proposal itself.)

Apparently there were people in CEO who were not happy with the Legal Aid proposal, and a different plan was drafted by members of the CEO staff. Under this plan, lawyers would have been made available at CEO neighborhood centers to see clients referred by the various CEO agencies located there. This plan, too, was reviewed by the Task Force, which, through the minutes of its meeting, reported to CEO that the plan was objectionable on a number of grounds: persons whose work related to legal services, it was said, should be employees of the Legal Aid Society, not the CEO; use of CEO's liberal financial eligibility standard would impose too great a caseload on the available staff; the provision that the "legal services most in demand by the target populations" should be provided was objectionable, because "while the wants of a client must always be taken into account, the service needed is part of the professional advice given and is often in conflict with what a client believes he needs." Minutes of Task Force Meeting, March 15, 1965, at 5-6, and attachment thereto.

Legal Aid's proposal was rejected by OEO as inadequate.²² Discussion between OEO and representatives from the Legal Aid-bar group followed. The presidents of the Society and the bar then appointed a joint committee to draft a plan that OEO would accept. Serving on the committee were the gentlemen that appointed it, two additional bar association representatives, two persons from Legal Aid's board of directors, the chief counsel of Legal Aid, and a representative from the junior bar organization. The makeup of this committee as well as the plan the Society itself had advanced indicated a certain orientation: the planning and direction of a legal services program were viewed as matters wholly within the province of the bar; and the poor were seen only as potential recipients of service, as the objects of charity, not as a group that ought to be involved in the planning of the program. This in turn suggests that the bar-Legal Aid leadership saw OEO funding as a way of supplementing the work already being carried on by the Society, i.e., the servicing of immediate individual needs. Certainly nothing more was contemplated by those who drafted Legal Aid's initial proposal, and the plans subsequently developed by the bar-Legal Aid committee, as well as the conduct and statements of its key leaders, further evidence such an orientation.²³

22. CEO included the Legal Aid proposal in the overall community action program submitted to OEO. According to CEO, OEO rejected the legal services component because the service was to be provided at the established Legal Aid office rather than at offices to be established in poverty neighborhoods. Letter from CEO to Legal Aid Society, July 20, 1965. An OEO staff member who reviewed the Legal Aid proposal noted other objections, including these: absence of any representation of the poor on the Society's governing board; noninvolvement of area law schools; the "social need" and ambiguous legal "merit" restrictions on service. OEO Legal Services, Interoffice Memorandum, Sept. 14, 1965, at 1-2. The staff member described the proposal as "totally inadequate" and said that the help of an OEO consultant was needed "not only to prepare a proposal but to try to educate the Society as to what a Legal Service Program should be." *Id.* at 1.

23. The bar-Legal Aid proposal stated that representation would be provided to organizations of the poor, but nothing in the proposal indicated that such work was considered important (a total of three lines in the 21 page proposal were devoted to this matter) or that it was perceived as part of an effort to help the poor develop power of their own. Under the heading "Changes in Substantive and Procedural Law" the proposal said that each staff attorney would write "two articles per year for use as an aspect of preventive law and for publication in professional journals." Neither the development of test cases nor efforts to obtain legislative reform were mentioned. Application for Neighborhood Legal Services Grant, Dec. 1965, at 12, 15 and *passim*.

In January 1966, the president of the City A Bar Association devoted his annual address to the contest for control of the legal services program in City A. After noting that the activist proposal provided broadly for representation of organizations, he said, "It is my understanding that the true objective of the legal services program is to provide legal services to poor individuals; not to provide neighborhood cliques or power blocs with fully staffed law offices whose retainers are paid by our government."

The central promoter of the activist proposal, Mr. C, was a young lawyer who viewed the OEO legal service program as an instrument of social change and believed that the poor should be involved from the very beginning in developing plans for and setting the goals of such programs. At first he tried to implement his ideas by contacting the president of the City A Bar Association and asking to be included on the committee that was being formed to plan a legal services program. A few weeks later, quite by accident, he heard that a committee had been formed and was holding regular meetings. When he again volunteered his services, he was told, "You know how it is with committees, if you get too many people in there, you can't get anything done. So we have a rule that nobody can attend."²⁴ Angry at this rejection, now firmly convinced that the bar-Legal Aid committee would fail to find or address itself to the real needs of the poverty community, and spurred by the urging of a friend who worked in the legal services division of OEO, Mr. C began to move on his own.

Within the next few weeks he discussed the possibility of promoting a legal services program with several lawyers and neighborhood leaders. He then prepared a rough draft of a proposal that incorporated their ideas and his own. This was considered at a series of meetings attended by both the lawyers and the neighborhood people; various points were discussed and disagreements resolved; and a proposal for OEO was prepared. OEO ultimately funded this group.

The members of this group, like C himself, believed that legal service programs should be deeply involved in legal reform and community action. Indeed, in their view, the underlying role of a program should be to help the poor (as individuals and as a group) gain the confidence, strength, and power necessary to fashion a future for themselves. Thus, in describing program goals and functions, they spoke of LSP-A as a "component of community action" that would involve "as many poor persons as possible in the process of understanding their individual and collective goals and problems," and that would provide service to "groups, including credit unions, cooperatives, and other self-help organizations made up primarily of indigent residents."²⁵ They wanted a program that

Excerpts of the Annual Address by President of the Bar Ass'n of City A, Jan. 14, 1966, at 10-11.

24. At the time of my research, Mr. C had left City A, and consequently I was unable to interview him in the course of my research there. I did meet and speak with him for about two hours elsewhere. In addition, in January 1965, Mr. C was interviewed at length on the development of LSP-A, and a transcript of that interview was made available to me. Statements concerning C's views and actions are based on both sources, though mainly on the 1965 interview. The quotation in the text above is from the 1965 interview.

25. Proposal for City A Neighborhood Legal Assistance Program, c. late 1965, at 1, 11-12, 13.

would "attack the causes of poverty," one that would "treat the disease as well as the symptoms."²⁶ The perspective of these promoters was further reflected in their insistence that a majority of the program's governing board be selected by the poverty community, a principle adamantly opposed by the bar-Legal Aid group.

The spirit of the activist promoters was carried forward to LSP-A's hierarchy in several ways. First, the man hired as executive director had participated in the development of the program and, even before that, had been interested in and written on providing legal services to the poor. His perspective on program objectives and functions matched well with the statements contained in the proposal. Second, 16 of the 31 members of the program's governing board were to be selected by the poverty community, and the promoters from that community undoubtedly played an important role in the selection process. Indeed, several persons who had participated in the program's development became directors themselves. The bar-Legal Aid forces had the power to select only seven board members, less than one-fourth of the total. One seat went to the Lawyers' Guild; the rest to area law schools and related institutions, some of which were virtually certain to send representatives whose views would be much the same as those of the promoters. The first president of the board was a man from the poverty community (chairman of one of the neighborhood community action boards) who had been much involved in developing the proposal. The vice president, a young lawyer from one of City A's best medium-sized firms, was one of the bar association's appointees to the board. Though it was said the bar leaders who picked him thought he would be "conservative," his view of LSP-A's function was that it should

provide day-to-day help for people who need lawyers but cannot pay for them; search for ways to attack institutional evils that are the source of poverty—rules of law, and also the disposition of many decision makers (small claims court, police court, the building inspector) to be unresponsive to the needs of the poor.²⁷

He also believed that

one gap in the program may be a lack of a legislative program. There should be such a program. The poor don't have anyone to lobby for them. Perhaps lawyers in the program should be expected to turn in two or three suggestions for legislative change each week. There should be a legislative lobbying program for the poor.²⁸

26. *Id.* at 12. The proposal also spoke of the importance of test cases and legislative reform and listed nine specific problems that the program should consider. *Id.* at 14.

27. Interview.

28. Interview.

Like C and his promoter colleagues, then, the hierarchy of LSP-A saw poverty as a social and institutional problem, one whose solution had to be approached accordingly. Moreover, they perceived the poor as alienated and powerless. Charity would never change that. Handouts could never bring the poor a sense of dignity and human fulfillment. The need was for vigorous action through which the poor might become involved in a sort of self-determination. Hopefully LSP-A would promote this process by championing the interests of the poor and by helping the poor gain power and become spokesmen for themselves.

The developmental process that produced this orientation involved more than individuals selecting other individuals whose views were much like their own. The process resembled more the growth of a single organism than the gathering together of similar but nonetheless distinct individual bodies. Thus many of those who became board members, plus the program's executive director, came from the promoter group itself, and, as a group, the program's hierarchy shared not only the views of the promoters on legal service programs but also their overarching conceptions concerning social forces and identification of social goals.

PERFORMANCE

The central office of LSP-A was opened in October 1966. In addition to its administrative functions, this office housed two attorneys whose assignment was to concentrate on law reform and other matters of broad import. The program's neighborhood offices were all operating by mid-November. By the following May, the offices covered by the research had seen a total of about 2,500 clients, a monthly average of 40 per neighborhood lawyer.²⁹

Representing poverty community interests in law- and policy-making processes. LSP-A was the most active of the five programs in representing and speaking on behalf of poverty community interests. Its approach to the problems of individual clients often involved challenges to well established legal rules, and some of these were consciously developed into full-blown test cases. Indeed, legal theories that could be used to advance the interests of the poor were developed even before there were concrete cases in which they might be asserted, and community groups and leaders were told about law reform possibilities and the kinds of fact situations that would lend themselves to test case treatment. Most of the neighborhood attorneys were involved in some test case activity, either on their own or in cooperation with one of the law reform specialists. In several instances program attorneys coordinated their work with others in the community.

29. Here, as in the discussions of LSPs-B, C, D, and E, statements concerning caseload are based on information compiled by the program itself.

In City A, as elsewhere, many tenants complained that their landlords had failed to repair faulty plumbing, exterminate vermin, provide adequate heat, and otherwise properly maintain their premises. There were building and health codes, of course, but individual tenants were likely to obtain little relief through complaints to the city officials in charge of enforcing these municipal laws. One of the neighborhood offices, working together with CEO community organizers, developed a campaign to push housing code enforcement. The lawyers had drawn up a leaflet, to be distributed by CEO personnel, telling tenants about their rights under the housing code, *i.e.*, what a landlord was required to do to maintain his premises in a legally acceptable condition. Tenants who brought their problems to the neighborhood office were helped to file complaints with the building inspector's office, and the chief counsel in the office stood ready, if these complaints were ignored, to bring a mandamus action against appropriate city officials.

State law was in accord with the general rule—the landlord's covenants are independent of the tenant's, and a default by the former does not excuse the latter from paying the rent—though a state statute gave the tenant a limited right to make repairs and deduct the cost from his rental payments. The chief counsel of one of the neighborhood offices had focused his attention on this statute. One problem was that it spoke of only a single month's rent, and thus might not provide an adequate remedy when the cost of a needed repair exceeded that sum. This lawyer, however, was contending that a tenant should be allowed to use the statutory remedy month after month. Thus, if the monthly rental was \$100, and a repair would cost \$150, the tenant could make the repair and pay for it over a two month period. Another question he wished to raise was whether two or more tenants could use their combined rent to make a repair important to them all, for example, a repair to a common stairway. While he hoped to win in court, he also had an eye on possible legislation. "By raising such issues," he said, "we will at least show the legislature the shortcomings of the statute."³⁰

In a further effort to reform landlord-tenant law, LSP-A had filed a federal court action, asking that the public housing authority be directed to make the repairs and provide the regular maintenance necessary to keep its premises in a "decent, safe and sanitary" condition, and, further, that actions to evict tenants who were withholding their rent because of landlord defaults be enjoined. The heart of this suit was its challenge to the independent covenant rule: the tenant's duty to pay rent, LSP-A urged, should be conditioned on the landlord's performance of his obligations.

30. Interview. This attorney also conducted seminars for community action workers in order to acquaint them with the state statute, both the rights clearly granted thereby and the issues that needed to be raised.

LSP-A had also brought suits to improve the coverage and benefits provided under government assistance programs. The public housing authority's practice of charging welfare recipients a higher rental than other tenants was being attacked on the ground that it had no rational basis and therefore violated the equal protection clause of the fourteenth amendment. The welfare department's rule making a person eligible for benefits only after he had resided in the state for one full year was overturned in federal court. In another case involving a questionable waiting period, LSP-A challenged the rule that women whose husbands had deserted would not be granted benefits for three months unless they sued for divorce.

As consumers, the poor are especially vulnerable to overreaching both at the time they make a purchase and later, if they are unable to meet the payments called for by the sales agreement. LSP-A developed and pressed a number of legal theories to provide better protection. In several suits program lawyers used state consumer protection statutes as a foundation for the contentions they asserted. In one, for example, repossession was attacked as an abuse of process on the ground that the contract had been signed in blank, was therefore unlawful, and consequently gave the seller no rights.

Garnishment was being attacked on two fronts. The chief counsel in one neighborhood office arranged with a state legislator to have an LSP-A attorney testify in favor of remedial legislation. Another neighborhood office had laid plans to act against creditors who garnished exempt wages. As soon as an appropriate case and a willing client came along, the office was going to claim that the creditor's conduct was tortious and, on that basis, seek both damages and an injunction.

The abusive practices of schools that sold courses to people who did not understand and could not use them were also under attack. In some cases the program was seeking to establish that the sales techniques amounted to misrepresentation. Another suit involved a client who, after prepaying tuition, discovered that the course was useless to her, quit, and asked for a refund. The school refused to return her money. LSP-A filed a law reform suit, asserting that the tuition payment retained by the school bore no relation to actual damages and therefore constituted an impermissible imposition of liquidated damages.

LSP-A's representation of poverty community interests went beyond the problem areas typical of legal services programs. For example, there was a successful challenge to the state statute that provided for automatic revocation of a driver's license if the uninsured holder was involved in an accident and could not post bond; and suits were brought to establish procedural protections for students faced with suspension from public schools.

On occasion, LSP-A's lawyers acted as spokesmen for parents presenting grievances to the school board. One complaint was that a teacher had made derogatory racial remarks. A second involved inordinate delays in the completion of a badly needed addition to a school. The attorney urged the board of education not to grant the contractor an extension; the board withheld the extension, postponing decision to its next meeting, and the contractor completed his work before that meeting.

The program also joined with others to develop broader attacks on community problems. One instance involved redevelopment plans that would have uprooted many citizens without providing decent replacement housing. A multi-pronged attack was developed through discussions between program lawyers and representatives of community organizations. Suit was brought to enjoin further federal funding on the ground that the Department of Housing and Urban Development (HUD) could not make the statutorily required finding concerning the feasibility of relocation. Then an administrative complaint was filed with HUD, alleging that one of the redevelopment plans would not comply with federal relocation requirements. Later LSP-A represented individuals who claimed that the redevelopment agency had given them eviction notices without providing adequate relocation housing.

Another cooperative effort developed when several incidents at City A's juvenile detention facility led to demands for an investigation. One neighborhood lawyer, acting as a link between community groups, helped bring large numbers of people to a hearing. Another program attorney, one who had accumulated some experience in the juvenile field, testified at a city council meeting, supporting a proposal to invite the National Council on Crime and Delinquency to study City A's situation.³¹

Finally, the program worked to protect members of the poverty community against police misconduct. At first, LSP-A attempted to address this problem by bringing complaints to the police commission and the police-community relations unit. After several months of this approach, LSP-A went to court. One neighborhood attorney filed a class action to enjoin the kinds of police misconduct that were allegedly common practice in the black ghetto. The program's main office filed another class action in which LSP-A sought to stop the police from arresting and holding people for several days without probable cause.

Promoting the development of political and economic power within the poverty community. The extent of LSP-A's work with

31. Juveniles were also afforded vigorous representation in court. Thus the two LSP-A attorneys who handled most such cases routinely disqualified a judge they considered to be especially unsympathetic to juveniles.

poverty community organizations is indicated by the great attention given to such activity. One staff meeting, for example, was largely taken up with a consideration of whether neighborhood lawyers should undertake to act as house counsel for these groups or whether performance of this function should be centralized in a single attorney working in the program's main office. Also, in speaking with me about their work, several attorneys showed considerable sensitivity to the difficulties of working with groups led by persons who distrusted lawyers or saw resort to legal action as inimical to their broader objectives.

That the program became quite active on behalf of community groups is not surprising, for the lawyers had developed many contacts that might lead to such work. The typical program lawyer had attended meetings of at least five or six community organizations, speaking about LSP-A and what it could do to help the poor.

LSP-A's work in support of two major efforts by community organizations had its genesis in contacts established by program lawyers who spoke at meetings of these groups. It was after such a meeting that representatives of the East Side Community Organization (ESCO) asked LSP-A for help in opposing an urban redevelopment project. The lawyer-client relationship was not an easy one. ESCO wanted immediate action to halt the project; the chief counsel took the position that legal action would have to focus on forcing the redevelopment agency to provide adequate relocation housing for those the project would displace. After considerable discussion and some acrimony, a plan incorporating both viewpoints was developed, and ESCO and LSP-A proceeded together.

LSP-A also worked closely with the tenants' associations that were leading a rent strike by public-housing-project tenants, demanding repairs, improvement in future maintenance, and a voice on the housing authority's governing board. The program lawyers supported the efforts of these groups by defending individual strikers who had been served with eviction notices, by bringing an action to restrain evictions and compel repairs, and by participating with tenant representatives in bargaining and negotiating with the housing authority.

LSP-A lawyers drew up corporate structures for a wide variety of groups. Sometimes there was little continuing contact with these groups, but other times the lawyers who did the incorporation work maintained a close relationship with the organization, discussed various problems with its leaders, and generally served the function of house counsel. Among the many organizations that the program came to represent were City A Neighborhood Cooperative; Parkland Progressives; United Neighborhood Organization; Rebels in Action; Building Skills Clearing House Corporation; Concerned Brothers of Hill Point Housing Project; Block, Inc.; Artists Roundtable; Young Afros; Black Concerned Citizens; the Welfare Rights

Council; Malcolm X Education Center; Filipino-American Association.

LSP-A also developed the City A Local Development Corporation to assist the poverty community plan and finance its own economic enterprises. Representatives of the poor, the business community, and the Small Business Administration (SBA) were involved in the effort. Early in 1968, financing for a coin operated neighborhood laundry was obtained from SBA and private sources. In the months that followed, further funding was secured and additional businesses were opened. LSP-A also helped to plan and conduct a conference to inform others about the possibilities for economic development. Plans were laid for a housing development corporation to help community groups obtain FHA financing for the development of housing projects.

B. The City B³² Legal Services Program (LSP-B)

IDEOLOGY

The City B legal services program was the product of a merger of two separately initiated promotional efforts. Though a legal aid society served the residents of City B, the assistance it provided, especially on the civil side, was far from adequate. To meet this deficiency, the Poverty Action Commission (PAC), City B's community action agency, asked E, a professor at the law school in City B, to draft a proposal for an OEO funded program.

Independently, but during this same time period, the civil rights committee of the bar association, troubled by developing racial tensions in City B, was asking itself how the legal profession might play a role in the war on poverty. Discussions with W, a man who served both as dean of the local law school and president of the Poverty Action Commission, brought the bar group to the decision that it should form an ad hoc committee of lawyers to explore the possibility of developing a legal service program. Professor E, the man previously contacted by the PAC, soon joined this group, and thus the two initiatives were merged.

The members of this group were deeply concerned with injustice. Professor E, the chief draftsman for the group, had been both professionally and personally involved in civil rights matters for some years. Mr. F, the head of the bar's civil rights committee and the person most instrumental in developing broad bar support for LSP-B, had a background of similar involvement.

Quite naturally, E, F, and others in the group believed that one of the basic purposes of a legal services program is to protect those who, in the absence of a lawyer, would be sorely disadvantaged (and

32. The use of this designation rather than the true name of the city is explained in note 13 *supra*.

often unfairly treated) in their day-to-day dealings with landlords, creditors, welfare officials, and others. LSP-B's promoters saw more than this need, however. They saw the social conditions that generated individual misery and the importance of seeking to change those conditions themselves. Both of these concerns—with the poor individual and with poverty itself—are reflected in their description of program objectives:

The neighborhood law office will have two general categories of responsibilities. It will have single-client functions and neighborhood functions.

In addition to working for specific clients, the law offices will perform certain neighborhood oriented functions. They will work with neighborhood groups, such as action committees and churches, in devising means of attacking neighborhood problems which may be amenable to legal solution. . . .

The neighborhood law offices will also be involved in the community social development programs undertaken by the Advisory Board [of LSP-B]. . . . The neighborhood lawyers will work with the Advisory Board in planning community legal action programs. They will also implement those programs at the neighborhood level when called upon to do so.³³

The promoters envisioned no real opposition to the individual service aspect of LSP-B's work but recognized that program efforts to promote social change might meet with resistance. The structure they gave to LSP-B's governing board was well designed to counter such resistance should it arise: almost two-thirds of the board members were to come from the ranks of the poor themselves. In addition, to protect against the dampening effect of local political influence, the promoters planned to rely on private sources rather than city or county government for the local contribution to the program's financing.³⁴

33. Proposal for the City B Legal Service Project, c. April 1965, at 3, 4. The portion of the proposal quoted in the text above appears in almost verbatim form in the version submitted to and approved by OEO. Application for City B Legal Service Program, July 19, 1965, § 7.1.2. See also the Certificate of Incorporation of LSP-B, at 2, stating that one of the purposes of the program was "to study and devise means of attacking general problems of the urban poor which may be amenable to solution through use of the law and legal institutions. . . ."

34. There was some ambivalence on this point. The proposal submitted for OEO funding said that City B would be asked to contribute \$15,000, about half of the local share, "but if that cannot be obtained, it will be secured from private sources." Application, *supra* note 33, § 2.1. Subsequently, in a document distributed to the local bar to promote interest in and support of LSP-B, the promoters said this: "Although many anti-poverty projects receive their local share . . . from local governments, LSP-B will make every effort to raise its local share from non-governmental sources. It will follow this course in order to maintain not only

Mr. F became chairman of LSP-B's board of directors and served on the board's four-member personnel committee. In this way, the ideological perspective of the promoters was carried forward to two positions of central importance. Several other promoters also became directors. One of these, Mr. T, also served as chairman of the Community Problems Committee. This committee's task was, first, to develop communication with residents of the poverty areas so that the most pressing community problems could be identified, and, second, to consider and make recommendations on how these problems might be attacked by LSP-B. Other board and committee positions also were filled with people who saw social reform as one proper and important program goal.³⁵

The transfer of ideological orientation from promoters to program hierarchy was completed with the selection of LSP-B's two top executives. Both the executive director, a black lawyer with considerable litigation experience and much knowledge of poverty-community problems, and the assistant director, a white attorney, viewed legal services as one means to the end of social reform. They wanted LSP-B to play a meaningful role in solving community problems and welcomed participation by community activists, even those labeled by some as "radical."

the fact but also the appearance of absolute independence from any political control." Material Concerning LSP-B, c. 1966, at 5. This policy was followed in raising the local share for the initial grant period. In 1967, PAC (the overall community action agency for City B) decided to ask the city to contribute a portion of the local shares of the various program's conducted under PAC's auspices, including LSP-B, and the directors of LSP-B agreed to this. Minutes of Meeting of LSP-B Board of Directors, Jan. 23, 1967, at 1-2. Within the next two months, however, the program apparently decided not to seek city funds but instead to ask the state OEO for a contribution to LSP-B's local share. Minutes of Meeting of LSP-B Board of Directors, Mar. 27, 1967, at 4. The question whether to seek city support came up again at a board meeting; "substantial feelings were expressed" against taking funds from local government; a resolution of the question was deferred. Minutes of Meeting of LSP-B Board of Directors, April 24, 1967, at 3. In May 1967, the state OEO approved a grant of \$20,000 to help LSP-B with its local share. Minutes of Meeting of LSP-B Board of Directors, May 22, 1967, at 1. The minutes of the next several board meetings contain no mention of the matter; apparently the idea of asking for city assistance was dropped.

35. Mrs. V, a law school representative on the board and a member of the personnel committee, described a "vital program" as one that was a "combination of individual service, law reform, and community action." Interview. Mr. R, a bar association appointee to the board and also a member of the personnel committee, initially thought the program was just "another crackpot idea from Washington. But I changed my mind: I came to scoff and stayed to pray." Interview. He saw the function of the program in this way: "The attorneys should devote themselves to problems that affect many people. For example, in the consumer fraud field, if you can get proper legislation or use a specific case as a test case to establish some principle that will be good for all, this is desirable. The same goes for housing laws—rent withholding, for example." Interview.

Though the program's orientation was in striking contrast to that of the City B Legal Aid Society, and thus was quite different from the model long accepted by the bar, LSP-B enjoyed both the moral and financial support of the local bar association. The promoters sought this support from the beginning. At first, the bar showed some skepticism and perhaps a little hostility, but the promoters, through adroit handling, eventually won bar approval.³⁶

In this respect, the developmental process leading to LSP-B differed sharply from that in City A. There was no open, notorious battle with the bar establishment in City B. This difference in program history meant that although LSP-B accorded considerable importance to working for social change, nothing had happened to focus public attention on that fact or to give LSP-B an image that would make it stand out from other programs around the country.

PERFORMANCE

LSP-B began operating in early 1966. For the first few months all work was centered in the administrative offices. Then, in May, two neighborhood offices were opened; a third followed in late July, and a fourth in October. Three of these were located in premises that also housed the neighborhood operations of the PAC. By the time of my research in City B, upwards of 2000 clients had come to LSP-B's neighborhood offices, an average of about 40 cases per lawyer per month.³⁷

Representing poverty community interests in law- and policy-making processes. About two-thirds of LSP-B's neighborhood lawyers had challenged accepted legal doctrines in the course of their day-to-day servicing of individual clients. In only a few instances, however, were matters handled with a test case perspective, i.e., with an eye on the importance of using the case to establish a precedent. On the other hand, LSP-B acted as poverty community representative in many other ways, and its performance in this respect was not far off the mark set by LSP-A. However, while most of

36. When the proposal was ready for general consideration, a copy was sent to the president of the bar association and a meeting with the bar's governing board was requested. At the same time, the proposal was sent to the justices of the state supreme court, who soon informally expressed their general approval of the plan. Throughout this period, Mr. F, head of the lawyers' ad hoc group and a man highly respected by other lawyers, quietly lobbied on behalf of the proposal. As a consequence of his efforts and the supreme court's attitude, the governing board of the bar soon decided by unanimous vote to appoint one of its members to serve on LSP-B's board; the state bar, the Legal Aid Society and others followed suit. Later, the City B Bar Foundation voted a \$3000 contribution for the program, indicating that the bar was solidly in support of LSP-B.

37. Here, as in the discussions of LSPs-A, C, D, and E, statements concerning caseload are based on information compiled by the program itself.

LSP-A's staff was involved in such work, almost all of B's law reform performance was attributable either to the program director or to a young, radically oriented neighborhood lawyer.

On occasion, program lawyers had resisted evictions by contending that the landlord's failure to make repairs was a defense. Though in these efforts the focus was wholly on the individual client, in other instances the program was seeking to reform landlord-tenant law and improve housing conditions in the poverty community.

When a rent control ordinance was being considered by city government, the program drafted a series of proposals and then met with the city attorney to ask that these proposals be made a part of the legislation slated for presentation to the city council. Although some of the program's suggestions were accepted, the official proposal remained inadequate in LSP-B's eyes. Consequently, the program's director appeared before the city council, offered and spoke for a substitute ordinance drafted by the program, and later submitted a written analysis of the differences between the program's draft and the one offered by the city. Although the council adopted the city's proposal, LSP-B did not abandon its efforts. About a week after the council's action, the program director and one of the neighborhood lawyers met with the city attorney, submitted some proposed amendments to the recently enacted ordinance, and asked that they be considered at the city council's next meeting. Eventually, most of their proposals were adopted. As a consequence, tenants whose landlords refused to make needed repairs could ask that a receiver be appointed to collect the rents and, in addition, could seek to have ceilings placed on the rent.

After this ordinance was adopted, LSP-B's director and assistant director undertook to demonstrate that it could be used effectively. Acting on behalf of tenants who had complained about dilapidated housing, LSP-B investigated the situation, took pictures and gathered other evidence of code violations, and then filed suits invoking the provisions of the new ordinance. In this same suit, they sought to establish two other theories of general import: implied warranty of habitability and public nuisance.

LSP-B, like LSP-A, also attacked retaliatory evictions. The theory asserted was that an eviction order, entered on behalf of a landlord who sought to punish a tenant for complaining to the city about code violations, would constitute state action in derogation of the tenant's first amendment rights.

LSP-B was active on behalf of consumer interests. One program attorney had attacked the holder in due course defense by seeking to show that the relationship between a seller and a finance company was so close that it was absurd to treat the finance company as a wholly separate entity without notice of or responsibility

for the seller's misconduct. Here again, however, the attorney had not treated the matter as a test case, and it is unlikely that his effort benefited anyone other than the client involved.

Another program lawyer was concerned with protecting consumers as a class and had developed some novel approaches to promote this objective. One was a tort suit for damages against a creditor who knew that his attempt to enforce a wage assignment would result not in the recovery of money but in the debtor's loss of his job. Another was the possibility of characterizing as a "commercial nuisance" a seller who consistently operated in a fraudulent manner, and, on this basis, enjoining such practices.

In addition to its concern with the substantive problems of consumers, LSP-B had acted to promote procedures that might help them. The program developed and obtained judicial approval for a plan under which law students were permitted to represent poor persons in small claims court. The attorneys in one neighborhood office worked with the Main Street Complaint Bureau, established by local merchants for the purpose of receiving and adjusting consumer complaints; the program attorneys functioned as a liaison between the merchants and the community to assure proper handling of complaints.

LSP-B sought several improvements in government assistance programs. On the procedural side, through conferences with the welfare department, the program gained acceptance of new grievance procedures. Welfare was also convinced to discontinue its practice of withholding benefit checks until the recipient agreed to apply part of his payment on a debt owed to a former landlord. Another case involved a state statute under which the welfare department had consistently refused to make ADC payments unless the mother involved turned over to the department a bank book representing funds held in trust for her child as a result of the settlement of the child's personal injury claim, social security benefits paid for the child on his father's death, and so on; in this one case, at least, the program's advocacy convinced the welfare department to abandon its demand for the bank book.

Both procedural and substantive rights were involved in a class action brought against the public housing authority. This suit arose out of complaints from tenants who were being evicted, not for non-payment of rent but because of their alleged noisiness, the delinquency of their children, or, sometimes, for no stated reason at all. The objectives of the class action were to establish, first, that the public housing authority could not evict without good cause, and, second, that the housing authority must hold a hearing, if requested, to see if there was such cause.

There were several other areas in which LSP-B acted as spokesman for poverty community interests. Divorce law was one. For

many years, women who needed divorces had been unable to afford the attorney fees. The creation of LSP-B solved this problem. The program also arranged for court costs to be waived. The last problem was the law itself: under the state recrimination statute, the adultery of a complaining spouse was a defense when a divorce was sought on grounds of adultery. A judicially developed extension of this rule made adultery a defense without regard to the asserted grounds for divorce. Thus a woman who had not been able to afford a divorce at the time her husband had deserted her, and who had since lived and raised a family with another man, could not obtain a divorce and regularize her existing relationship. In two divorce suits, LSP-B was seeking to overturn this judicial expansion of the statutory doctrine.

LSP-B spoke for the poor in the political as well as the judicial arena. When a controversy developed over a pending appointment to the position of board of education secretary, because of considerable feeling within the black community that the person chosen by city officials had been selected on political grounds and that an obviously qualified black candidate had been ignored, LSP-B became advocate for this sentiment in resisting the proposed appointment.

One of the program's most extensive efforts involved a plan for the construction of a state medical school. In order to convince the school's planners to locate within City B, city officials had promised to clear 180 acres of land in the heart of the black ghetto, thus displacing thousands of residents without any realistic assurance of adequate relocation. In November 1966, the Committee Against Removal, an organization of neighborhood residents, asked LSP-B to look into this matter. After considering whether to oppose the project altogether, and testing community sentiment on this question, the program decided to pursue less sweeping objectives: LSP-B's director and assistant director testified at city council hearings, urging that a 100 acre limit be placed on the medical school site; the program director appeared before the state legislature to support a bill setting standards for the compensation of individuals forced to move; in meetings with the mayor, LSP-B insisted that a detailed written relocation plan be drafted defining the rights of residents. Finally, when other steps had failed to produce satisfactory results, LSP-B brought suit to enjoin the medical school project.

The most intense and extensive LSP-B project as poverty community spokesman arose out of riots that erupted in City B's black ghetto. The program became immediately involved when its director, together with others, rushed to a police station to try to ease the explosive situation that had developed when police were seen dragging a black cab driver into the station. This attempt to avoid violence failed, however, and a full-scale riot erupted. The

National Guard was called and remained on the scene for three days. During this period LSP-B's offices were flooded with phone calls. Some callers were frantically seeking help in locating relatives and friends who had been arrested. Others were reporting various forms of police misconduct: brutal treatment of individuals, destruction of black owned businesses, and so on. Three main lines of program activity developed.

During and after the riot, LSP-B's director, at the governor's request, served on committees through which he was able to present the community's view of what had happened and to advocate appropriate steps for redress of the community's grievances.

The program's second major effort was aimed at helping those who were arrested during the riot. An emergency release-without-bail program was set up; the full staff plus 18 law students working for the program participated in interviewing over 700 persons in a 48 hour period.

Finally, the program sought to help those individuals whose rights had been violated by the police. When people called with stories of brutality, they were urged not to resort to self-help, but rather to come to the LSP-B office and make out a statement so that legal redress could be obtained. Hundreds did. These materials were later made available to federal and state investigating commissions. In addition, the program undertook to act for the cab driver whose arrest had triggered the riot, and who, because of his treatment by the police, had come to symbolize community grievances. First, the program represented him in criminal court. Second, when a local judge refused to accept the criminal complaint which he wished to file against the officer who had arrested him, LSP-B brought the matter to the attention of the state supreme court. As part of its program to redress police misconduct, LSP-B joined the NAACP and the Civil Liberties Union in a unique legal action, a federal suit charging that the police department had been continuously and consistently violating the constitutional rights of City B's black residents, and asking that the department be put into the hands of a receiver with authority to reorganize it and take whatever steps were necessary to see that citizen rights would be honored in the future.³⁸

Promoting the development of political and economic resources within the poverty community. Although LSP-B had not become

38. This was not the first time such a suit had been contemplated by LSP-B. A few months earlier, a neighborhood lawyer who had received three or four complaints about police misconduct had begun to plan for such action. In order to bring a successful action to enjoin police practices, he believed, it would be necessary to have proof of 10 to 15 specific instances of misconduct. He had contacted community groups that might be interested in the problem and asked them to help gather the necessary evidence.

involved in the development of poverty community economic enterprises,³⁹ it had a fair record of working with community organizations.

About half the neighborhood lawyers had attended and spoken at meetings of neighborhood groups. Only one lawyer, however, had also undertaken to stimulate the formation of poor people's organizations. Thus when a tenant came to the office because of his landlord's failure to maintain apartment premises, this lawyer would urge the tenant to organize a meeting of others who lived in the same building and had similar problems so that the program could advise these tenants on how they might act together to solve their common problems.

In addition to attending meetings, the attorneys had done some work for the PAC Area Boards, the structures responsible for community action work at the neighborhood level. On occasion the program worked cooperatively with a community organization without actually becoming its attorney. For example, the LSP-B effort relating to the medical school problem involved considerable work with the Committee Against Removal.

A few of the lawyers acted as counselors and advocates for community organizations. In one instance the program represented 50 of the 90 families living in an apartment building in their efforts to obtain needed repairs and services from their landlord. The program lawyer first served as negotiator for the group, and then, when negotiations failed and the tenants voted for a rent strike, continued as legal advisor. Another group of tenants—five of the six families in a building—told LSP-B that their landlord had presented them with huge heating bills, even though he had agreed to pay for the heating costs himself. The tenants had agreed to act as a group not only to resist payment of the heating bills but also to force the landlord to repair leaky roofs and broken floors and exterminate roaches and rodents. After an inconclusive call to the landlord, the attorney complained to the board of health, which inspected the premises and cited the landlord for numerous violations; the program also prepared a declaratory judgment action to establish the landlord's obligation to pay for heat.

Other work for community organizations included negotiating with the mayor on behalf of a tenants' association that wanted a traffic light installed at a school crossing; writing a booklet for the City B Welfare Rights Project, explaining the rights of welfare clients in simplified terms; and acting as counsel for Citizens for Bet-

39. This was true both for the period preceding my research in City B and for about a year and a half thereafter. My conclusion concerning the latter period is based on the absence of any mention of such activity in the periodic reports issued by the program director and the same absence in the minutes of board of directors meetings.

ter Hospital Services, a group seeking to improve the notoriously poor services available at the city hospital.⁴⁰

C. *The City C⁴¹ Legal Services Program (LSP-C)*

IDEOLOGY

In City C, the OEO legal services program was sponsored by the Legal Aid Society. Within the bar, the Legal Aid Society drew its support primarily from the City C Bar Association, whose members came mainly from large law firms. The county bar association, the organization of the small firm and solo practitioners, had for some time opposed expansion of Legal Aid (partly because the Society was seen as drawing off potential clients) and was opposed to the development of an OEO program. In the past, because of the antagonism of the county bar, it had been necessary to struggle actively in order to expand the legal services available to the poor. Partly because of this, the Legal Aid Society had attracted to its presidency and other leadership positions men with some sense of social commitment, men who were predisposed to view sympathetically the notion that a legal services program, in addition to helping individual poor people with their problems, might play some role in combatting poverty itself. The men whose efforts led to the establishment of LSP-C were of this persuasion.

In 1965, Mr. M, president of the Legal Aid Society, hearing that OEO funds were available for legal service programs, drafted a proposal, submitted it to the city bar, and then forwarded it to OEO. After several months of negotiations with OEO, the proposal was finally approved and funded.⁴² Several of M's colleagues

40. Apparently the number of organizations served by LSP-B increased in the months following my research there. This is suggested by the fact that in November 1967, about nine months after my work in City B, the board of directors considered whether volunteer lawyers should be used to help provide service for the organizations that were requesting it. Minutes of Meeting of LSP-B Board of Directors, Nov. 27, 1967, at 2.

41. The use of this designation rather than the true name of the city is explained in note 13 *supra*.

42. One important change was in the staffing of the program. An assistant director and other lawyer positions were added, and the secretarial and investigative staff were enlarged. This is reflected in the increase in budget from the \$100,000 initially proposed to \$178,000; the increases in legal staff accounted for about 50% of this budget change, and another 35% was for other additions to staff.

Another important change involved OEO's requirement that the poor be represented on a program's governing board. See text accompanying note 49 *infra*.

The amended proposal also expressly provided that organizations of the poor would be served. Although this had not been mentioned in the first draft, the omission was undoubtedly due to the draftsman's oversight (or his failure to understand that OEO wanted a written declaration on the matter) rather than any doubt concerning the propriety or importance of such work.

on the Legal Aid governing board joined in this effort, including N, who assumed the Legal Aid presidency when M's term expired.

M and N had much the same view of a legal service program's function. They saw both individual service and law reform as appropriate and important. Thus, in M's draft proposal, program objectives were described as providing "legal aid, advice and assistance to City C residents who, because of financial inability to pay, are unable to procure such legal aid and assistance" ⁴³ And N said, "It provides a service to which poor people are entitled. These people have rights and claims that should be enforced and protected." ⁴⁴ Even in his early draft, however, M had indicated some perception and approval of a role for the program in community action work. ⁴⁵ And, in answering questions about program goals, M said:

The basic question I have is whether we are going to do a meaningful job in breaking the poverty cycle. Clearly we will help more people than before. But it seems like bringing up a popgun to kill an elephant. Ideally, our lawyers should have a small enough caseload so that they can have an intense relationship with their clients and see what their lives are like. And I would much rather have the program spend time on group action, law reform, etc. than in handling a large caseload. ⁴⁶

As for Mr. N, while he was "not sure that Legal Aid can do anything about poverty . . . the basic problem is economic," ⁴⁷ he had no doubts about the propriety of program lawyers bringing test cases, proposing and actively supporting legislative reform, and representing poverty community groups. He recognized that this might involve controversy and "might make some people unhappy," ⁴⁸ but thought the program should go ahead anyway.

As initially proposed and ultimately approved, their program involved the establishment of neighborhood law offices in each of City

For the changes noted above, and various others, compare Proposal for Establishment of Neighborhood Offices of Legal Aid Society, May 1965, with Neighborhood Legal Services Proposal, Dec. 29, 1965.

43. Proposal for Establishment of Neighborhood Offices of Legal Aid Society, May 1965, at 1-2.

44. Interview.

45. A further goal is to provide educational programs in which non-legally trained workers within the community's "anti-poverty" program may be educated to the legal aspects of the problems faced by impoverished individuals and families, and to insure coordination and communication between such workers and those rendering legal assistance.

. . . [I]t is expected that the attorneys . . . would act in an advisory capacity to non-legally trained workers in the community action program

Proposal, *supra* note 43, at 2, 4.

46. Interview.

47. Interview.

48. Interview.

C's five poverty areas. While the first draft made no provision for poverty community representation on the Legal Aid governing board, on request from OEO the draftsmen, though skeptical of its value, quite willingly added a provision placing community representatives on both the board and its executive committee, the group to which responsibility for overseeing LSP-C had been delegated.⁴⁹

As presidents of the Society, M and N also headed their respective executive committees, were generally influential, and probably had considerable voice in the selection of other committee members. In any event, their views predominated. Mr. O, for example, the man who was to succeed N as board president, told poverty community representatives, "We want you to call not only for help to individuals but also for the community groups. We are ready to help."⁵⁰ The perspective of the executive committee was evident in actions as well as words. In an effort to promote participation by board members from poverty areas, the executive committee held meetings in the neighborhood law offices.

In its search for a director and assistant director, the executive committee sought people whose ideologies were compatible with their own. This imposed relatively few limitations, however, since the tenets of their ideology were quite general: the program should provide vigorous representation for the poor and should not hesitate to act boldly when bold action was called for; however, no specific form of bold action was demanded, nor was one form valued more than another. Consequently, while the executive committee would not have been attracted by job candidates who viewed the program's function too narrowly, a variety of approaches would have been acceptable.

The carryover of this general direction is evident in a statement of the man hired as assistant director:

Lawyers should be advocates for the poor, both the individuals and the community. We urge our lawyers to be-

49. A provision for representation of the poor first appeared in a revised proposal sent to OEO by Mr. M with a cover letter dated November 29, 1965. At this point, the provision said that Legal Aid's governing board would be expanded to include new members designated by the community action boards, but the number of such new members was not specified. Subsequent discussions with OEO led to an agreement that 15 representatives of the poor would be added to the board. Letter from Mr. N to OEO, Jan. 26, 1966. A provision to this effect appears in the final version of the proposal. Neighborhood Legal Services Proposal, Dec. 29, 1965, at 38. The question concerning the executive committee of the board was subsequently raised by OEO, and the promoters' agreement on this point was evidenced by a stipulation OEO attached to its approval of the program.

50. Statement at meeting of board of directors.

Another member of the executive committee, though emphasizing the importance of individual service, said that the program should seek law reform, bring test cases that raised "way out questions," represent groups, and even help organize associations of the poor. Interview.

come part of the neighborhood—not to live there, but to think about what problems recur and therefore need to be attacked in a more general way. We should propose legislation and represent groups.⁵¹

And it was to be expected that the director, in an early memo to his staff, would list “[m]atters involving an opportunity for judicial, administrative, or legislative reform” among those that should be given priority.⁵² In his view, however, the most important way in which LSP-C could contribute to the war on poverty was to promote the development of economic and political power within the poverty community. He communicated something of this perspective in a staff memorandum:

[A]ttorneys are expected as a part of their employment to seek out and become active in civic activities in the neighborhoods which they serve. Particular attention should be given to those activities which will contribute in a significant way to the economic improvement of the poverty neighborhoods and their residents.

Staff attorneys should regard legal problems of neighborhood groups as being of major importance. The staff attorney should provide advisory services to such groups on the same basis as any civic minded attorney would provide on an uncompensated basis for citizen efforts in a suburban community. The term “legal” includes efforts before legislature and administrative officials as well as in the courts.⁵³

But the reality of LSP-C's ideology was different from the image projected to the public. Because the OEO program grew out of the old Legal Aid Society, outsiders attributed to LSP-C the same characteristics they associated with Legal Aid. This meant, at least in the early days of the program, that LSP-C was seen as a timid program rather than as one willing to work actively for social reform.

PERFORMANCE

Two of the four LSP-C offices studied were located in multi-service centers together with other active antipoverty agencies. The other two were within a few blocks of such centers. Average caseload ran about 50 clients per lawyer per month.⁵⁴

No one in LSP-C had been specially assigned to the task of working on matters involving broad community interests. As in LSP-B,

51. Interview.

52. Memorandum from Director of LSP-C to Neighborhood Attorneys, May 26, 1966, at 1.

53. Memorandum from Director of LSP-C to Staff Lawyers and Secretaries, April 25, 1966, at 1, 4.

54. Here, as in the discussions of LSPs-A, B, D, and E, statements concerning caseload are based on information compiled by the program itself.

however, the program's director had undertaken a number of such projects.⁵⁵

Representing poverty community interests in law- and policy-making processes. Though all the LSP-C's attorneys believed the program should pursue law reform, relatively little had been done to change specific rules of law. Rules had been challenged in a number of cases, but seldom with law reform as a conscious objective. Through other projects, however, LSP-C developed a creditable record in working for poverty community interests.

In the landlord-tenant area, the lawyers of LSP-C seem to have taken for granted the rule that a landlord's defaults are not a defense in an action to evict for nonpayment of rent. "Many tenants," said one lawyer, "say they didn't pay the rent because the landlord refused to furnish some service, but there's nothing that can be done. This isn't a defense."⁵⁶ Although there had been talk of a suit against the city to compel better enforcement of health and housing codes, nothing had been done.

Counterbalancing this inactivity were a number of efforts to improve the situation of poverty community tenants. In one case a program lawyer had consciously been seeking to establish a rule that would prevent retaliatory evictions.⁵⁷ LSP-C also participated in a national conference whose purpose was to frame and gain government backing for a Housing Bill of Rights. Much of the program's work with community organizations focused on housing problems.

Another effort, of importance both to tenants and consumers, was a proposal, drafted by LSP-C's director, for a neighborhood arbitration program under which merchants and landlords would adopt certain standard contracts and leases, and submit all disputes under these agreements to arbitration.⁵⁸ The proposed leases,

55. The director specifically instructed staff attorneys to bring matters "involving an opportunity for . . . reform" to his attention "at the earliest possible moment." Memorandum, *supra* note 52, at 1.

56. Interview.

57. In another eviction suit, despite the orthodox rule that a landlord can terminate a month-to-month tenancy for any reason, the lawyer contended that the eviction should not be allowed when the landlord's motivation for ousting the tenant was that she had resisted his sexual advances. In this case the attorney seemed to be acting out of a sense of outrage over the landlord's treatment of the tenant rather than because of a perception that the law in this area should be changed for the benefit of tenants in general.

58. In addition, the proposal, which was jointly sponsored by LSP-C and the American Arbitration Association, called for LSP-C to hire one attorney and three lay representatives from the poverty community to contact landlords and merchants and persuade them to participate in the plan. LSP-C attorneys were also to supervise the lay representatives who were to act as representatives of the poor at arbitration hearings. Neighborhood Arbitration Proposal, c. 1966, at 1. As an additional induce-

contracts, and arbitration system provided greater substantive rights and more effective remedies for the poor.

There had been no test cases involving consumer problems. Some lawyers, however, planned to participate in a campaign to promote legislation banning cognovit notes, a device frequently used to the disadvantage of purchasers. One program attorney had been in touch with state legislators in connection with this problem; the assistant director of LSP-C had publicly called for a statutory ban. Another attorney had begun to look into the possibilities of promoting consumer protection legislation.

Legislative activity also figured in LSP-C's approach to government assistance programs. At the request of an activist minister from the black ghetto, one of the neighborhood lawyers drafted an amendment to the state welfare statutes and subsequently accompanied a delegation to the state capitol to lobby for this proposal. There had been two other efforts in the welfare area. One attorney was helping prepare a manual that would explain to people what they were entitled to under the welfare laws. Another had challenged the department's rule that social security benefits due a child on its father's death are to be charged against welfare benefits otherwise payable for the child's support. The welfare department retreated from its position in the particular case, but whether more was accomplished—indeed, whether the attorney had aimed at a general reform—was unclear.⁵⁹

Part of LSP-C's community action work came in response to a major ghetto riot. As the fires of the riot were cooling, the mayor of City C appointed an emergency committee to deal with the many problems that had arisen. The director of LSP-C, as chairman of this committee, and the assistant director, who served on it, helped direct city resources to assist the ghetto community. In one instance, for example, by arranging for police protection so that a supermarket could reopen, they made food and other merchandise available to the public. In addition, LSP-C assisted small businessmen reestablish businesses that had been destroyed in the riots. A program lawyer arranged a meeting between a newspaper reporter and some of the young men who had participated in the riots. The result was a lengthy feature story that told the paper's readers something about how conditions in the ghetto generate despair and ultimately violence.

LSP-C received many complaints of police misconduct occurring

ment to participate, landlords and merchants who joined were to be given posters or window decals indicating their participation. *Id.* at 2.

59. LSP-C's work on problems relating to government assistance programs also included an effort to improve the policies of the public housing authority. Since this project involved work with a community organization, it is described in the section on that aspect of the program's work. See pp. 1035-36 *infra*.

both during the riot and at other times. These were brought to the attention of the police department, but no other action was taken. According to the neighborhood lawyer involved, suits were not feasible because the police had removed their badges, making it impossible to identify and proceed against the offending officers. Apparently the idea of an action against the department itself had not been considered.

Promoting the development of political and economic power within the poverty community. LSP-C's director believed that economic development was the most important activity the program could pursue. To this end, he played a major role in arranging an antipoverty institute conducted in City C in 1967. The overall objective of the institute was to foster the development of credit unions, nonprofit construction companies, consumer cooperatives, and other such institutions. Experts were brought to City C, and for six weeks worked with people from antipoverty agencies (including LSP-C lawyers) and members of the community in exploring different ways to approach economic development, possibilities for federal and private financing, and related matters.

The director also encouraged neighborhood lawyers to assist and promote the development of community organizations, and the lawyers had done so in a number of ways. They cooperated with community organizers working in neighborhood multiservice centers. They wrote articles for the mimeographed newspapers that these centers produced for neighborhood residents. They established contacts with neighborhood groups and spoke at their meetings.

In some of their appearances at meetings of neighborhood groups, the lawyers functioned only as sources of information on the law, viewing the group not as a client but as an audience, and, instead of suggesting that LSP-C could help the group take action, retiring from the scene after having explained the pertinent provisions of law. In other situations, lawyers responded actively. Two attorneys represented tenant groups. One counseled the group that although there was not legal right to withhold rent, they would acquire considerable bargaining power by doing so. When rent was withheld and eviction action followed, the lawyer represented the tenants in negotiations with the landlord, who ultimately met most of the demands. In another case, the lawyer helped the tenants file and press complaints with the authorities responsible for housing code enforcement; after overcoming the city's initial refusal to permit examination of the housing inspector's records, the lawyer and his clients found that the landlord had previously been ordered to make repairs, but that no action had been taken when he failed to do so; this was brought to the attention of the appropriate authorities and the landlord soon made the repairs called for.

In two instances, both involving groups of tenants, LSP-C's work led to continuing attorney-client relationships. In one, the neigh-

borhood lawyer had been instrumental in organizing the group. Working with others concerned about public housing matters, he brought together tenants and representatives from national and community organizations and formed the Committee for Decent Public Housing (CDPH). The organization held public meetings, prepared lists of tenant grievances—including poor maintenance, failure to exterminate rats and roaches, spying on meetings of tenant councils, and racial discrimination—and negotiated solutions with the housing authority. LSP-C's lawyer was, in effect, house counsel for CDPH, and, thus, attorney for the thousands of tenants living in public housing.

The second instance of a continuing lawyer-group relationship involved the tenants' association of an 800-family apartment complex that was owned by a nonprofit corporation and operated by a real estate management company. The tenant association complained that portions of the lease form were grossly unfair and that maintenance services were steadily deteriorating—the number of maintenance men had been drastically cut, apartments were not being repainted, rubbish containers were allowed to overflow, etc. In addition to helping the association negotiate solutions to these grievances, a program attorney continued to act as the association's counsel and enlisted community-action workers in an effort to contact additional residents, inquire about their grievances, and in this way build a stronger association.

D. The City D⁶⁰ Legal Service Program (LSP-D)

IDEOLOGY

The key promoters of LSP-D were Mr. Q, Mrs. J, and Mrs. K. The initial impetus came from Q, a member of the board of directors of the Legal Aid Society in City D and a past president of the state bar. The emerging OEO effort had been a topic of discussion at a meeting of the American Bar Association, which Q attended, where local bar associations had been urged to play a role in the program's development. Q asked Mrs. J, the executive director of the Legal Aid Society, to assume responsibility for the development of an OEO program in City D.

Mrs. J proceeded to form a committee of three representatives from the senior bar association, three from the junior bar, and three from Legal Aid itself. Mr. Q served on this committee; Mrs. J was its chairman; and Mrs. K entered the picture a few months later to take over the job of drafting a suitable proposal.

That these three individuals dominated the development of LSP-D and were responsible for its ideological orientation is at-

60. The use of this designation rather than the true name of the city is explained in note 13 *supra*.

tributable to several factors. The influence of J and Q came in part from their roles as prime movers. Mrs. J, moreover, as director of the Legal Aid Society, probably was perceived as an "expert" in relation to the problem at hand. Similarly, Q's position as a former state bar president and a member of the Legal Aid board of directors helped to make his voice an authoritative one, especially in a context in which most of the listeners were other lawyers. Though Mrs. K was not so prominent in her own right, she had the sponsorship of J, and for some months occupied the draftsman's chair, almost always a position of considerable influence. The individual influence of J, K, and Q was enhanced by their friendship, their previous association in Legal Aid endeavors, and the effective working relationship they had developed. That they were the most motivated of anyone involved and undertook the lion's share of the work put them in a position to formulate the proposals to be discussed and thus to set the framework of discussions.

For several months there was no opposition to their proposals. Then, because OEO wanted broader consultation with the community, the promoters enlarged the initial planning committee and some dissident views were voiced. These views were not pushed, however, perhaps because the dissidents saw themselves faced with a *fait accompli*. In this, they were probably correct, for while details remained to be settled, the essential characteristics of the emerging program were set and, indeed, probably had been set months before when J, Q, and K assumed the role of key promoters. From first to final draft, in both form and substance, LSP-D reflected their conception of what was needed, their attitudes toward the role of legal services in relation to poverty, and their overall ideological perspective.

That perspective reflected, in Mrs. J's case, many years spent as director of Legal Aid. She had seen a good deal of the poor and their personal problems, and she was not without compassion, but it was the plight of the individual that she saw and responded to, not poverty as a social phenomenon. Moreover, as director of City D's Legal Aid Society, she had been faced with the job of trying to make limited resources help many people. Given her perspective and the difficulties of her job, she had found friendly accommodation the best approach. She and the administrator of the local welfare program were good friends and had resolved welfare problems through informal telephone negotiations. "We usually get what we think the client should have," she said. She knew the police chief, the judges, and considered them her friends. Activists in the poverty community seldom view officialdom in this friendly a fashion, and J, like most people, was not inclined to work with those who saw her friends as enemies.⁶¹

61. J's reaction to community activists is well reflected in her comment on a suggestion that a young minister, active in community organizing and

J saw the new legal service program as essentially an extension and enlargement of the Legal Aid Society, that is, as a way of serving individuals:

Now we will be able to do many things not possible under the old Legal Aid . . . help people with divorces without limitation . . . spend more time interviewing each individual client . . . appear as representatives of plaintiffs pressing small claims. . . .⁶²

This conception of the program's role was further reflected in her notion of how LSP-D could contribute to the war on poverty:

If you can help a man out of a hole, that is breaking the cycle of poverty. Also, if you can help a woman who was deserted ten years ago get a divorce now, I think that is breaking the cycle of poverty.⁶³

As for law reform,

We will gain knowledge from our experience and go to the bar association and get backing for legislative change, when we have been in operation long enough. We'll need about three years.⁶⁴

On representing tenants' associations and other groups she said:

My thought was to get us established and then go to larger issues. I can't spring a lot of new things on the board of legal services. If I get too wild, it might jeopardize our program.⁶⁵

Like J, Mrs. K viewed helping individuals as the new program's only function.⁶⁶ Unlike J, however, K seemed not to know what the problems of the poor are, even at the individual level. Thus she identified as key problems lack of knowledge concerning legal documents (rather than lack of money) and onerous clauses in leases (rather than vermin, faulty plumbing, and high rents). When asked whether the poor have problems in their dealings with public housing and welfare authorities, the only matter that occurred to her was that "there may have been some problems with welfare frauds or people living in public housing who really aren't eligible."⁶⁷ She reacted negatively to activities that would challenge

influential within the black ghetto, be asked to join one of LSP-D's committees: "Oh, no," she said, "We don't want him!" Interview.

62. Interview.

63. Interview.

64. Interview.

65. Interview.

66. K described LSP-D's objectives as follows:

First, to give broader legal services to the poor, and, second, to educate the total community to the need for legal services by all people in the community. . . . The poor don't know what documents they need in buying property; they pay too much. Tenants, because they can't read, sign absurd leases; they promise to keep the premises structurally intact, for example.

Interview.

67. Interview.

existing institutions, and was most reluctant to see LSP-D become involved in such matters.

I don't think there would be any objection to representing groups of the poor, but we wouldn't approve of lawyers instigating suits or promoting rent strikes. I personally hope there won't be any legislation permitting rent strikes. If there were, the lawyer could explain it to the community, but he could not urge people to use it.⁶⁸

Like J, K saw herself and her friends as a part of the established order and felt threatened by attacks upon it. Her discomfort and hostility were probably intensified by a lack of familiarity with the style and idiom of ghetto activists. Commenting on the people who staffed a community action project in the black ghetto, she said with some dismay and shock, "Why they had a sign on their office door that said 'Come on in, baby. You're the reason we're here.'"⁶⁹ For her, this made them people with "far out ideas."⁷⁰ Her lack of identification with the poor was matched by the strength of her identification with the bar. She sympathetically explained, for example, that bar involvement with the program was motivated in part by a desire to control its operations, to see that it was "run in a lawyer-like fashion."⁷¹ Her work with the program was aimed at promoting more and more bar participation. She was pleased by lawyers engaging in this charitable enterprise, and she herself seemed highly motivated to please the bar.

The last of the three key promoters, Mr. Q, saw the purpose of LSP-D in this way:

We will provide the poor with something they need, legal services, and hopefully demonstrate that law can be a friend to the poor; I also hope it will be possible to teach the poor that there are legal responsibilities. People are obliged to obey the law.⁷²

When asked whether law reform activities or working with organizations of the poor were appropriate program functions, he said that the local law school's poverty research institute rather than the neighborhood lawyers should deal with reform, and that whether LSP-D should represent groups "would be a policy matter that would have to be taken up by the board of directors."⁷³

The structure of the program initially proposed by J's committee directly reflected the promoters' orientation. Under this proposal—one clearly unacceptable to OEO—the Legal Aid Society would have added two half-time attorneys to its staff and made them available

68. Interview.

69. Interview.

70. Interview.

71. Interview.

72. Interview.

73. Interview.

at two neighborhood multiservice centers.⁷⁴ These attorneys would have interviewed clients and given on-the-spot advice. If further service were required, the clients would have been sent to the downtown Legal Aid office. Preexisting limitations on the kinds of cases Legal Aid would handle apparently would have continued. Thus, for example, divorces would have been handled "only when they serve a sound social purpose, and usually only where minor children are involved."⁷⁵ And bankruptcy proceedings would have been undertaken "only where the applicant has a reputation for honesty, has made every reasonable effort to pay his debts, and where it is impossible to work out any amortization plan."⁷⁶ Such a program could at best help individual clients with their legal entanglements,⁷⁷ and, considering the tiny staff contemplated, probably could not have done even this very well.⁷⁸

After attending a national conference on law and poverty, the promoters realized that they would have to develop a far more extensive proposal if they were to obtain OEO funding. At J's request, Mrs. K prepared a new proposal under which neighborhood law offices would be opened in the city's two most critical poverty areas, each staffed by two full-time lawyers, secretarial help, and indigenous neighborhood aides.⁷⁹ The program would be under the formal control of Legal Services Inc., a new corporation to be formed for that purpose, and having some members of the poverty community on its board of directors. Legal Services Inc., however, would hire the Legal Aid Society to administer the program. As a part of this same planning effort, it was proposed that an institute on poverty and the law, operated by the law school in City D, be

74. Proposal for Participation in OEO Program, Submitted by Joint Committee Representing Legal Aid Society of City D, City D Bar Ass'n, and City D Junior Bar Ass'n, c. spring 1965.

75. *Id.* at 3.

76. *Id.* The proposal also included an expansion of the existing voluntary defender project and the continuation of an experimental project through which release without bond was being obtained for defendants in criminal proceedings.

77. The proposal was oriented entirely toward serving individual clients. Representation of groups was not mentioned, nor was there anything to suggest that the draftsmen saw the program as a vehicle for law reform.

78. Only two half-time attorneys were to be added to the Legal Aid staff. They were to function only as on-the-spot advisors in the neighborhood centers. Other service—negotiations with landlords or merchants, litigation, etc.—was to be furnished by the existing Legal Aid staff. This staff was already handling several thousand new matters every year, and consequently could not have provided very vigorous assistance—representation in trial courts, the assertion of new legal theories, appeals—for clients.

79. The proposal also contemplated the use of private attorneys, who would be compensated out of program funds, where protracted litigation was required or where the full-time program attorneys were unable to give urgently needed help. See City D Plan to Implement the Economic Opportunity Act of 1964, and accompanying Letter from Mrs. K to OEO, Nov. 5, 1965.

established to do research in relevant areas of the law, conduct an educational program for members of the bar, and develop proposals for law reform. This plan, with minor revisions, was eventually approved and funded by OEO.⁸⁰

Since this proposal, like the earlier one, called for the Legal Aid Society to administer the program, Mrs. J, as executive director of Legal Aid, would be in charge of LSP-D's operations. In addition, the plan called for a half-time deputy director, and it was understood that this job was to go to Mrs. K.⁸¹ Thus did the ideological orientation of the promoters become the orientation of those who were to control the day-to-day operations of LSP-D.

The people who controlled general program policy also saw the program's *raison d'être* as providing service for individuals and believed that there was little room for other work. This was the prevailing view on the board of directors⁸² and of the members of its

80. The approval came in March 1966, and covered a six month period for which the total budget was \$158,000.

81. This understanding was reflected in the language of the proposal itself. In referring to the deputy director, the pronoun "she" is used, rather than "he," the pronoun customarily used in such a context and the one generally used elsewhere in the LSP-D proposal. The City D Plan—Legal Services to Implement the Economic Opportunity Act of 1964, March 9, 1966, Exhibit C (Job Descriptions), at 1.

An OEO staff person familiar with the situation in City D reported: "Mrs. K and Mrs. J will run the program." Memorandum from OEO Staff Person to Director of Legal Services, Feb. 17, 1966, at 4.

82. The board had 23 members: four from the Legal Aid Society; four from the City D Bar Association; four from the Junior Bar Association; the dean of the local law school and two other persons from the university of which that school was a part; two professors from another university; and, because OEO insisted, six representatives of the poor to be nominated by organizations identified with the poverty community (the NAACP, an association representing Spanish speaking people, another representing the elderly, etc.) subject to the approval of the original directors of LSP-D. Two of the three representatives of the poor who attended board meetings had a broader perspective than the promoters; the third, a representative of the elderly citizens, opposed the whole idea of a neighborhood law office program. A middle-aged black attorney on the board favored a more vigorous program than actually developed. But most board members, especially those who were active and had positions of responsibility, saw the program in much the same way as did the promoters. E.g., one lawyer director, a person generally viewed as a "liberal," saw the program's function in this way:

It's part of the effort to break the cycle of poverty. My own conviction is that if a person has a legal right, he ought to have a right to have counsel to protect him. The poor no less than the rich. LSP-D is an attempt to make this ideal more of a reality than it has been in the past. . . . Legislative reform would be a good idea but who will have time for scholarly study? . . . Representing tenant associations would be all right if the group couldn't afford a lawyer. The other lawyers on the Board might oppose such activity, however. Interview. A second lawyer director, also a "liberal," said:

If you can help break that terrible cycle of poverty, then you have done something. Helping a woman obtain a divorce might lend some dignity to her whole family stability. We also must instill

executive committee.⁸³ Moreover, in many instances, Q, as president of the board, and J, as program director, consulted on important questions that arose and either made the decisions themselves or framed answers for presentation to the board.

In brief, at all levels, the ideology of LSP-D's promoters became the dominant ideology of its hierarchy. The most salient characteristic of this perspective was its focus on serving individual clients. Poverty was a problem of the individual, to be solved by helping him, by breaking the "cycle of poverty" he was caught in. Law reform and group representation may be all right—some doubted the propriety of the latter—but were unlikely to engage the attention of the neighborhood law offices. There was no conception of poverty as an institutional problem, at least not as an institutional problem that LSP-D could do anything about. No one spoke of the lawyer as a representative of the poverty community, speaking, litigating, negotiating on behalf of community interests. And certainly no one saw legal service programs as a resource through which the poor might be helped to grow economic or political muscles of their own.

PERFORMANCE

LSP-D had two neighborhood law offices, though only one had been operating long enough to be included in this study. During its first four months, this office, which was located in City D's black ghetto, saw about 700 clients, a monthly average of 70 for each of the two full-time attorneys and 35 for one half-time volunteer.⁸⁴

Representing poverty community interests in law- and policy-making processes. For over a year, all of LSP-D's energies went into handling the day-to-day problems of individual clients. No

respect for law . . . show the poor the law can be their friend. . . . In the legislative field, our lawyers could properly appear as witnesses at a hearing on a bill, but as a tax-supported institution we should not initiate legislative proposals on behalf of any particular group. Cases challenging rules of law would be proper so long as the lawyers don't go out and drum up cases. But I don't believe we could represent groups, since the combined resources of the members would make the group financially ineligible for service.

Interview.

83. The executive committee was composed of Mr. Q (president of the board), whose perspective is shown in quotations in text accompanying notes 72-73 *supra*; the first lawyer quoted in note 82 *supra*, who was secretary of the board; Mrs. J, the program's director, whose position is set forth in note 61 *supra* and accompanying text and in text accompanying notes 62-65 *supra*; the vice president of the board, a lawyer whose viewpoint was much the same as Q's; the law school dean, a man who agreed with J and Q on the program's function; and the treasurer of the board, a rather diffident representative of one of the poverty community organizations.

84. Here, as in the discussions of LSPs-A, B, C, and E, statements concerning caseload are based on information compiled by the program itself.

attempt was made, through test cases, legislative work or otherwise, to give the poverty community a voice in the formulation of law and policy.

This was not for a lack of community problems to which the program might have addressed itself. The neighborhood lawyers, for example, reported that most of the tenants who came to them with eviction problems—some 80 to 90 percent of these clients—complained about inadequate heat, rats, dirty communal toilets, and defective plumbing; in some instances these conditions themselves, rather than an eviction notice, had prompted tenants to seek help from the program. The lawyers referred some tenants to the city health department and occasionally called a landlord to ask that he make repairs, but the program had done nothing either to improve code enforcement or to change landlord-tenant law. Similarly, the program's response to retaliatory evictions was quiescence. And although the chief counsel in the neighborhood office said that he was in favor of legislation that would permit a rent strike and was aware of a group working on the rent strike problem, he had not attempted to contact that group and involve LSP-D in its work.⁸⁵

Consumer problems were also common in City D. The leader of a community organization recited a long list of specific abuses that he said were matters of common practice in the ghetto. The neighborhood lawyers reported that many clients had complained about overcharging and defective goods. LSP-D obtained adjustments for many of these individuals. Once again, however, although one lawyer recognized that a number of cases might have been taken to court, none were.

In one case, a young woman had signed up for a secretarial course but had been forced by illness to discontinue. The school demanded that she make the payments due under its contract with her. LSP-D told her that the contract was valid and enforceable, and that her only recourse was to ask the school to let her continue. LSP-A, when faced with a similar situation, had contended that the school was not entitled to tuition.⁸⁶

The welfare department, according to both the neighborhood lawyers and community informants, engaged in various questionable practices. Under one of its rules, recipients of benefits could not have phones or cars even if a third person paid for these items.

85. The lack of any effort to improve the poverty community housing situation, and this attorney's awareness of and discomfort concerning that lack, were cogently indicated by an exchange that occurred during my interview with him. I had asked whether any landlords had brought pressure to bear on LSP-D. He replied, "No. You know why, of course." When I responded, "Because you haven't done anything?" he smiled knowingly and nodded in affirmation.

86. See p. 1017 *supra*.

The response of the neighborhood lawyer whose client had complained about this rule was, "There's nothing that can be done; the rule says no phones or cars."⁸⁷ In another case, welfare had withheld a client's check at the request of a former landlord. The attorney handling the matter disposed of it satisfactorily, but without giving any consideration to its test case possibilities.

People in the community had a number of complaints concerning the administration of public housing. There were attempts to evict tenants active in organizing project residents, excessive bills for utility charges, unannounced inspections, and so on. LSP-D, once again, had done nothing. Indeed, the program may even have failed to learn about these problems, since no one on the legal staff mentioned them.⁸⁸

Several reports of police misconduct and brutality had come to the neighborhood lawyers. Attempts by community residents to obtain redress through established channels never produced results. Indeed, the police commission refused to hear complaints unless they were filed by a property owner, and the police chief's response to complaints from ghetto residents was: "I don't have to answer to those people."⁸⁹ Members of the poverty community had called for a civilian review board to hear charges of police misconduct. In these and other situations, LSP-D had stood on the sidelines.⁹⁰

After about a year of such performance, as a result of pressure from OEO, the director of LSP-D drew the attention of its governing board to the program's failure to promote law reform. The board took two steps to solve this problem. First, several of City D's large law firms were contacted and asked if they would contribute the services of one associate to help LSP-D with law reform work; six firms agreed to participate. Second, a recent law school graduate was hired to work full-time on law reform; she was to examine cases pending in the neighborhood offices to see whether any lent themselves to test case treatment, and when one came to her attention, she was to bring it to one of the large firm volunteers who would assume responsibility for the litigation.

87. Interview.

88. The chief counsel in the neighborhood office had heard the complaint that the public housing authority sometimes evicted tenants for no apparent reason, and he was aware of instances in which this practice could have been challenged. He took no action, however. As noted in the text at p. 1045 *infra*, about a year and a half later, i.e., following my October 1966 research in City D, a test case involving this problem was being prepared.

89. The chief's remark had been reported in the local press, and members of the community mentioned it in the course of my conversations with them.

90. Another problem the program ignored was City D's failure to respond to citizens who were demanding that a stop light be installed at a highly dangerous corner. Faced with a similar problem, LSP-B had become actively involved in helping the community residents. See text accompanying note 40 *supra*.

Within eight months, the new attorney had involved LSP-D in several test cases. The rules denying aid to dependent children and general relief to persons who had not resided in the state for one year had been attacked, as had the public housing authority's rule against renting to women with illegitimate children, and a state law on suspension of drivers' licenses. Two actions were being prepared, one asserting that public housing tenants could not be evicted without first being given a fair hearing, the other involving a retaliatory eviction. A judgment obtained by a finance company had been reopened so that the underlying transaction could be challenged.

LSP-D's law reform project vastly improved the program's stature as advocate for community interests. This development ran counter to program ideology, however, and therefore met considerable resistance from the program's hierarchy. In effect, OEO's ideological perspective had come into direct conflict with the local program's orientation. Both exerted an influence, and the net result reflected both forces.⁹¹ LSP-D developed some test cases, but other actions that should have been brought, including one involving police misconduct, never were.

Promoting the development of political and economic resources within the poverty community. The lawyer in charge of law-reform coordination also took an interest in organizing tenants, and met with two community groups that wished to form tenants' unions. In addition, at the behest of another antipoverty agency, she and one of its neighborhood workers investigated a small apartment house and found numerous health code violations; this led to a rent withholding action, for which she and a volunteer from one of the cooperating private law firms provided the legal guidance.

Prior to these events, LSP-D's contacts with organizations had been minimal. The program's neighborhood aides had spoken to a few church groups and block clubs, but no organizations had been represented. On the one occasion in which a program lawyer did some work for an organization, he asked that his involvement be kept confidential.

The economic development front, insofar as LSP-D was concerned, had been totally silent.

E. The Community E⁹² Legal Service Program (LSP-E)

IDEOLOGY

X and Y, who were primarily responsible for the development of a legal service program in Community E (a cluster of small municipi-

91. For further discussion of this matter, see p. 1078 *infra*.

92. The use of this designation rather than the true name of the community is explained in note 13 *supra*.

palities bordering City B), undertook the task at the request of the County Commission for Poverty Programs (CCPP), the agency established by the county board of supervisors to obtain and supervise federal antipoverty grants. The board of supervisors, like most facets of government in the state, was under the firm control of the Democratic party organization. Consequently, the supervisors and those they had selected to run the CCPP were responsive to the party's needs and wants. X and Y were no less mindful or responsive than their colleagues. The important point, of course, is not which political party dominated but that one did, for this meant that the promoters and supporters of LSP-E would be people who viewed the world and their role in it through the prism of party politics. How this might influence their conception of a legal services program is not difficult to imagine. But we need not rely on imagination. We have their word for it.

For Y, the program's general purpose was "to see that people are not taken advantage of because of lack of a lawyer."⁹³ In the proposal he drafted, X expressed much the same thought, although in more traditional terms:

In civil cases, there is [in Community E] a complete void in representation . . . of the poor The approach [of the proposal] is not paternalistic or charitable, but is based on the premise that a citizen is entitled to the equal protection of the law.⁹⁴

On their face, these statements are ambiguous. One might read them as approving a broad-gauged legal service program. X's concern with "equal protection" could mean that he believed that a legal services program should speak for the poor on law and policy matters and, further, should represent groups; after all, other segments of society are so served by the legal profession. To so construe our spokesmen, however, would be to fail to accord practical politics its proper place in their equation. And neither X nor Y was prone to errors of that sort.

Asked about the program's role in law reform—a topic he did not raise spontaneously—X explained:

The program should not sponsor legislation. Maybe, in some way, we could note the problems that exist, but we shouldn't go around contacting legislators. We should not make a specific recommendation for legislation. You would come into political conflict. Take the matter of recrimination [an aspect of the state's divorce law]. There you would come into direct conflict with the church.⁹⁵

Similarly, on the question of representing groups, he said:

93. Interview.

94. A Program for Legal Assistance to the Poor, c. summer 1966, at 7.

95. Interview.

Our position is that we should only represent an individual. If we represent a group, we will be in conflict with political power and that would be self-destructive.⁹⁶

Y's views were much the same. He, however, spontaneously stated his basic view of LSP-E's responsibility in combatting poverty:

The program should concern itself with cases, not causes. This program should not lobby. People who are paid by this program shouldn't be urging social reform. . . . We shouldn't represent groups if they have a political aim.⁹⁷

Y believed it essential to avoid any clash between the program and the political establishment. He feared that if program lawyers became involved in working with community groups, the program would be identified as an opponent of the political power structure and thus lose its support. As a result, he was especially opposed to highly visible activities: while open lobbying could not be tolerated, writing a letter to a legislator might be permissible. When asked whether the program would work on a suit against de facto school segregation, he said, "If the suit were against the county vocational school, we wouldn't handle it. I would be in favor of turning it over to LSP-B, and I think the board would agree."⁹⁸ But when it was suggested that a referral might also have political repercussions, he had second thoughts on whether even that action ought to be taken.

It was not simply fear of political repercussions, however, that motivated Y and X. Both men were part of the political establishment: Y had married into the family of one of the area's most powerful party bosses; X had long been active in party politics; both men were associated with the CCPP which had strong ties to the party machine, and both had been designated by that body to develop a legal services program. Consequently, they were concerned with protecting political figures and officeholders against the attacks that an activist program might mount against them. Nothing illustrates this better than a sentence from an early draft of their proposal:

While prepared to represent groups of citizens where joint action is required (tenants' complaints) the Office should not consider as part of its activities the representation of protest groups, social movements, and civil disobedience.⁹⁹

96. Interview.

97. Interview.

98. Interview.

99. I was unable to obtain a copy of the early draft that contained the quoted passage. The passage is quoted in full, however, in an OEO staff member's critique of the proposal. Memorandum on Community E Legal Services Proposal, Aug. 30, 1965, at 1. The portion beginning with the words "the Office" is also quoted and questioned in Memorandum on Community E County Commission for Poverty Programs, Sept. 23, 1965, at 1. And there is a reference to the matter in Letter from Director of Legal

OEO, of course, objected to the sentence,¹⁰⁰ for it prohibited some of the very activity that OEO wanted to encourage. The promoters willingly struck the entire sentence, thus deleting all reference to group representation.¹⁰¹ But, at OEO's insistence, the promise to represent "groups of citizens where joint action is required (that is, tenants' complaints)" was reinserted.¹⁰²

A sort of shrug-of-the-shoulder acceptance of what they might have called "the facts of political life" also characterized these men. X, though he believed that in the best of all possible worlds a legal services program would have much broader scope, suggested that one had to deal with the real world and might as well accept it. "You can't fight city hall," one could almost hear him saying. This practical-politics perspective also involved acquiescence in minor corruption and dishonesty. Thus both men said forthrightly that their program would not represent groups, notwithstanding the fact that OEO funding had been explicitly conditioned upon an agreement that the program's services would be available to such clients. OEO had also insisted that the poor be represented on the governing board. X, Y, and others opposed this, but ultimately agreed that the board would include "[s]even representatives of the poor from the areas to be served, including at least three members of the clergy."¹⁰³ When the time came to select the four nonclergy, the bargain with OEO was kept by taking the welfare rolls and picking some names at random, with no concern for whether those chosen would serve.

Services for OEO Northwest Regional Office to Director OEO Legal Services Program, Nov. 19, 1965. This letter indicates that as of its date the quoted passage still appeared in the draft of the proposal for LSP-E.

100. See the memoranda cited in note 99 *supra*.

101. See letter from Mr. X (draftsman of the proposal) to OEO Regional Director of Legal Services, Dec. 9, 1965, at 4. This letter notes that the parties have extensively discussed the contents of the draft proposal and authorizes OEO to make various changes in the terms thereof. My conclusion that this letter authorized the deletion of the passage in question is an inference from the following: (a) the Memorandum of Sept. 23, 1965, *supra* note 99, states that the passage in question appears on page 23 of the draft proposal; (b) one of the changes authorized by the instant letter was the deletion of "paragraph 5" on "page 23" of the draft proposal; and (c) on page 23 of the proposal as edited to incorporate the changes authorized by the instant letter, four lines of type immediately below paragraph 4 have been blocked out.

102. The quoted language was not actually incorporated in the proposal itself, but by virtue of the written conditions attached to OEO funding was in effect incorporated by reference. Also, subsequent to the proposal's approval, in order to satisfy another condition attached to OEO's funding, the sponsors of LSP-E created the Community E Legal Assistance Center, and the language concerning group representation appears in the document drafted in connection therewith. By-Laws of Community E Legal Assistance Center, c. June 1966, at 6.

103. *Id.* at 3-4. This provision was also included in the terms of the proposal as funded by OEO. Community E Legal Assistance Center, c. Aug. 1965, at 17-18.

The structure of the governing board of LSP-E was designed to maintain the ideological orientation of its sponsors. Under the terms of an early draft, the CCPP's power of control over the program was open and clear.¹⁰⁴ OEO policy, however, required an independent control body, a rule especially important in this case because CCPP's close association with county welfare agencies might cause conflicts of interest; OEO also insisted that the poor be represented on the board. The promoters responded with a 19-person board of advisors.¹⁰⁵ Five members were to come from bar associations, local law schools, and the Legal Aid Society, each group to designate its own representative. The other 14 members—half lawyers and the other half representatives of the poor (including three clergymen)—were to be selected by CCPP itself. It was provided, of course, that members of CCPP could not be members of the LSP-E's board, but the power to select almost three-fourths of the board was more than enough to give CCPP (and therefore the political organization) control of the program.

X became chairman of the board; Y became a member. Also on the board were a member of the state senate (one of the powers in local politics), the public prosecutor, chief counsel for the county welfare department, a state assemblyman, and four other lawyers; three clergymen were also selected; the law schools sent their representatives; three people supposedly coming from the poverty community itself were added; two positions were unfilled. With one or two exceptions, these men, though not all politically oriented, were likely to see the affirmative objectives of the program in much the same way as the promoters. For example, one member, a black lawyer, despite the need he saw for legal and social reform, said this when the matter of reforming the divorce law and landlord-tenant rules was raised:

I don't think test cases are going to get anywhere. This is a strong Catholic state. As for the legislature, it would be a political football. We have to be careful that we don't get involved in political squabbles that would damage the program because of its ties to the political structures. The landlord-tenant law certainly needs revision. What we have now is wholly a landlords' law. This might not be as much

104. The early draft itself was not available. The statement in the text above is based on the following: (a) an OEO staff member's comments on the draft proposal state that an ethical problem arises because CCPP "is closely related to welfare work" and the poor have many legal complaints concerning welfare, and, further, that "no safeguards are built into the proposal to insure that the relationship of client and attorney will not be infringed. . . ." Memorandum on Community E Legal Services Proposal, Aug. 30, 1965, at 1-2; (b) after reviewing the proposal, a second OEO staff member told Community E's antipoverty agency (CCPP) that the program would have to be run by an organization independent of CCPP. Letter from OEO Staff Member to Director of CCPP, Aug. 20, 1965, at 1.

105. See note 103 *supra*.

of a political problem as with the recrimination rule. But landlords would put pressure on the politicians, and they in turn would put pressure on us.¹⁰⁶

If there were board members who disagreed with this perspective, they had little opportunity to exert any influence. Day-to-day operations were in the hands of the executive director, who also selected program personnel, subject to pro forma board approval. When queried about program goals, the director answered:

I am not carried away with causes. I am interested in individual problems. And I have so instructed my men: do not become involved with causes.¹⁰⁷

Would he bring an action against de facto segregation in public schools?

I greatly believe in the palm branch. I believe all problems can be negotiated and resolved. I shrink from publicity for its own sake. So I would talk to the school board and try and solve the problem that way.¹⁰⁸

And if negotiations failed:

That's a hypothetical question. It would depend on the case.¹⁰⁹

The director also understood politics. Indeed, early in our interview, he spontaneously declared, "you know this program is political." When asked what this meant, he explained that he himself had been offered his job by the state senator who served on the board, and almost everyone he had hired had been "recommended" to him by the senator. In effect, they had been selected by the Democratic party organization.

In some ways LSP-E was actually an arm of local politics. Its jobs were dispensed as favors. Its objective was not unlike that of the urban political machine itself: to exercise its influence on behalf of individual constituents who came to it for help. In its focus on individual service LSP-E's ideological perspective was much like LSP-D's. There was an important difference, however. While D's hierarchy was oriented toward the local power structure and felt dependent on it, in Community E the promoters and the director

106. Interview.

107. Interview. The similarity between the director's statement and Y's admonition that LSP-E "should concern itself with cases not causes," (see text accompanying note 97 *supra*), is striking and indicates that the carryover from promoters to program hierarchy involved not only general perspectives but also specific formulations.

As an illustration of his approach, the LSP-E director noted the controversy in City B over a plan to make land located in the black ghetto available for the construction of a medical school; he said that while he would not represent a group that wanted to stop construction of the school, he would help those who were dislocated find other housing.

108. Interview.

109. Interview.

were themselves part of the political apparatus—members of the family, so to speak. However much the executives of LSP-D disliked activities challenging the status quo, the feeling within the hierarchy of the LSP-E was bound to be even greater.

PERFORMANCE

LSP-E's four neighborhood offices had seen approximately 2000 clients by the time of this research, an average of 25 per lawyer per month.¹¹⁰ Measured by OEO goals, the program's performance must be counted a clear-cut failure, for its lawyers had done virtually nothing but advise and assist individual clients with specific problems.

Representing poverty community interests in law- and policy-making processes. LSP-E's record as representative of poverty community interests was almost blank. There had been no test cases, no proposals for legislative reform, and almost no other activity that might be viewed as having any general import.

Though housing in Community E was somewhat better than the norm for poverty areas, tenants still faced the typical problems. The head of one neighborhood law office, for example, described several apartment buildings he had seen as "really abominable"¹¹¹ and noted that a number of tenants, some facing eviction and others not, had complained to him about their landlords' failures to make repairs, provide sufficient heat, and otherwise maintain decent conditions; the chief attorney in another office reported that he often received such complaints from his clients. Apparently, however, no one in LSP-E had even thought of contending that a landlord should perform his obligations as a condition to collecting rent, nor had any other action that might have some impact on landlord behavior been considered. Clients were told that they must "pay or move" and that their only remedy for landlord defaults was to file a complaint with the health department.

Retaliatory evictions were another problem. In one case, when a program lawyer called a landlord to ask that certain repairs be made, the landlord replied, "OK, I'll take care of it, and then I'm going to evict him for complaining to you."¹¹² The landlord did just that. LSP-E offered no resistance.

The housing code enforcement process of Community E was subject to the same infirmities as are found elsewhere. One attorney, for example, had been told by a number of clients that the health department seldom pressed complaints filed with it. Moreover, if a complaint were pressed and the landlord was found to have vio-

110. Here, as in the discussions of LSPs-A, B, C, and D, statements concerning caseload are based on information compiled by the program itself.

111. Interview.

112. Interview.

lated the code, the resulting fines were minimal, usually far less than the cost of compliance. In one of the cities served by LSP-E, the local community action program had organized a committee to study housing codes and propose revisions. Though LSP-E knew of this project, no attempt had been made to participate in it.

There had been one landlord-tenant situation in which LSP-E did try to improve housing conditions. A city had brought proceedings against a landlord who had failed to remedy code violations. The city prosecutor planned to use only the building inspector's testimony to establish the violations. The LSP-E attorney believed that the case would be strengthened by testimony from a number of tenants, and he asked the court for leave to appear as amicus for this purpose. His request was denied and the case ended with the court fining the landlord about \$50.

On the consumer protection front, LSP-E had acted with some vigor to help individuals who had been dealt with unfairly. Nothing was done, however, to establish legal principles that might deter unfair dealing generally or otherwise to help poverty community consumers as a group.

Similarly, in handling situations involving government assistance programs, LSP-E largely ignored law reform possibilities.¹¹³ Program lawyers, for example, accepted the welfare department's "man in the house" rule without question, though the rule had been successfully challenged elsewhere in the nation. When welfare reduced the benefits of a working mother so that her salary plus welfare totaled less than the prior welfare payment, the program's solution to the problem was to advise that she quit her job.

There were two other obvious problems LSP-E had ignored. Community E was located in the same state as City B and consequently was governed by the same divorce laws. These laws, as noted in the discussion of LSP-B's performance, included a judge-made gloss on the recrimination statute, and this doctrine operated especially harshly against poor women. LSP-B brought test cases to change the law. LSP-E ignored it. On the problem of police misconduct, one program attorney reported that it was common practice for police to take statements from suspects without first informing them of their constitutional rights. His response to this situation was to tell the police that such confessions would not be admissible in court. Another attorney, informed by two clients that the police had beaten them, did nothing. A third attorney, while acknowledging that he had received complaints about the police, said that he preferred not to discuss them.

113. The only possible instance of law reform that came to my attention was an appeal involving a construction of the social security law. Even in that case, however, the attorney seemed concerned only with the impact of the appeal on the client's interests, and did not seem to see the case as an opportunity to establish a principle of general importance.

Promoting the development of political and economic resources within the poverty community. Community E had various activist groups, including both older organizations like the NAACP and those of more recent development. In one area, the local community action program had organized 10 different tenants' associations.

With one exception, none of LSP-E's lawyers had represented or even been in contact with any group.¹¹⁴ Even though the neighborhood law offices shared space with another agency of the community action program, the lawyers knew nothing about the functions or activities of that agency and had never worked with it.

LSP-E had not involved itself in any economic development activity.

Such are our five programs, their ideologies and their performances. A brief comparative analysis, first of ideology and then of performance, will provide a basis for explaining the relationship among them.

In comparing program perspectives, the crucial question is what each said about the different objectives such programs can choose to pursue, that is, what their ideologies said or implied about the propriety and importance of serving individual needs, reforming the law, and helping the poverty community develop economic and political power of its own. The promoters of LSP-A and the orientation that came to characterize that program stand at one end of this ideological scale. They saw a legal service program primarily as a weapon to attack poverty as a social condition rather than as a way of providing temporary relief to impoverished individuals. This did not mean that the immediate legal needs of individuals should be ignored. An effort to fill that need was seen both as having some intrinsic merit and as a way of directing program energies into the broader struggle. Far more importance, however, was attached to law reform efforts, representation of poverty community groups, and other forms of activism, and the uppermost positions in LSP-A's hierarchy of values were reserved for work of that sort.

While the promoters of LSPs-B and C also believed that legal service programs should play a role in the antipoverty struggle, they saw this as one rather than as the most important function of such programs. Helping individual clients with their day-to-day problems was a distinct and equally important objective, partly because it might enable some individuals to rise out of poverty and

114. The exception was a lawyer who, as chance would have it, represented in a debtor-creditor situation a man who happened to be head of a tenants' association. This client brought the attorney to some meetings of the association, and the attorney helped arrange for a building inspector to examine an apartment house that allegedly violated the building code in many respects.

partly because the ideal of equal justice demands that lawyers be available to the poor. The perspectives of the B and C promoters were not identical, of course. The promoters of LSP-B had a clearer conception than had C's of what their program might do to promote social change, and they seemed to place more emphasis on this objective. This difference, however, was less pronounced than the difference between these two programs, on the one hand, and LSP-A, on the other. Moreover, because of the notoriety incident to the development of LSP-A, it had acquired a public image as an activist program. Nothing in the development of LSPs-B or C had served to advertise their perspectives, and consequently, in the early months of their lives, their orientation toward social change was not generally known. Indeed, because LSP-C was an extension of the Legal Aid Society, this program was to some extent distrusted by activists in the poverty community.

If LSP-A occupies one end of the ideological spectrum, and B and C hold the middle, programs D and E stand close together at the other end. To the LSP-D and E promoters, the rationale for a legal service program was to provide "equal justice under law," meaning that poverty should not deprive a man of legal services, not that legal services should play a role in combating poverty. It followed from this conception that a legal service program should devote itself to servicing individual clients. This definition of appropriate program activity was reinforced by the fact that these promoters were leery of "causes." The individuals primarily responsible for LSP-D had been too long dependent on, had too many ties with, and, indeed, were themselves too much a part of City D's established institutions and power structures to be able comfortably to contemplate program activities that would in effect attack old friends and relationships. The aversion to such activity was even greater among the promoters of LSP-E, for some such attacks would have been aimed at the very political machine from which this program had sprung and of which it, indeed, remained a part.

In sum, the programs fall into three ideological categories: *social change orientation* (all types of program activity are considered proper, but, because the program's primary goal is seen as combating poverty, efforts to promote social change are considered most important and assigned the highest value); *individual client/social change orientation* (the program is seen as having two basic functions—meeting the immediate needs of individual clients and working for basic reforms—of about equal importance and value); *individual client orientation* (the program's function is seen wholly in terms of individual client needs, and activity pointing to social change is considered both inappropriate and troublesome). Further distinctions can be drawn within categories,¹¹⁵ but variations within

115. Within the second category, LSP-B's ideology might be rated as somewhat more oriented toward social change, both because the promoters

categories are neither as striking nor as meaningful as differences from one category to another.

Looking to performance, LSP-A clearly had the best record of working for social change. It developed more test cases, spoke more often on behalf of poverty community interests, and was far more involved in working with community organizations and for economic development than any other program. More of its lawyers participated in these activities and devoted more of their time to them.

Programs B and C were active, but significantly less so. Moreover, most of their efforts stemmed from a few lawyers, much of it coming from the program directors themselves. As between the two programs, B's performance record was a bit better than C's. B represented and worked with a larger number and a more diverse collection of community organizations and undertook more law reform than C, though C had begun to promote economic development, something B had not done.

Finally, there are LSP-D and LSP-E. Except for test cases developed after program D was pressured by OEO, these programs have an almost perfect record of inactivity.

The differences in the overall performances of the five programs correspond to differences in their ideologies: LSP-A is first in both respects, programs B and C are second, and D and E bring up the rear. Further, LSP-B, with a somewhat more activist orientation than LSP-C, also rated somewhat higher in performance. Of course, not all variations in program performance can thus be matched with differences in ideology. This is true of LSP-C's failure to become much involved with law reform and LSP-B's inactivity on the economic development front.¹¹⁶ But these are minor variations and not inconsistent with the thesis that the general shape of program performance is a product of promoter ideology.

This relationship between promoter ideology and performance, however, did not hold in LSP-D after OEO began to exert pressure, for the program then developed several test cases. This episode suggests that certain forces outside a legal service program can influence its performance. The result when such force is brought to bear, however, will be a function not only of the outside pressure but also of the manner in which a legal service program responds to

seemed to have a more concrete idea of what the program should do to promote reform and because of C's image. Within the third category, E would be rated somewhat more status quo oriented than D, largely because the perspective of E's promoters and hierarchy was so greatly influenced by their relationship to and place within the political structure.

116. There was also no difference in the ideologies of B and C that matched their differences in working with poverty community groups. C's lower ranking here, however, may have been a result of its ideological image. On this point, see the discussion at p. 1073 *infra*.

it. The behavior of LSP-D and other data suggest that this response will be closely related to program ideology.

II. THE IMPACTS OF IDEOLOGY

Ideology works in a number of ways to shape performance in its own image. The primary impact of ideology is on the manner in which program lawyers perceive and respond to poverty community problems. This is our topic in the next section. Following that we will examine the way ideological image influences community response to a program and how that, in turn, affects program performance. Finally, we will look at the relationship between ideology and certain other factors that may be important to the character of program performance.

A. *Program Ideology and Lawyer Behavior*

For the most part, legal service program lawyers are not subject to direct external controls. They are seldom directly prevented from taking a specific case or handling it in some particular manner. Few actions would cause them to be fired. In this sense, individual lawyers are usually free to decide whether to direct their efforts toward social reform or toward solving problems for individuals or both.

How the lawyers make this decision depends in part on their abilities and attitudes. Ability—knowledge, analytic capacity, imagination—is obviously important. One must see the possibility of changing the law before he can act to change it. Knowledge of what other lawyers are trying will reveal some opportunities; others come only from one's own perceptivity and imagination. The relevance of these qualities is not limited to test case work. In all kinds of problem situations, the more acute, skillful, and knowledgeable a lawyer, the more likely he is to see ways in which the law might be used to protect and advance poverty community interests. The lawyer's ideological commitments—what, in his view, a legal service program as an institution and he as an individual ought to be doing about poverty—are also important, sometimes crucial. The lawyer concerned about social justice might view an eviction situation in terms of the high rent being charged for a rundown, shabby apartment, while an unsympathetic attorney would see simply a tenant who refuses to pay rent legally due the landlord. And the lawyer interested in improving social conditions may see in this situation possibilities for law reform that would be ignored by an attorney who sees poverty solely in terms of poor individuals. Consequently, the level of ability and the attitudes typical of the lawyers a program hires give it what we might call a performance propensity: absent other significant influences, the program whose lawyers are most skilled and most committed to at-

tacking poverty as such will engage in the most social reform work. The attitudes and ability level that will prevail among the attorneys a program employs—and thus the program's performance propensity—are closely related to its ideology. We will explore this relationship when we discuss the impact of ideology on staff selection.

However, whatever their ability and social commitment, lawyers hired by a program are likely to value the acceptance and approval of others in the program, especially, perhaps, that of the program's hierarchy. In that context, a program's ideology, by telling its lawyers whether conduct will be favorably or unfavorably received, enters forcefully into the motivational mix that shapes their behavior. This we will discuss immediately after staff selection.

THE IMPACT OF IDEOLOGY ON STAFF SELECTION

The lawyers in our five programs differed sharply in what they saw as the purposes and functions of a legal service program, and in the order of importance they attached to various goals. To determine this, the lawyers were asked what they hoped the program would accomplish. Goals mentioned spontaneously were deemed to be the most valued; attitudes toward other program functions were gauged by responses to explicit questions. In addition, to determine concern for social justice, the lawyers were asked why they had decided to take a job with the program. Their answers ranged from "the pay was good" and "to get trial experience" at one end of the spectrum to wanting "to fight for human values and rights" at the other.

The lawyers of LSP-E saw serving individuals as the only real function of their program. They uniformly opposed working with community organizations. None spontaneously identified law reform as a goal; when specifically asked about it, though voicing no objections, they said that the press of day-to-day business made such activity impossible.¹¹⁷ In explaining why they had come to work in LSP-E, all mentioned money and experience first, and only one went on to express some desire to help the poor.

LSP-A's lawyers were just as uniform at the other extreme. Without any prodding, all identified test cases and legislative change as program goals, and most mentioned activity of this sort before talking about individual clients; some spontaneously talked of aiding in the development of cooperative apartments, credit unions and the like; several spoke of representing poverty community groups, and all expressed a positive attitude toward such work. Every lawyer indicated that concern for the rights and well-being of the poor was important, usually crucial, in motivating him to work in the program.

117. One lawyer's comment on law reform work was: "To be honest, I don't have time." Another said, "Nice, but it will never be." Interviews.

LSPs-B, C, and D were staffed by lawyers of varying perspectives. In each, some of the lawyers had joined to obtain money or experience, others to help the poor, still others for both reasons. All but one looked favorably on law reform activity, but for most it was not a matter of first priority, and some discussed the question only when it was expressly put to them. Representing groups was considered proper, but again few of the lawyers mentioned this spontaneously or considered it a priority item.

The program staffs also differed in their levels of legal competence. In the interviews, LSP-A lawyers were far more imaginative in dealing with legal theory. They discussed not only the new ideas that others around the country had been developing, but also theories they had invented themselves. Similarly, as a group they seemed more adept in dealing with facts—seeing the multiple implications of a situation rather than only the most obvious one. The other programs were mixed. LSP-B had one truly excellent man, and one or two others clearly above average. Programs D and E each had at least one quite poor lawyer and no one who seemed outstandingly qualified. The rest fell somewhere in the middle range.

These impressions are consistent with two indicia relevant to competence: law school background and prior experience in practice. LSP-A had drawn about half its staff from schools of national repute. Almost all the lawyers hired by the other programs had come from local schools not known for the excellence of their graduates. Similar differences were present in the practice experience of the staffs. The average for the lawyers interviewed in program A was better than three years, and the heads of the neighborhood offices all had better than six years experience. Some had left excellent positions to join LSP-A. In the other programs, many lawyers were fresh out of law school; most of the others had no more than one or two years of experience, occasionally in positions of responsibility, but just as often as struggling solo practitioners. LSP-B and LSP-C might be ranked a bit higher than the others; program E was the least impressive. But these differences were far less marked than was LSP-A's superiority.

Program ideology operates in two ways to affect staff characteristics and bring about such differences. It influences programs when they choose among the applicants seeking jobs. It also influences potential program lawyers when they select programs to which they apply for work.

Those responsible for staff selection—program directors, personnel committees, perhaps the initial promoters—are themselves bearers of program ideology, and they are quite free to follow their ideological predilections. They interview and screen job applicants, sometimes conduct their own search for persons to fill vacant positions, and ultimately decide who will be proposed to the program's

governing board. Board approval is seldom more than *pro forma*. Though the screening process provides only a sketchy picture of job applicants, it does allow programs to identify individuals of outstanding ability and individuals strongly disposed toward social reform.¹¹⁸ However, the extent to which a program's staff will reflect the program's power to base selections on ability and attitude depends in part on its ideological perspective. For this purpose, one aspect of that perspective is the importance it attaches to ideology itself.

The attitudinal homogeneity of the lawyers hired by LSP-A and the similar situation in LSP-E were due in part to the promoters' intense concern with ideology and to the specificity of that concern. Given the obvious importance program E attached to avoidance of conflict with the political power structure, it was likely to be especially concerned with the orientation of its lawyers. Persons who felt keenly about social reform would be dangerous, in this view, and therefore should not be hired. None were. In program A, ideological perspective had occupied stage center from the very beginning. To be acceptable within LSP-A's ideological framework, lawyers would have to view social reform as highly important, and, as a group, the lawyers hired fit this pattern. The heterogeneity of the lawyers in LSP-B and LSP-C is also consistent with program ideology. Nothing in the history of these programs would have caused their job interviewers to be preoccupied with applicant ideology, nor did the perspectives of these programs focus attention on any single, well-defined attitude. Under these conditions, applicants with a wide range of attitudes were likely to fit the interviewers' conception of good program lawyers.

While some of the differences in the attitudes characteristic of program staffs can be attributed to the ideologies that influenced program screening of job applicants, certain variations in staff characteristics cannot be explained in this way. The fact that LSP-D hired a neighborhood lawyer and a law reform coordinator whose perspectives diverged sharply from the program's probably resulted

118. For the most part, the only source of information on a job applicant's attitudes was what he said in the course of his job interview. A number of program lawyers told me, however, that anyone who wanted a job would have known how to answer the very general questions put to him by the interviewers. But not all questions had pat answers. Applicants who were asked how they would handle hypothetical situations could have seen various responses as appropriate, and consequently the answers to such questions, when they were put, may have been quite revealing. Moreover, an applicant deeply committed to social reform would probably make this clear in the interview.

Information on ability would come from the applicant's scholastic record and the recommendations of his teachers and prior employers. This would provide a reasonably reliable basis for determining whether the applicant was outstandingly or poorly qualified or fell somewhere in the middle range.

from mistakes in judgment. But the fact that programs B and C, when compared with A, hired very few lawyers who gave priority to law reform and very few highly skilled lawyers cannot be so explained. Applicants possessing these characteristics would have been quite visible, and they would have been as welcome in LSPs-B and C as in A. Consequently, the disparity between the staffs of B and C, on the one hand, and A, on the other, cannot be attributed to differences in program ideology. An explanation can be found, however, in the role ideological image plays in the staff selection process.

To understand the key impact of image, one must appreciate the market conditions in which the recruitment of legal service program lawyers takes place. Relative to the number of job openings in the nation, there is but a small supply of lawyers with a high degree of intelligence and imagination. Also, the supply of lawyers deeply committed to social justice and law reform is smaller than the number of legal service program job openings. In brief, it is a sellers' market. As a buyer, a legal service program must compete not only with private law firms but also with other legal service programs.

In competing for the highly intelligent and imaginative lawyer, private firms have a clear advantage: they pay more, sometimes twice as much. The prime offsetting advantage offered by legal service programs is an opportunity to promote social reform, to participate in shaping the law and changing society. The significance of this opportunity is twofold. Because it involves working on behalf of the poor, it provides a way of satisfying the pull of conscience. Because it involves changing social institutions, it gives fulfillment to those who wish to see themselves as playing a significant role in the life of the nation.¹¹⁹ Not all legal service programs will be seen as offering these satisfactions. Since whether they are so seen will depend on the image they project, this image will often determine whether a program can compete effectively with private law firms and other legal service programs. The importance of image is strikingly illustrated by what several LSP-A lawyers said about how they came to join their program.

119. Although it is important that the [legal services] programs pay respectable salaries, they will never be able to attract the best lawyers . . . by monetary rewards alone. Young and dynamic lawyers of high quality are being attracted to legal services by the promise of being in the vanguard of legal, political, and economic reforms.

Note, *Neighborhood Law Offices: The New Wave in Legal Services for the Poor*, 80 HARV. L. REV. 805, 824-25 (1967).

Whether a program is seen as presenting an opportunity to be "in the vanguard" may be especially important to its ability to attract graduates of prestigious national law schools. To some extent these lawyers see themselves as the elite of the legal profession; to be attractive to them, a job must be one that will satisfy this self-image; consequently, a program that holds out the opportunity to change the law and shape social policy will have a special attraction.

Some of LSP-A's lawyers said they were attracted to it because they obtained little satisfaction from the business practice in which they had been engaged and had been excited by what they heard about LSP-A. Some received their information from A's promoters and there can be little doubt concerning the image thus conveyed. Others had heard discussions generated by the struggle between LSP-A's sponsors and the bar-Legal Aid group, portraying LSP-A as an activist program interested in law reform and community action. One attorney explained that he heard about LSP-A from a friend who worked in another legal service program. Before that

I had thought these programs were just bigger Legal Aids, and I had no intention of going to work with Legal Aid. But then I looked into it and became interested. I contacted Mr. C [the chief LSP-A promoter]. I have always been interested in fighting for human values and rights and I just didn't have a chance to do this in private practice.¹²⁰

It should be noted that although not happy in private practice, this man would have abandoned it only for a legal service program with an activist image.¹²¹

Image and self-selection operated in LSP-E, too. Almost all of program E's lawyers came to their jobs through the political connections of a relative or friend. Thus, they were likely aware of the program's political character at the time they applied for their jobs. If not, the message was conveyed when they were interviewed. The program director, after stating that he was "not carried away with causes," added, "and I instructed my men not to become involved with causes."¹²² The image was attractive to some, for it meant that their connections could help them gain employment; they selected themselves into the program. Anyone seriously interested in social reform, however, would have selected himself out. Both aspects of this selection process contributed to the homogeneity of E's staff.

The other programs projected a generally less distinct image. Consequently, image played only a minor role in staff recruitment. Like most other programs, of course, they would be seen as a place where a young lawyer might have some opportunity to work for social justice. But this comes from the general image generated by the nationwide program rather than from local conditions. Nothing in their specific images indicated that law reform or community action were especially valued, or that the opportunities to engage in such work would be greater in these programs than in others. In-

120. Interview.

121. Similarly, another LSP-A lawyer said that he had "worked for Legal Aid in law school, and it wasn't worth a damn. I knew Mr. V [the main promoter from the poverty community] in law school, and he told me about this program. Also, Judge M said to me, 'This is the kind of program you want. It's not a sellout.'" Interview.

122. Interview.

deed, in one respect, the ideological image of programs D and C may have suggested just the contrary. Both bore the "Legal Aid" label, a label that for many lawyers symbolizes a program that focuses on serving individual clients rather than on social reform.¹²³

Some generalizations can be drawn from our examination of ideology—image and reality—and its effects on staff selection. The stronger and more clear-cut a program's ideological orientation, the greater impact it will have. First, those who screen job applicants will be focusing more sharply on the perspectives of those they interview. Second, the program's image will be clearer, therefore more visible, and consequently more influential. Programs that are seen as especially concerned with social reform will attract the most capable, committed lawyers. And since the supply of such lawyers is limited, there may be few left over for the other programs. It is important to note that it is image operating here, and that it operates independent of reality. The actual ideological perspective of LSPs-B and C was just as hospitable to social reform activity as LSP-A's, but this reality was not communicated. There had been no struggle that brought ideological views to public attention, nothing to create the kind of image that LSP-A had developed. Indeed, perhaps the most distinct aspect of LSP-C's image—the "Legal Aid" name—ran contrary to reality.

Though staff selection gave our programs certain propensities, it did not unalterably fix the course of future conduct. There was room for the influence of other factors, among them the continuing impact of ideology itself.

THE INFLUENCE OF IDEOLOGY ON THE PERFORMANCE OF STAFF LAWYERS

Like most of us, the legal service program lawyer has a need to be accepted and approved by others. He wants to be esteemed by other staff attorneys; he wants also to gain the favor of those who hold positions of authority in the program. A program's ideology, by telling him whether conduct will be favorably or unfavorably received, can interact with this need and motivate him to behave in accord with ideology's dictates. Experience in our five programs shows that ideology does in fact operate in this manner, that the way in which a program's staff responds to the problems of the poverty community is directly related to the behavioral mandates explicit or implicit in its ideology.

In LSP-D, for example, two of the attorneys were inclined by personal convictions to work for law reform, help the poor develop community organizations, and otherwise act to promote social change. Yet one of them never undertook such activity, and the

123. See note 121 *supra*; text accompanying note 120 *supra*.

other, initially active in developing test cases, sharply curtailed her activity when the program's ideology was made clear to her.

The first lawyer headed the neighborhood office located in City D's black ghetto. He knew of legal theories emerging from test cases that had been brought by other programs and was anxious to try some of these theories himself. He was also interested in promoting new legislation, particularly a statute authorizing rent strikes. He spoke enthusiastically about a conference at which various possibilities for reform had been discussed: "I was very pleased with the tone of the conference—let's get off our duffs and really swing. New theories were brought out, food for thought. I got new ideas and a sense of rededication."¹²⁴ Despite this perspective, however, neither he nor the other attorneys in his office had taken any action to promote reform. He, himself, speaking in a tone almost of despair, cogently summarized the situation: "All I've said about what we should do, what I want to do, is simply talk. I feel uncomfortable and hypocritical about this."¹²⁵

His failure to pursue reform activity resulted primarily from a recognition that to do so would have brought him sharply into conflict with the perspective of the program's hierarchy. He knew that LSP-D had been promoted and was being run by the same people that supported and ran the Legal Aid Society; this, in his view, meant that the program's hierarchy would be oriented toward individual service and away from any activities that might generate controversy. This preconception was reinforced by his experiences in the program itself. The people who interviewed him for his job left the impression that their primary concern was whether he would be careful to avoid activity that might conflict with the bar's antisolicitation rules; subsequently, some members of the program's governing board expressed concern over his use of neighborhood aides to spread information about the program. In addition, the program director made frequent visits to his office to check case files and give him advice, and under the program's rules trial court decisions could not be appealed without first obtaining approval at a staff meeting. All of this indicated to him that the hierarchy intended to keep a tight rein on program activity.

As a result, he did not feel free to undertake work that might be viewed as controversial. Over and over again, in discussing client problems and other situations to which the program might respond, he commented on whether a program activity might evoke a hostile reaction from those in positions of authority in City D. Other comments show that this concern stemmed from an expectation that his position in the program might be seriously threatened if he undertook work that provoked controversy.¹²⁶

124. Interview.

125. Interview.

126. After expressing a desire to involve himself in law reform work,

Although it is clear that ideological perspective of LSP-D caused this attorney to be concerned about the consequences of undertaking law reform or other potentially controversial work, it does not necessarily follow that this concern alone caused him to refrain from such activity. However, given his belief in the importance of such work and the ample opportunity he had to engage in it, no other explanation seems plausible. Two specific incidents, both involving a somewhat militant group called Organization for Action (OFA), support this conclusion. One of LSP-D's neighborhood aides, in speaking to a neighborhood group about the program's work, also talked about OFA. Someone called the attorney to complain that his people were supporting militants, and he immediately told the aid never to mention OFA when she was engaged in program work. The second incident occurred when the chairman of OFA came to the attorney to ask for help in formulating a wallet-sized card that would tell people what their rights are if they are stopped by the police. The attorney provided the necessary information, but he asked OFA's chairman to keep LSP-D's help confidential. The way in which the attorney handled these situations created barriers between himself and community activists. This was not what he wanted. Indeed, had he felt free to do so, he would have worked openly with OFA. But the ideological perspective of LSP-D told him that such work would meet with considerable disfavor, and the lengths he went to in order to avoid identification with OFA testify to the influence exerted by that ideology.

The second LSP-D lawyer inhibited by program ideology was a recent law school graduate hired to act as law reform coordinator. She thought this kind of work worthwhile, both for legal service programs and for herself, and she did not realize initially that vigorous pursuit of such work would be inconsistent with the mandates of LSP-D's ideological perspective. Consequently, she approached her job with enthusiasm and without inhibitions. Soon she had started two test cases, one challenging the state's one-year waiting period for welfare, the other questioning whether the public housing authority could evict a tenant because of illegitimate children.

Then the director of LSP-D asked her to attend the upcoming board of directors meeting to report on her activities, and the assistant director told her that a prominent member of the board had complained that the second suit might adversely affect the program's efforts to obtain local financial support. The assistant director added a few words to indicate her own concern: "Be careful

this lawyer made the following comment, which indicated his understanding that such work might jeopardize his position in LSP-D: "If trouble comes, let it come. There would be riots if I was fired." Interview. A further indication of his concern was the thought he had given to how to meet the difficulties that might arise. Thus, he said, "If the board of directors objects to vigorous action, I will say that I'm just doing what any lawyer is supposed to do for his clients." Interview.

about bringing any more suits against the welfare department or the housing authority. We have to work with them."¹²⁷ In addition it was suggested that she ought to avoid a case involving a charge of police brutality. Finally, when the coordinator appeared at the board meeting to explain her work, the board member who had earlier complained moved that no cases challenging ordinances or statutes be brought without prior board approval, and a committee was appointed to consider this matter and report back. Thus was the perspective of LSP-D's hierarchy made known to the program's law reform coordinator. She, herself, has described the effect of this knowledge.

This hamstrung me. . . . The two main problems are welfare and public housing. The public housing authority is notorious; I could have brought a half-dozen cases against them. I wanted to bring cases, but I felt inhibited from doing so.¹²⁸

Ultimately much of this inhibition was counteracted. The national office of the legal service program sent an evaluation team to LSP-D, and by speaking with its members the law reform coordinator came to understand that her perspective was entirely in accord with that of the national office and that the evaluators took a dim view of the orientation that dominated LSP-D's hierarchy. Thus she knew that, though vigorous law reform work would be disapproved locally, it would gain favor at the national level. In effect, her contact with the national office provided her with an alternate source of approval and support. Had there been no intervention from the national office, however, it seems likely that LSP-D's ideology would have continued to inhibit her actions.¹²⁹

The influence of program ideology is not difficult to discern when, as in LSP-D, it causes program lawyers to diverge from the course along which their own ideas and convictions would have carried them. In LSP-E, however, the lawyers accepted and agreed with the program's ideological orientation toward individual service. Consequently, it is arguable that in failing to undertake activities that might promote social reform they were following their own convictions rather than responding to the pressures generated by the program's ideology. In many respects this certainly is true, but the reality of the situation is far more complex than this argument suggests. There are numerous indications that LSP-E's ideology subtly influenced the behavior of its lawyers.

127. Interview.

128. Interview.

129. Even the national office's intervention may not have completely overcome the inhibiting effect of LSP-D's ideology. After the evaluators from the national office had visited City D, our attorney still was anxious to keep the board of directors ignorant of her work with tenants' organizations, and this suggests that program ideology may still have been at work.

Simply because program E's lawyers generally accepted the individual-service orientation did not preclude a clash between their personal convictions and the mandates of program ideology. There are times when even the course of action appropriate to promote the well-being of an individual client might involve a law suit or other activity that conflicts with the program's prohibition against attacks on established political authorities. In such a situation, the norms of professional ethics require a lawyer to do what is best for the client, and most lawyers would behave accordingly unless a stronger force pushes in a contrary direction.

In LSP-E, a lawyer knew that attacks on established institutions would bring him into conflict with a critical mandate of program ideology and, therefore, might jeopardize his position within the program.¹³⁰ Consequently, if a lawyer saw different ways in which he might ethically handle a client's problem, but one approach would have clashed with program ideology, his desire to avoid the clash would probably lead him to reject that approach in favor of another. The effect of this process would be to screen out activities with social reform potential, for they were the ones that program lawyers would have seen as politically troublesome. One lawyer, commenting on cases involving conflicts with welfare agencies, saw two alternatives: to contact people in the political establishment and enlist their help in quietly settling the case at hand, or to bring a suit against welfare. He thought the second approach preferable, because it might make the agency more responsive in the future and thus help him solve the problems of other clients. But he saw a suit against welfare as contrary to mandates implicit in the political orientation of LSP-E, and was quite clear that he would choose the course of quiet negotiation.

Ideology has the power not only to induce conscious responses but also to evoke, as one LSP-E attorney put it, "subtle, unconscious responses."¹³¹ To what extent were a lawyer's characterizations of fact situations unconsciously affected by his need to perceive the complaints of clients in a way that permitted him to respond without violating the constraints expressed or implied in the program's ideology?¹³² Further, how far did this need cause him

130. That the LSP-E lawyers were well aware of the personal risks entailed in cases that threatened aspects of the political establishment was shown by the fact that they had worried about what to do if the program director ordered them not to handle such a case. One lawyer said that after much thought, he had decided that he would resign. Another said, "I don't know what I would do. I would probably take the case. There are things I value more than politics." And a third attorney candidly acknowledged that he "would think twice before taking a welfare agency to court." Interviews.

131. Interview.

132. Research and theoretical work in social psychology, especially concerning the concept of cognitive dissonance, is suggestive here. "Cognitive dissonance" is the name given to the psychological state in which an

to internalize specific rules of behavior—to accept them as his own—so that in thinking about how a case might be handled the only approaches that would even occur to him were those the program found acceptable?¹³³ A number of situations indicate that ideology operated in these ways.

For example, speaking of the rule making recrimination a defense to a divorce action, one lawyer said:

We are aware of the problem, but we don't know what to do. I really haven't thought about legislative reform. The program may have some role to play in bringing problems to the attention of the legislature, but not in lobbying.¹³⁴

This lawyer might have held this view when he came to LSP-E. From all indications, however, he had not even thought about the functions of legal service programs before joining LSP-E, and it seems highly unlikely that he arrived at his position on a program activity through a consideration of the merits of the issue. A more likely explanation is that he had come to internalize the hierarchy's view of lobbying. Such internalization of program ideology may

individual feels tense and uncomfortable because he has taken an action that is inconsistent with his attitudes. Because dissonance is unpleasant, the individual is motivated to find some way in which to reconcile the conflict between his action and his attitudes.

Applying these ideas to our situation, we may postulate that dissonance arises when a lawyer takes a job with a program like LSP-E. He accepts this job because, in terms of pay and the experience he will obtain, it is the most attractive available; indeed, it may be that he has few other opportunities, and that the LSP-E position is available only because the lawyer has politically influential friends or relatives. In joining LSP-E, he knows that he has accepted a position in which he is expected to avoid conflict with established institutions even if in doing so he will be failing to discharge his duty to a client. Like most lawyers, however, he believes that it is unethical, even cowardly, to sacrifice a client's well-being in order to protect or advance his own personal interests. Thus the dissonance: by taking the LSP-E job with knowledge of the program's ideology, the lawyer has committed himself to actions that conflict with his beliefs concerning proper professional conduct. This conflict will cause tension, perhaps very extreme tension. The lawyer could relieve this tension by quitting his job, but that course of action is not very attractive to him. Nor can he easily consciously reject basic tenets of professional ethics. A third solution is to avoid specific situations in which the lawyer's commitment to the LSP-E job implies action that conflicts with his ethical attitudes. This he can do, as suggested in the text, by focusing on some elements of a client's problem and ignoring others so that he can define his duty to his client in a way that will be consistent with the commitment entailed in continued employment with LSP-E.

For a statement of the theory of cognitive dissonance and a description of a number of experiments involving this theory, see R. BROWN, *SOCIAL PSYCHOLOGY* 584-604 (1965).

133. This internalization of program norms would be another way to resolve the dissonance arising out of the conflict between the commitment implied in the lawyer's acceptance of the LSP-E job and his attitude that yielding to political pressure would be improper. See note 132 *supra*.

134. Interview.

explain why, though the lawyers of LSP-E believed the recrimination rule should be changed, no one had proposed legislation or brought a test case to effect that reform.

The reaction of program lawyers to certain dubious judicial practices may also reflect an internalization of the program's ideological mandate against attacking persons or institutions within the power structure. One trial judge, for example, told the attorneys that he intended to ask the program's divorce clients whether they had committed adultery, although, the judge said, he did not do this when clients were privately represented. The lawyers apparently had not even considered the possibility of doing something to combat this uneven administration of the law. Similarly, the attorneys of LSP-E quietly accepted the fact that the local judges had refused to permit much use of the procedures through which criminal defendants might be released on their own recognizance and, further, had prevented effective implementation of a system, approved by the state's supreme court, through which the divorce clients of legal service programs might have filing fees waived.

The need of lawyers to avoid conflict with the program's ideological mandates may also have exerted an unconscious influence on the way they perceived and characterized factual situations. "A couple of clients," one of the LSP-E attorneys reported, "have complained that the police beat them up, but I didn't press it. I figured that if the police slapped him, he probably deserved it, and he probably exaggerated anyway. We have good relationships with the police, and I don't want to jeopardize them. Of course, if there was a really flagrant case, I would take it."¹³⁵ One must suspect a relationship between this response and the pressure of ideology. If the lawyer had felt free to challenge the police, would he have been so dubious of his client's claim or so willing to justify such police conduct? Would he, without inquiry, have decided that the client's report was exaggerated? Would his concept of a flagrant case and his notion of what constitutes good relationships with the police have been the same? And would he have struck the same balance between maintaining those good relationships, on the one hand, and the interests of his client, on the other? It might be, of course, that these reactions were produced not by the unconscious influence of LSP-E's ideology but by the frame of reference this lawyer brought with him when he joined the program. My impression of him suggests the contrary, however. His general attitude toward the poor was far more sympathetic than his reaction to these complaints indicates. He recognized without hesitation that on occasion policemen do behave improperly, even brutally. He was interested in the welfare of his clients. For example, in a case involving social security benefits, he believed his client had been poorly treated by both the agency and the lower court, and he was planning an appeal.

135. Interview.

In the absence of pressure from the program's ideology, his perceptions of and reactions to the complaints of police misconduct would have been different.

LSP-A's perspective placed a high value on social reform. Most of its lawyers were in agreement with this position. Consequently, to some extent, perhaps overwhelmingly, their performance was determined by their own inclinations rather than by their perception of the program's perspective. In some situations, however, LSP-A's ideology did seem to exert a significant influence on lawyer behavior.

The chief counsel in one of the neighborhood offices saw law reform and group representation as proper and appropriate activities but identified service to individual clients as the program's most important mission. The attorneys working under him knew his position, and since they wanted to be favorably perceived by him, their knowledge of his perspective probably had some impact on their conduct. This was well put by one member of his staff.

Our chief counsel represents a more middleclass view than G [LSP-A's overall director]; he sees the office as a conventional law office; he is not as interested in the cases with social significance. This filters down. G's approach affects those who work downtown in the main office, while we are influenced by our chief counsel's views. I take a sort of middle view.¹³⁶

It seems likely that the views of the chief counsel would have been more influential if his staff members had perceived the program itself as ideologically neutral, but they knew that the executive director, others in the hierarchy, and, indeed, most of the attorneys saw the promotion of social change as an essential program objective. It was perhaps this knowledge that caused the attorney quoted above (as well as others in that office) to take, as he put it, a "middle view," rather than one closer to the perspective of his chief counsel.

In at least one instance the program's ideology probably influenced the conduct of the chief counsel himself. Some of the downtown staff, this neighborhood office and a militant neighborhood group were working together on problems generated by a neighborhood redevelopment plan. The neighborhood group wanted to challenge the redevelopment plan in its entirety, while the chief counsel thought this would be pointless and proposed quite a different approach. As a consequence, the neighborhood leaders and the chief counsel mistrusted one another. Nonetheless, the relationship lasted, and one factor that seems to have contributed was the chief counsel's recognition that LSP-A's ideological perspective placed a

136. Interview.

very high value on the development and maintenance of relationships with such neighborhood groups.¹³⁷

In addition to influencing lawyers in specific situations, LSP-A's ideological perspective may have exerted a more general influence on program performance. Though the program's staff can accurately be characterized as favoring law reform and community action, not every individual lawyer was strongly inclined in these directions. Some lawyers might have had little if any interest in such work were it not for the motivation supplied by their knowledge of the program's ideological position. Moreover, LSP-A's perspective may have influenced even the lawyers who came to the program strongly committed to social reform activity. The pressures of workload can incline even such a lawyer toward the expeditious handling of the cases rather than toward the extensive and time consuming treatment usually necessary to law reform. And even a lawyer's belief that law reform should have priority may change when he confronts the clients themselves and experiences the reality of their needs. The head of one LSP-A neighborhood office said, for example, that working in the program had altered his sense of priorities, causing him to place more emphasis on meeting the day-to-day needs of clients. No one knows how much such factors might have affected the conduct of LSP-A's attorneys in the absence of the counterforce that program ideology provided.

In contrast to the other programs, ideology operated in an essentially permissive way in LSPs-B and C. No particular approach to legal service programs was demanded, nor was any prohibited. The lawyers working in these programs perceived this, consequently felt free to follow their personal inclinations, and, for the most part, did. Those who saw social reform as a prime goal focused their efforts on that objective, while those who thought that serving individuals was of first importance spent their time trying to help particular clients and were little concerned with the broader implications of their cases. It would be a mistake, however, to conclude from this that the behavior of staff lawyers was unrelated to ideology.

Many of the lawyers in these programs saw both individual service and social reform as important and could derive personal satisfaction from either line of work. They also knew that both approaches would be accepted and approved within their programs. The result was that they engaged in some of each. Had program ideology taken a hostile or neutral attitude toward law reform, these lawyers might well have decided, consciously or uncon-

137. Similarly, the lawyers who were working on a rent strike led by militant community leaders experienced considerable frustration and exasperation. Here, too, the motivation provided by LSP-A's ideology may have provided an important counter to difficulties that might otherwise have caused a rupture in the attorney-client relationship.

sciously, to focus their attention wholly on serving individuals, for that would have been the only way to gain the approval of others in their programs. Similarly, some lawyers who at first were interested only in helping individual clients came to believe that legal services programs should also work for social change. It seems unlikely that their perspectives would have developed in this way had program ideology not been friendly to reform.

Another important aspect of the ideologies of B and C was a willingness to accept conflict with established institutions and powerful individuals. This allowed advocacy for individual clients in LSP-B and LSP-C to be more vigorous and innovative than in D and E. The B and C lawyers were quite ready to do battle with the welfare department and housing authority, for example, and were not deterred from asserting new legal theories by concern for how powerful interests might react. As a consequence, on a number of occasions, the lawyers in programs B and C, though focusing on the needs of a particular client, handled their cases in ways that could lead to social change.

Having separately examined, first, the way in which a program's perspective influences its selection of staff and, second, the way in which ideology can inhibit or support the behavioral inclinations lawyers bring to their work, we can now summarize the relationship between a program's ideology and the extent to which its lawyers act to promote social reform. The shape of program performance varies with the mandates of program ideology. What that shape will be depends on what ideology says about the propriety and importance of social change. If, as in LSP-A, the message is that the program should concern itself primarily with law reform, group representation and the like, those selecting staff will look for lawyers inclined toward such work; if, in addition, the program is known to be thus oriented, lawyers who are so inclined and especially able will seek it out. As a result the program will start with a staff strongly disposed to work for change and reform. The contrary will be true when ideology takes a clearly hostile view of reform-oriented activity, as in LSP-E. If the program's attitude equally supports both individual service and reform, the staff will be diverse in its inclinations.

Whatever the propensity resulting from staff selection, ideology will continue to operate by telling lawyers how to win approval and avoid disfavor within the program. Insofar as the lawyers were inclined toward the program's perspective when they were hired, ideology reinforces this inclination. Moreover, it inhibits contrary inclinations, thus correcting for mistakes that occurred in the screening of job applicants.

B. Ideological Image and Relations Between Legal Services Programs and the Poverty Community

Though the main determinant of involvement in social reform work is the ideological orientation of a legal services program, the image it projects to the poverty community also influences performance. If the image is of an activist program, concerned with poverty and willing to do battle even with city government and other established and powerful institutions, clients will bring to the program problems of broad significance, thus increasing the program's opportunities to promote social change. The contrary will be true if the program is seen as "part of the establishment" or as oriented wholly toward individual service.

LSPs-D and E were seen as closely tied to the local power structure, and this clearly influenced the way in which community leaders and activists responded to them. An activist minister in City D's black ghetto described community responses:

The people here don't see Legal Aid as an organization that will fight the little man's fight. It's useful for some personal matters like divorce, but not as a way to attack poverty. The neighborhood office is seen as just an extension of the old Legal Aid organization, and people didn't see that as helpful on basic community problems. I would be very surprised if people brought complaints about the welfare department to Legal Aid. . . .

We get people coming in with complaints against welfare, with stories of police brutality, employment discrimination, etc. There are many complaints against the public housing authority, including covert discrimination: Negroes are urged to go to Negro projects rather than white ones. But before these problems will be brought to the neighborhood law office, they have to create an image that they are willing to fight. Legal Aid hasn't done this yet.¹³⁸

Other City D activists confirmed this view. They expressed a willingness to refer divorce clients and other such matters to LSP-D, but anything controversial was sent to a private attorney. Activist perceptions of LSP-E are illustrated by the following comments of a community organizer concerning his view of the program's usefulness.

I deal with the situation as it is. If we asked LSP-E to go to City Hall to enforce regulations, building codes, etc., they would work out a compromise. Ideally LSP-E could do much more, but realistically they won't. LSP-E is part of the whole county political set-up. The basic philosophy is "don't rock the boat."¹³⁹

When, as in LSPs-D and E, the establishment-oriented image of

138. Interview.

139. Interview.

a program is congruent with its actual ideology, the impact of image is likely to be slight. D and E probably would not have undertaken to promote social reform even if appropriate cases had been brought to their offices, although a particular problem might have so captured the imagination and interest of a lawyer that he would have involved himself in law reform.

If a program attuned to activism projects a contrary image, the effect on performance may be significant and debilitating. The ideology of LSP-C was entirely friendly to work promoting social change. That this program bore the "Legal Aid" label, however, caused at least some community activists to view it with suspicion. The head of a community organization reported that "representatives of neighborhood groups say that Legal Aid is part of the downtown power structure, and therefore they don't want it representing them."¹⁴⁰ So far as this man knew, none of the community groups had asked LSP-C for help. This was "because of the basic perception of Legal Aid: they are not trusted. People are afraid Legal Aid will sell them out."¹⁴¹

This was the program's image even though it had involved itself in and worked vigorously on a number of community problems. Over a period of time, as LSP-C's director and lawyers made more and more contacts with poverty community leaders and the program's willingness to take an active role in promoting social change came to be known, LSP-C began to gain the confidence of community activists. Until this happened, however, image and reality were working at cross purposes, and this may explain why LSP-C was for a time less involved with community organizations than LSP-B.

C. Ideology and Other Factors Affecting Program Performance

In focusing on the role of legal service program ideology, we have largely ignored other influences on program performance. It is appropriate to look at some that have figured prominently in discussions of program performance and to examine the relationship between the role they play and the role of program ideology.

CASELOAD PRESSURES

There are so many clients with immediate, pressing problems—clients facing eviction, clients whose wages have been garnished, clients who want and need divorces—that, so it is said, no time is left for other work: programs are simply overwhelmed by the task of servicing individual clients and, as a consequence, fail to play a role in promoting social change. It follows, so the argument goes,

140. Interview.

141. Interview.

that the way to improve program performance is to reduce caseload.¹⁴² While this line of reasoning contains an element of truth, the broad implication that caseload per se determines the level of social reform performance ascribes to caseload a power it does not have, and overlooks the influence exerted by program ideology.

If caseload levels and program performance were directly related, a program with a low caseload would engage in more social reform work than a program carrying a high caseload. Data from our five programs is very revealing in this respect. LSP-E had a caseload of about 25 cases per lawyer per month. Programs A, B and C had caseloads of 40 to 50. If caseload were the critical factor, LSP-E should have rated higher than A, B and C in social reform performance, but the performance ratings were exactly reversed.

That low caseload does not necessarily result in high performance should not be surprising. The absence of caseload pressure means only that a program's lawyers will have time available for law reform and related work. How they use that time, however, depends on their own convictions and on the extent to which program ideology supports or inhibits those convictions.

The question remains whether low caseload pressure, though not a sufficient condition for high performance, is necessary to an activist program. Pressures come from two sources: the number of people seeking service, and the number of cases actually accepted by the program. The larger the number of applicants, the greater the lawyer time that might be spent in client intake, and the more cases accepted, the more time program lawyers might spend in meeting immediate client needs. Assuming the presence of these pressures, their impact depends on how a program and its lawyers respond to them, and the character of those responses is related to program ideology.

The problem of heavy intake pressure can be approached in various ways. A program can attempt to provide interviews for all those who seek them, or it can limit the resources it makes available for this work. The policy in LSP-D seemed to be that clients would be seen at any time and without any appointment. One sensed, in talking to the director and assistant director of this program, that a high intake level was somehow seen as an end in itself. They were much concerned with statistics and seemed delighted to be able to report a large caseload. This, of course, was quite consistent with their ideological perspective. In LSP-A,

142. For discussions of the question whether caseload should be limited, see Bellow, *Reflections on Case-Load Limitation*, 27 LEGAL AID BRIEFCASE 195 (1969); Getzels, *Legal Aid Cases Should Not Be Limited*, 27 LEGAL AID BRIEFCASE 203 (1969); Silver, *The Imminent Failure of Legal Services for the Poor: Why and How to Limit Caseload*, 46 J. URBAN L. 217 (1969); Note, *Neighborhood Law Offices*, *supra* note 119, at 822-28.

neighborhood offices handled the matter differently. One office would see new clients only by appointment (except for emergencies) and only one lawyer conducted such interviews on any given day; another office would see clients without appointments on some days but required appointments on others. One of the offices in program B also reported that it required appointments. Though it may have been coincidence that LSP-A, the program oriented most strongly toward reform, was the one whose offices did most to relieve intake pressure, it is clear that such a policy is the one most consistent with a social reform ideology, and the policy may be in part a product of the influence of that ideology.

If a program accepts too many cases, its lawyers could allocate all their time to assisting individual clients. But this is not the inevitable consequence of a high workload. Legal service program lawyers, like attorneys in private practice, do not spread their time evenly; they establish priorities and give some matters more time and more attention than others. Consequently, even if the individual-client workload is high, program lawyers could choose to allocate a significant part of their efforts to law reform, group representation, and other such projects. This, in fact, is what was done by some neighborhood lawyers and by the directors in LSPs-A, B, and C, the programs whose ideology encouraged such work.¹⁴³ Neither the neighborhood lawyers nor the directors in programs D and E chose to undertake such work. The difference in the way resources were allocated resulted not from variation in individual-client workloads but from differences in ideological orientation. The promoters of D and E had picked directors attuned to individual services; in LSPs-B and C, on the other hand, the promoters had looked for and hired individuals with much broader concerns.

A low caseload level, then, is neither a necessary nor a sufficient condition for social reform performance. This does not mean, however, that caseload has no impact on performance. Given a program ideologically oriented toward social reform, an increase in the resources allocated to such work will lead to an increase in the amount of work undertaken. Also, though the staff of such a program will allocate some of its time to reform work whatever the pressure from the individual-client workload, performance will be improved if the program itself relieves some lawyers of work with individual clients and gives them prime responsibility for developing test cases. Further, by establishing such positions within its structure, a program may attract concerned and able lawyers.¹⁴⁴

143. One lawyer in program B assigned a low priority to cases involving, as he saw it, no potential for social reform and spent the bulk of his time on law reform and working with community groups. Other lawyers, though not adopting so pervasive an approach, spent large amounts of time on specific projects, thus necessarily reducing the extent of their efforts for individual clients.

144. There is another side to coin. If a program establishes a special

Of course, as experience in LSP-D illustrates, even if a program establishes a law reform unit, the quality of performance will be affected by program ideology. The tendency of a program to hire attorneys who fit its mold will influence the selection of personnel for the unit, and those selected to be responsible for reform work will likely be inhibited if the program's ideology is hostile to such work.¹⁴⁵ The creation of a reform unit will lead to some test cases, but such a structure is not in itself a sufficient condition for the emergence of a vigorous, broad-gauged effort. A friendly or at least neutral program ideology is also essential.

EXTERNAL PRESSURES

Whether the OEO legal service programs would take an active role in law reform, representing groups, and otherwise promoting social change has been a matter of considerable interest and concern to various groups, institutions, and individuals. Those in charge of the effort at the national level—the people directing and working in OEO's Legal Services Division—wanted the local programs to work vigorously for change. Activists in the poverty community, some of whom held positions in community action programs (CAP), shared OEO's perspective. Those who might be the targets of such work—city officials, welfare and public housing authorities, landlords and creditors and the attorneys who represented them—often took a different view. Similarly, some members of the judiciary were concerned with rising divorce caseloads, the active litigation of cases that had previously gone by default, and the way in which programs occasionally challenged the practices of a specific judge.¹⁴⁶ Local bar associations, the Community Chest and other nongovernmental groups influential in local affairs may also have been concerned with program activities.

Each of these interest groups may fill some need of a legal service program. OEO provides most of the funding for program oper-

unit to handle test cases and other work involving social reform, the job of neighborhood lawyer may become unattractive, and it may become difficult to attract topflight lawyers to those positions. If the ability of the neighborhood staff decreases, that staff will be less able to identify the cases with social-reform potential. Moreover, tensions between the neighborhood lawyers and those in the special unit can easily develop. (Such tensions had developed in LSP-A.) As a consequence, even if a neighborhood lawyer sees that a case has reform potential, he will be reluctant to refer the case to the special unit.

For a description of the tensions that developed between the law reform unit and the neighborhood offices in the San Francisco legal services program, see Carlin, *Store Front Lawyers in San Francisco*, Trans-action, April 1970, at 64, 72-73.

145. See discussion at pp. 1058-59, 1064-65 *supra*.

146. On judicial attitudes toward legal services programs, see Stumpf & Janowitz, *Judges and the Poor: Bench Responses to Federally Financed Legal Services*, 21 STAN. L. REV. 1058 (1969).

ations. Twenty percent of a program's budget, however, is raised locally, and consequently people and groups that might fill that need or influence other contributors are not to be lightly ignored. The local CAP is also important, since program proposals and applications for refunding ordinarily must gain its approval before funding is granted by OEO. And the judiciary, in addition to its general influence in the community, occupies a position of key importance to a legal services program. Since each of these interest groups has something to offer a legal services program, programs have reason to act in ways these groups will find acceptable, if not pleasing.

In fact, local interests may have little power to alter the course of action set by a program's own ideology.¹⁴⁷ One reason for this may be that, for the most part, programs can survive quite well even in the absence of local financing. The local share of a program's budget often is made up not of cash but of in-kind contributions—locally contributed goods and services—that are actually unnecessary to program operations. Consequently, when OEO is lax in policing the local share requirement, programs have little need to cater to local interest groups. Moreover, in seeking local support, a program need not look to sources whose views clash with its own, but can rely on friendly or neutral sources and thus avoid unwelcome pressures. What a program does in this respect will, of course, be guided by the ideological position with which it starts. LSP-E, for example, obtained its local share from county government, an entity whose perspective came from the same political apparatus that had created LSP-E and shaped its ideology. On the other hand, believing that city and county governments would try to exert pressures inimical to program goals, LSP-B's promoters deliberately avoided those sources and looked elsewhere for their local share. LSP-A initially asked for city help, but when city council members indicated their displeasure with the program's support of local rent strikes, and it thus became apparent that there would be a price tag on city assistance, this program, too, undertook to develop sources of support that would leave it free to act as it wanted.

That the programs relied on friendly or neutral sources for local support does not mean that they were totally unresponsive to the wants of local interest groups. In a few instances, for example, the selection of program lawyers was influenced by a felt need to hire people who came from the ethnic groups a program served. Pressure from the poverty community caused LSP-C to increase staffing so that one lawyer would always be available at each neighborhood

147. It may be well at this point to remind the reader that the conclusions herein are based on a study of five programs located in northern communities. Whether local interests in a southern community might have more power, especially in relation to program activism on racial issues, is a question for which this study can provide no answer.

office. These responses to local interest-group pressures, however, had little impact on attempts to promote social change. Program behavior proceeded along the path laid out by the mandates of its ideology. Local pressures were effective if they pointed in the same direction, but not when they called for a change in course.¹⁴⁸

Since OEO support is essential to the continuance of a legal services program, one would expect programs to be more responsive to its pressures than to those of local interest groups. This supposition is supported by the one relevant incident included within our data, the attempt of OEO to stimulate reform work within LSP-D.¹⁴⁹ To an extent, the hierarchy of LSP-D yielded to OEO pressures: an attorney was hired to work at identifying possible test cases, and a committee of local lawyers was organized to assume responsibility for the cases she surfaced. As this incident illustrated, however, the impact of OEO is restricted by the countervailing influence of a program's ideology. The force of that ideology is indicated by the need for OEO to effect substantial changes in the leadership, and thus the ideology, of LSP-D in order, finally, to obtain the kind of performance it wanted. Control of the program was taken from those who had promoted it and were responsible for its status quo orientation and placed in new hands. This suggests that promoter ideology may operate so forcefully that it cannot be countered effectively even by pressure from OEO. Its roots must be removed and a new ideology implanted if program performance is to be changed.

PLACEMENT OF NEIGHBORHOOD OFFICES IN MULTISERVICE CENTERS

If a legal service program develops good relationships with people active in the poverty community, they will direct clients to the program and bring community problems to its attention. This increases the program's opportunities to promote change and reform and thus can influence performance. Under the right conditions, locating a program in a center that houses other antipoverty agencies can have this effect.¹⁵⁰

The first essential condition is that those who share the center

148. The experience of the San Francisco program, reported in Carlin, *supra* note 144, suggests one limitation on the statement in the text. That program was structured to give the neighborhood offices a large measure of autonomous power. Also, because social reform work was focused in the program's main office, tensions developed between that office and the neighborhood offices. This combination of factors seems to have made it possible for neighborhood interests to exert more influence—an influence favoring more individual service and less activism—than seems to be possible under other conditions.

149. See discussion at pp. 1044-45 *supra*.

150. For comment on other consequences of locating a program in a multiservice center, see Note, *Neighborhood Law Offices*, *supra* note 119, at 812-13.

with the neighborhood law office be engaged in meaningful community work. The facilities labeled "multiservice center" vary widely in this respect. These variations occur not only from community to community but even within a single city. Some are little more than a formal structure. Others house agencies whose staff members have developed deep and extensive community roots, are familiar with community problems, and can act as links between the community and the legal service program.

The second condition is that the program's ideology encourage its lawyers to avail themselves of such opportunities. If not, the potential of the situation will never be developed. The lawyers will make no effort to meet others who share their location, and if opportunities for reform are nonetheless brought to the program's attention, they, too, will be ignored. In LSP-E, for example, the lawyers in offices with multiservice-center locations, knew nothing about those who shared the facility and seemed totally disinterested.

When both conditions are present, a multiservice center location, by placing lawyers in close proximity to community action workers, tends to promote useful relationships between the two. They share coffee breaks and have other informal contacts. As a consequence, the relationships that develop are characterized by an easy familiarity, even a closeness. In LSP-C, for example, it was clear that the lawyers whose offices were located in multiservice centers had become far better acquainted with others located in the centers than lawyers whose offices were just a few blocks away from such establishments.¹⁵¹ It was also clear that these personal relationships were responsible for lawyer involvement in some community problems that might otherwise have escaped the program's attention.

Location in a multiservice center is not essential. LSP-A, for example, had excellent links with the poverty community even though its offices were not housed in such facilities. The participation of community activists in the development of this program, the selection of such an activist as the first chairman of its governing board, and the program's general image, all contributed to the development of strong ties with community workers. However, in situations not so conducive to good program-community relationships, multiservice center location may be quite important.

III. CONCLUSIONS AND IMPLICATIONS

The basic shape of a legal services program is, as it were, an in-

151. One indication of this was the way in which the lawyers referred to others in the multiservice centers. Lawyers whose offices were located elsewhere never called the people in the centers by their first names; lawyers with offices in the centers did. One such lawyer, e.g., speaking of another person working in the center, said, "It's not 'Mr. Hunt' and 'Mr. Johnson.' It's 'Dick' and 'Hal.'" Interview.

herited characteristic. Environment, to be sure, is not unimportant and can influence performance in various ways. But whether the program will pursue social change and, if so, whether this goal will have priority over others, depends mainly on the ideology and the ideological image that come to the program from the persons and process that bring it into being. Because this has been too little recognized, the form of a legal service program has too often been mistaken for its substance. This confusion may seriously limit the social reform potential of OEO's legal service program.

OEO itself seems to have mistaken form for substance in evaluating and deciding whether to fund proposed programs. The funding decision usually turns on whether a written proposal contains the appropriate declarations and stipulations. Proposals are seldom adequate as submitted, and in the typical case the process of curing the deficiencies—discussions between OEO and the proposal's sponsors, followed by revisions, followed by further discussions—extends over many months. In part, perhaps in large part, the proposal revisions thus effected are meaningful: they relate to issues of importance, and the changes in the promoters' paper statements probably influence program behavior. Changes in the number, location and staffing of neighborhood offices, for example, are important. To this extent, OEO's focus on the language of the proposals has been sound. In one important respect, however, the contrary is true.

Whether a proposed program would be likely to devote some of its energies to social reform is of considerable importance. Here OEO's focus on the paper statements has amounted, for the most part, to an insistence on meaningless form. It was quite unnecessary, for example, to insert into the proposal for LSP-C a declaration that the program would represent "organizations of the poor in appropriate cases." The program was destined to work with poverty community groups whether the proposal contained such a provision or not. And, in the case of LSP-E, it was useless to insist on a declaration that the program's attorneys would represent "groups of citizens where joint action is required (i.e., tenants' complaints)" and would press vigorously claims against "local government" and "public agencies." This was not to be the case, paper statements to the contrary notwithstanding. Similarly, formal declarations that LSP-E's governing board would be "autonomous and independent" and that county government "shall not have any power of appointment over" board members—provisions designed in part to protect against inhibitions on activism—were destined to fail. The same holds for OEO's insistence on stipulations concerning representation of the poor on a program's governing board. Given the central importance of promoter ideology, one would expect proposal provisions inconsistent with that ideology to have little impact. Such has been the case.

Where a status quo ideology prevailed, for example, the "representatives of the poor" were selected and treated in ways that discouraged any meaningful input or influence on their part. And although LSP-E's governing board was covered with a veil of formal autonomy, the board was in fact controlled by individuals whose perspective and allegiance made the veil illusory. If promoter ideology is hostile to activism, there will be little or no fulfillment of the proposal's pledge that groups will be represented, test cases brought, and so on.

The implication is clear: If social reform work is to be a meaningful criterion in deciding whether to fund a program, OEO must look to the ideological perspective of the promoters and base its decision on that rather than on formal written assurances. Although OEO has not been oblivious to the importance of ideological perspective, the crucial importance of this factor seems not to have been appreciated. Thus, though OEO was well aware of and somewhat concerned about the orientation of LSP-D's promoters and future administrators, this was seen not as a condition that would virtually preclude active pursuit of social reform but simply as a possible source of difficulties. In the case of program E, OEO seemed not even to realize that there was a problem. Clearly the history of our five programs evidences no conscious effort on the part of OEO to search out and make use of information on promoter ideology. No doubt, any such searching and use would involve political difficulties. Despite such difficulties, however, on occasion OEO has stepped in when funded programs failed to satisfy its performance standards. One suspects, therefore, that if the critical importance of promoter perspective were understood, OEO could weigh this factor more heavily than it has in the past.

No matter what criteria are used, and despite great care, screening at the initial funding stage is unlikely to work perfectly. Some programs will prove failures at social reform. When failure becomes apparent, the problem of remedial action arises. Here, again, it is important not to mistake form for substance. Although pressure from OEO or community activists may cause a status quo oriented hierarchy to don the costume of social reform—to establish a law reform component, as in LSP-D, for example—this new look is not likely to be accompanied by much new action unless the controlling ideology is changed. Such a change cannot be effected without replacing key program personnel. While the replacement of program leadership should be the strategic objective, how that objective is to be accomplished will depend on the specifics of a given situation. An examination of various tactical possibilities would take us too far afield, but one suggestion from the experience of LSP-D is worth noting. The addition of activist lawyers to a program's staff may lead to litigation and other activity inconsistent with program ideology; this, in turn, may cause conflict within the program; and that conflict can provide a point of entry for OEO

and other forces interested in moving the program in new directions. OEO need not await the fortuitous initiation of this chain of events, but may trigger the process by judicious assignment of Reginald Heber Smith Fellows.

Just as a lack of substance may be obscured by activist forms, so, too, a program actually committed to social change may be misperceived because of the form in which it was cast. A program afflicted with this discrepancy between image and reality can take various steps to remedy the situation. It is quite possible to explain the program's real orientation, its willingness to do battle with established institutions, to the poverty community. Appropriate contacts can be made with people to whom lawyers interested in legal service program jobs might look for advice. No such action is likely to be taken, however, unless a program is aware that it has a problem, and the problem in question is inherently difficult to recognize. Those outside the program who see it inaccurately are not likely to bring their perceptions to the attention of the program's administrators. Since the consequences of this image, like the image itself, will have characterized the program from its very beginning, they will be perceived by program administrators as normal rather than as a sign of trouble. Given this situation, programs especially interested in social reform would be well advised to make action aimed at the false image problem a part of their regular routine.

In closing this discussion of the relationship between the ideology and performance of local legal services programs, it seems appropriate to add a note on the significance of ideological perspective at the national level, both within OEO and at higher levels. The idea that federally financed lawyers should be able to sue state and local governments has been vigorously opposed by governors, mayors, congressmen, and others whose support is important to the national administration. There have been pressures on the other side, too, but none backed by political power comparable to that of those who oppose reform oriented programs.¹⁵² Consequently, if

152. The most significant lobby supporting the legal service program has been the organized bar. The bar vigorously and effectively opposed three proposals it saw as antithetical to its basic ideological commitment to the independence of the lawyer. One of these proposals would have prohibited legal services programs from suing governmental agencies; another would have given state governors power to veto specific programs and lawsuits; a third involved decentralization of control over legal services. See Arnold, *Whither Legal Services*, JURIS DOCTOR, Feb. 1971, at 3, 6; Lenzner, *Legal Services Fights for the Poor, But Who Fights for Legal Services?*, *Id.* at 9, 10. The fight over these proposals was conducted in Congress, which meant that the bar had an opportunity to lobby and that those it had to convince probably had little if any political stake in the proposals themselves. Internal OEO decisions concerning specific local programs may be far less susceptible to bar influence. This is suggested by various instances in recent years in which OEO, in response to political pressures, has taken decisions that undercut the activism of local programs. See Lenzner, *supra* at 10.

political expediency were the only consideration, the outcome of the struggle would be a matter of little doubt. But expediency is not the only weight in the scales. The value assigned to the program's social change function can also affect the balance, and what that value will be depends on the ideological perspective of those who control and administer the program at the national level.

During the program's first few years, its national hierarchy was committed to the idea that the program had an appropriate and important role to play in social reform. In the main, they supported and defended activist local programs.¹⁵³ Whether this orientation survived the change in national administrations, however, must be counted an open question. Though administration officials have defended the program against some attacks, they have yielded to others.¹⁵⁴ As national elections approach, the temptation to yield even further will surely increase. If the program's reform function is seen only in terms of the particular changes it might produce, the value assigned is unlikely to outweigh the political risks involved in defending the program against attack. But there is more at stake than a series of specific reforms. To an important degree, the validity and viability of the principle that those who seek change must work through the orderly processes of the law also hang in the balance. The moral force of the principle depends on whether legal processes are available to the aggrieved. Without the support of lawyers, the poor do not have meaningful access to those processes: they cannot seek change through test litigation, or effectively press demands on the legislature, or invoke the law to defend themselves against attacks that are sure to come when they organize and lawfully but aggressively demand a larger slice of the national pie. Consequently, the legal services program's function as advocate for the poor in their struggle for reform has

153. For a description of the efforts of the national directors of legal services to promote activism at the local level, and of anti-activist political pressures and OEO's response thereto, see Pious, *Policy and Public Administration: The Legal Services Program in the War on Poverty*, 1 POL. & SOC'Y 365, 383-85 (1971).

154. See Arnold, *supra* note 152; Lenzner, *supra* note 152.

In order to protect the legal service program from political pressure, the administration proposed that the operation of the program be entrusted to a nonprofit corporation to be created for that purpose. Legislation to this effect was introduced. H.R. 8163, 92d Cong., 1st Sess. (1971). A modified version eventually emerged as part of legislation covering various aspects of the economic opportunity program. See H.R. REP. NO. 92-682, 92d Cong., 1st Sess. 41-52, 75-80 (1971). This legislation received congressional approval, but President Nixon vetoed it because of his opposition to the provisions establishing a national child care program. See N.Y. Times, Dec. 10, 1971, at 1, col. 1 (city ed.); *id.* at 22, col. 1. Whether the use of a nonprofit corporation would provide much protection is questionable. Funding still would come from Congress, and pressure could be applied there. Even the national administration might be open to pressure, since it is not without influence in Congress.

value as an adjunct of the principle that change should be pursued lawfully.

Moreover, if the need for social change continues to be as keenly felt as it is today, and if those who feel it find the processes of law unavailable, the implications for them and for the rest of society are clear. Thus, in valuing the program's reform function, account must be taken of society's deep and fundamental interest in encouraging those who seek change to do so in a lawful, orderly manner.

It is beyond doubt that the national administration—the source of ultimate authority over the legal service program—places a high value on the idea that change must be sought lawfully. Whether the administration appreciates the principled and pragmatic links between that value and the reform function of the legal service program is the point in question. Much may depend on the answer.