3-31-1992

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THE WAR ON POVERTY: A CIVILIAN PERSPECTIVE

Edgar S.* and Jean C. Cahn**

INTRODUCTION

This article does two things: it articulates a vision and it lays out a specific blueprint. The core of the vision regards legal representation as "a form of enfranchisement, as an attempt to institutionalize the functions of dissent and criticism, and as a means of revitalizing the democratic process." This explains why the article triggered a movement that was perceived as going beyond the orthodox delivery of legal aid. While others legislate or purport to breath life into the democratic process, lawyers, in their unique role as advocates, discharge a constitutionally protected role. And in light of the retaliation to which the legal services program was and is subjected, the First Amendment status accorded legal representation has had critical survival value.

The excerpt reprinted below contains a blueprint designed to detail functions for a new institution that had never existed—in a way that felt familiar and feasible. Four functions were enumerated:

A. Traditional legal assistance in establishing or asserting clearly defined legal rights,

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This article was original published, under the same title, in 73 Yale L.J. 1317 (1964). It is adapted with permission.
B. Legal analysis and representation directed toward reform,

C. Legal representation where the law appears contrary to the interests of the poor, and

D. Legal representation contexts which appear to be non-legal.

Having made the institution plausible, the next question became: how to deal with the inundating demand it would surely trigger. The Article then seeks to anticipate the caseload problem by proposing priorities in terms of where limited resources should be focused to secure maximum social change. Framing those guidelines was an important exercise in thinking through ways in which lawyers can enhance the democratic process. Not the least of those turned out to be defending grass-roots leaders from targeted criminal investigations and prosecutions.

This year, over 340 million dollars of federal funds will be spent on civil legal services for the poor. Despite politically-imposed constraints which operate to confine lawyers to traditional legal aid, the other functions invariably get discharged as legal-service lawyers do what lawyers must do: engage in zealous, creative advocacy on behalf of their clients. In the first two decades, efforts by legal-service attorneys transformed government largesse into entitlements redressing past imbalances so as to give greater equity to consumers and tenants. However, the historic significance of those achievements should not blind us to the broader vision articulated by the Article and implied in those enumerated functions. While getting a bigger, or more equitable share of wealth and power was what was stressed early on, the Article also understood that enfranchisement implicated certain obligations and duties. It sought to articulate a separate role for lawyers—one that empowers by asserting and protecting “the capacity of individuals acting in concert to create associations and binding legal obligations.” Indeed, in an era of diminished economic growth, empowering people to create and contribute—and protecting them when they do so—can be as important as safeguarding their rights to share in the national pie. That is why the Article asserts that “the power to create legal relationships is a form of political power—its utilization is one way of revitalizing the democratic process.” And that is why the next step that we envisioned was to move beyond the rights created in the past—to rights to become productive, remain productive and avoid obsolescence.

[L]aw is made not merely through statutes and legislative programs, but also through modes of official behavior. In Llewelyn’s terms, law is “what officials do, do about disputes, or about anything else . . . [with] a certain regularity in
their doing - a regularity which makes possible prediction of what they and other officials are about to do tomorrow. ¹

Once the law is viewed as what officials do—or omit to do when they could have done it—then legislators are not the only lawmakers. As such, lawmakers include the officialdom of municipal government, of private philanthropic organizations, of the courts, of social agencies, of public schools, of governmental health and welfare programs. Responsiveness in those lawmaking bodies is possible only if the citizens themselves are enfranchised and given effective representation in the processes which determine modes of official behavior.

[What follows] sets forth a proposal for a neighborhood law firm as one means of providing such representation and thereby implementing the civilian perspective.² In the final analysis the worth of the following proposal will depend on the contribution it can make as a form of enfranchisement, as an attempt to institutionalize the functions of dissent and criticism, and as a means of revitalizing the democratic process by providing representation in those forums of decision making where legislators, elective and non-elective, and where judges, frocked and unfrocked, hand down the common law of the poor.

IMPLEMENTING THE CIVILIAN PERSPECTIVE—
A PROPOSAL FOR A NEIGHBORHOOD LAW FIRM

The remainder of the article details a proposal for the establishment of one kind of institution—a university affiliated, neighborhood law firm—which could serve as a vehicle for the “civilian perspective” by placing at the disposal of a community the services of professional advocates and by providing the opportunity, the orientation, and the training experience to stimulate the leadership amongst the community’s present inhabitants. Such an institution would include a staff of lawyers, research assistants, and investigators who

². In one sense, this proposal derives from a reading of the Supreme Court’s decision in Gideon v. Wainwright, 372 U.S. 335 (1963), which established the right of the indigent accused to appointed counsel in state courts. We view that case as removing one form of disenfranchisement by providing a form of representation in another law-making organ. And we consider that giving the accused the right to representation by counsel was in effect giving him the power to change the law by objecting to and eliminating a body of improper practices by police officers, magistrates, and prosecuting attorneys, which had, for all intents and purposes, assumed the status of law.
would represent persons and interests in the community with an eye towards making public officials, private service agencies, and local business interests more responsive to the needs and grievances of the neighborhood.

While there is no claim made to exclusiveness in the performance of the advocacy function (lawyers maintain no monopoly on the arts of criticism, protest, scrutiny, and representation), lawyers are particularly well equipped to deal with the intricacies of social organization. This factor, among others, prompts our proposal.

Such an institution must have ready access to the grievances of the neighborhood. Here, the respectability of seeking a lawyer's services in situations of trouble can be a significant asset. While lawyers are often distrusted as shysters and sophists, there is no self-demanding implication or taint of helplessness and internal confusion in requesting the services of an attorney. Consequently, lawyers are often presented with problems which call for the services of a psychiatrist, family counsellor, or social worker, but which never would have been brought to such professionals voluntarily.

Besides access to grievances, such an institution must be able to establish rapport and communication. Here, the middle class status of professional persons often constitutes an impediment to the development of confidence and identification. This problem has been dealt with by various kinds of outreaching social work carried on by the community organizer, detached worker, and gang or street worker.

The lawyer is not obliged in the same manner to be apologetic about his middle class background, because the justification for his presence is that he is a professional advocate and that he possesses skills and knowledge not otherwise available. He does not have to pretend to be "one of them" to his clients in order to fulfill his function and merit their confidence. Middle class status thus need not be a barrier for the lawyer. This should not be confused with middle class orientation and values which can be a major barrier to trust unless the lawyer is able to suspend such values in judging his client's case and conduct.

The lawyer's most significant asset, however, is the unique advocacy with middle class orientation of his profession—one to which our legal system and the canons of legal ethics commit him. Other professionals such as social workers and educators are institutionally given the role of mediating between
their employers and their clients.\textsuperscript{3} A lawyer need not be apologetic for being partisan, for identifying.\textsuperscript{4} That is his function.

In addition, the lawyer is “case oriented.” And in the context of a disorganized neighborhood there are merits to a mode of articulating criticism or protest which stem from a specifically defined situation, an identifiable client, and an articulated demand. Such communities are, by and large, lacking in stable, energetic citizens groups to advance demands. These must be reckoned as middle class attributes. Thus, in communities unable and unwilling to expend energy for anything other than the most immediate needs and incapable of organizing except around specific short-term grievances, the case and controversy focus of legal activity can provide one possible alternative to middle class forms of organization and protest. In sum, it may take less time and effort to “import” a lawyer to articulate a concern than to press the same demand by organizing citizens’ groups.

Finally, legal expertise in and of itself can be extremely useful. Many of the problems faced by slum dwellers are either legal in nature or have legal dimensions. Divorce, eviction, welfare frauds, coerced confessions, arrest, police brutality, narcotics convictions, installment-buying—all involve legal problems, at least by the time a crisis arises. Further, nothing destroys the momentum of a militant community effort more than alleged technicalities of law\textsuperscript{5} or the alleged statutory inability of an official to redress a grievance. Lawyers are equipped to circumvent obstacles and to detect specious claims which mask a lack of responsiveness.

Nonetheless, we recognize that a proposal to establish a neighborhood law firm to articulate the “civilian perspective” may seem inappropriate or inadequate, because many of the problems encountered by slum dwellers have economic, psychological, and sociological dimensions with which a lawyer is not professionally equipped to deal. Yet her assumption that the problems which beset the poor are not “legal” is frequently based on an artificially

\textsuperscript{3} This is not a necessary concomitant of their disciplines. And we would urge that social workers, educators, counsellors, administrators, and placement personnel should think through the possibility of creating within their professions new adversary and grievance-presenting roles. Lawyers have had to do the converse in modifying their pure “adversary” model in the context of administrative law and arbitration.

\textsuperscript{4} We recognize, of course, that a lawyer’s duties include broadening his clients’ perspectives to enable them to recognize when a demand is self-defeating or unrealistic, and also involve assisting clients to define problems for themselves and to assess and reconsider their initial demands.

\textsuperscript{5} See, e.g., Silberman, Up from Apathy — The Woodlawn Experiment, Commentary, May, 1964, at 51. Saul D. Alinsky, in organizing the poor, found it necessary to use his own professional staff of city planners and consultants to critique the city’s slum clearance plan to counter official designs effectively.
narrow conception of "law." When we say that a grievance calls for the skill of a lawyer, we mean only that there is an official (usually called a judge or administrator) who is empowered to provide redress and remedy when he is presented, in accordance with proper procedures, with a legitimate grievance. The lawyer's function is essentially that of presenting a grievance so that those aspects of the complaint which entitle a person to a remedy can be communicated effectively and properly to a person with power to provide a remedy. Slum dwellers have many grievances not thought of as calling for lawyers' skills. Yet the justiciability of such grievances should not be prejudged; they require the scrutiny of a skilled advocate, for it is altogether possible that for many a remedy is available if the grievance is properly presented—even though the decision-maker may be a school board, principal, welfare review board, board of police commissioners, or urban renewal agency.6

Thus there are at least four areas in which legal advocacy and legal analysis may prove useful in implementing the civilian perspective: traditional legal assistance in establishing or asserting clearly defined rights; legal analysis and representation directed toward reform where the law is vague or destructively complex; legal representation where the law appears contrary to the interests of the slum community; and legal representation in contexts which appear to be non-legal and where no judicially cognizable right can be asserted.

A. Traditional legal assistance in establishing or asserting clearly defined legal rights

The potential of extended legal services, including legal representation, legal education, and preventive counselling for the poor is only now coming to be appreciated.7 Effective legal representation for the indigent accused of a crime

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6. Dismissing a legitimate grievance as "non-legal" means that it must be advanced by an amateur whose only recourse is to rely on largesse, often from the very person responsible for the grievance. Thus, in areas where the administrator, social worker, or educator has long held sway, the intervention of a lawyer to press a claim, find the proper channels for appeal, and provide the sustained follow-up effort is unlikely to be welcome—and the alleged irrelevance of his skills is a useful form of protection.

7. See, e.g., the following excerpts from Attorney General Robert F. Kennedy's Address on Law Day, May 1, 1964, at the University of Chicago Law School:

In the final analysis, poverty is a condition of helplessness—of inability to cope with the conditions of existence in our complex society. We know something about that helplessness. The inability of a poor and uneducated person to defend himself unaided by counsel in a court of criminal justice in both symbolic and symptomatic of his larger helplessness.
is but one part of this need; of equal importance for the poor are the assertion

But we, as a profession, have backed away from dealing with that larger helplessness. We have secured the acquittal of an indigent person—but only to abandon him to eviction notices, wage attachments, repossession of goods and termination of welfare benefits.

To the poor man, "legal" has become a synonym simply for technicalities and obstruction, not for that which is to be respected.

The poor man looks upon the law as an enemy, not as a friend. For him the law is always taking something away.

It is time to recognize that lawyers have very special role to play in dealing with this helplessness. And it is time we filled it.

Some of the necessary jobs are not very different from what lawyers have been doing all along for government, for business, for those who can pay and pay well. They involve essentially the same skills. The problems are a little more difficult. The fees are less. The rewards are greater.

First, we have to make law less complex and more workable. Lawyers have been paid, and paid well, to proliferate subtleties and complexities.

It is about time we brought our intellectual resources to bear on eliminating some of those intricacies.

A wealthy client can pay counsel to unravel—or to create—a complex tangle of questions concerning divorce, conflict of laws and full faith and credit in order to straighten out—or cast doubt upon—certain custody and support obligations. It makes no kind of sense to have to go through similarly complex legal mazes to determine whether Mrs. Jones should have been denied social security or Aid to Dependent Children benefits. To put a price tag on Justice may be to deny it.

Second, we have to begin asserting rights which the poor have always had in theory—but which they have never been able to assert on their own behalf. Unasserted, unknown, unavailable rights are no rights at all.

Lawyers must bear the responsibility for permitting the growth and continuance of two systems of law—one for the rich, one for the poor. Without a lawyer of what use is the administrative review procedure set up under various welfare programs? Without a lawyer of what use is the right to a partial refund for the payments made on an possessed car?

What is the price tag of equal justice under law? Has simple justice a price which we as a profession must exact?

Helplessness does not stem from the absence of theoretical rights. It can stem from an inability to assert real rights. The tenants of slums, and public housing projects, the purchasers from disreputable finance companies, the minority group member who is discriminated against—all these may have legal rights which—if we are candid—remain in the limbo of the law.

Third, we need to practice preventive law on behalf of the poor. Just as the corporate lawyer tries to steer company policy away from the antitrust, fraud, or securities laws, so too, the individual can be counselled about leases, purchases and a variety of common arrangements whereby he can be victimized and exploited.

Fourth, we need to begin to develop new kinds of legal rights in situations that are not now perceived as involving legal issues. We live in a society that has a vast bureaucracy charged with many responsibilities. When those responsibilities are not properly discharged, it is the poor and the helpless who are most likely to be hurt and to have no remedy whatsoever.

We need to define those responsibilities and convert them into legal obligations. We need to create new remedies to deal with the multitude of daily injuries that persons suffer in this complex society simply because it is complex.

I am not talking about persons who injure others out of selfish or evil motives. I am talking about the injuries which result simply from administrative convenience, injuries which may be done inadvertently by those endeavoring to help—teachers and social workers and urban planners.
of rights in areas of the law involving landlord and tenant, installment purchase contracts, and domestic relations. Of still greater import for the poor is representation to insure the equitable and humane application of administrative rules and regulations under such programs as aid for dependent children, welfare, and unemployment compensation. The assertion of a right in even a single case can have community-wide ramifications: police may begin to act more circumspectly; welfare workers may consult their regulations more regularly; credit companies may be slower to repossess articles or to sell them without affording proper opportunity for payment; and landlords may become prompter in making repairs. Sometimes effectuating legal and constitutional mandates can prompt institutional innovation. Thus, implementation of the "presumption of innocence" as well as the eighth amendment may call for radical new procedures in the administration of bail. Similarly, constitutional guarantees of due process are significantly altering the structure of public defender organizations.

The neighborhood law firm, if it is to affect the respect which members of a community are accorded, must not only assert rights; it must also create a widespread consciousness of such rights within the community.

A lawyer's role, in the traditional sense, extends far beyond simply asserting a right; it commonly involves counselling and assistance to clients in establishing contractual relationships which correspond with the clients' desires. The lawyer's role may take the form of challenging an agreement on grounds of its legality or on grounds that it was not entered into with the quantum of

8. FREED & WALD, BAIL IN THE UNITED STATES: 1964 45-48 (1964). The authors conclude: "With mounting evidence the conclusion is forming that the man who is jailed for want of bail is less likely to get equal treatment in court." Id. at 48. See also Rankin, The Effect of Pretrial Detention, 39 N.Y.U.L. Rev. 641 (1964); and see the following passages in U.S. Attorney General's Committee, Poverty and the Administration of Federal Criminal Justice (1963):

The viability of the presumption of innocence is threatened by a conception of "necessity" founded on a lack of means of the accused and a failure of ingenuity on the part of government to devise a system of non-pecuniary inducements to insure the presence of accused persons at trial.

Id. at 68.

Thus, it will be seen that the accused unable to make bail, more frequently pleaded guilty and hence, less frequently contested questionable official conduct or guilt before judge or jury. His case less frequently resulted in acquittal or dismissal.

Id. at 72.

Some of the developments stemming from these findings include improved fact finding mechanisms, release on recognizance, summons in lieu of arrest, release on conditions other than money, release for money, and various adjuncts to release and detention. FREED & WALD, op. cit. supra, at 56-89.
understanding and the equality of bargaining position which the law demands of consensual relationships.

Of even more far-reaching import is the capacity of individuals acting in concert to create associations and binding legal obligations. This can take the form of an association of tenants, of recipients of welfare, of consumers whose purchases are bought through certain finance companies. It can even include the incorporation of a block, neighborhood, or community with retained "house counsel" to safeguard the interests of the community and to keep officials and private parties dealing with the community under continuous surveillance. Ultimately the power to create legal relationships is a form of political power—its utilization by slum communities is one way of revitalizing the democratic process.

9. The need for attorneys in organizing such groups and pressing their demands is graphically illustrated in the following excerpts from Illler and Werthman, Public Housing: Tenants and Troubles, 8 Dissent 282 (1961):

At the same time that the New York Public Housing Authority fights to obtain community centers, extra police protection, new services, a social work staff, and store space in the projects, it has refused to let tenants fight independently for similar facilities.

In a "Bulletin to Managers," the New York Housing Authority Commissioners state that:

"... encouragement and cooperation will be given organizations composed of residents of our projects, provided such organizations are formed for the purpose of promoting the welfare of the tenant body and the maximum enjoyment of the project by the residents."

This same document, however, contains a revealing clause:

"The Authority does reserve the right to withhold recognition from any organization which, in its judgment, is of a partisan or controversial (emphasis ours) nature or which engages in discriminatory practices."

Id. at 286-87.

The confusion of the Public Housing Authority over the extent of tenant's rights—some of which are constitutionally guaranteed—as well as its systematic refusal to admit the genuine conflicts of interest exist, reflects the general ideological dilemma facing American administrative liberalism today. In the course of the welfare state have been forced to make major concessions. In the pure form of the welfare state, individuals who, through no fault of their own, find themselves unable to reap the rewards of a productive economy are allowed to live under semi-socialistic principles. "To each according to his need, from each according to his work" is precisely the principle on which low-income public housing is based. Tenants who earn less than some fixed figure pay rent which is proportionally to their income.

In deference to the view that the best men are those who can afford to pay their own way, however, the Public Housing Authority has slipped in the half-hidden assumption that tenants should be penalized for receiving state support. This view is reflected in the income ceiling imposed on occupants, a built-in assurance that projects will remain lower-class and that mobile leadership will disappear. The battle over the Tenant Association indicates that a further penalty may be the forfeiture of certain constitutional rights. The project thus becomes a sort of purgatory for the temporary casualties of the economic struggle, and the idea of the welfare states takes a clear second place to the American conception of freedom as successful competition.

Id. at 287-88.
The potential of such forms or representation was strikingly borne out of one of the authors' experiences as neighborhood attorney for a group of tenants desiring to resist a rent-raise by a landlord who refused to make needed repairs or to comply with the building and health codes.\textsuperscript{10} The prohibitive cost and delay of forcible eviction of all tenants provided the bargaining leverage necessary to negotiate agreements under which the increment in rent was paid to an escrow agent to be released only upon prompt completion of repairs. The tenants, in addition, became third party beneficiaries to a schedule of improvements agreed to by the landlord and the redevelopment agency. The recent rent strikes experienced in New York indicate the extent to which such concerted action can be projected on a neighborhood scale.

The effect of such action does not stop with alleviating the particular grievance involved. Of equal significance is the extent to which at least some of the tenants involved evinced an awareness of the utility of concerted action in other contexts of neighborhood concern. Action, even in a limited context, can be a significant antidote to despair and apathy. Action, moreover, can begin to nurture a sense of dignity and responsibility. Until the landlord rectifies his omissions and the city enforces its own law, sermons on the virtues of thrift, cleanliness, and honesty are likely to fall on deaf ears. The equities in such situations are not wholly with the tenants, for as one report from New York reveals, "the conditions in the buildings were created in many instances by the tenants . . . [who] threw garbage out of windows, stole light bulbs from sockets in the hallways and generally made the managing agent's life miserable."\textsuperscript{11} Yet new attitudes toward housekeeping and the responsibilities of tenancy are not likely to emerge where a pervasive sense of exploitation and helplessness are supported by the landlord's open flouting of the law and the city's dereliction of duty. The assertion of a legal right holds the potential not only for lessening one's sense of alienation from society but also for affecting one's self-image and aspirations.

\textsuperscript{10} This description overlooks the numerous steps between one tenant's hesitant inquiry, the formation of a group, the formulation of demands, the discovery of a history of past health and building code violations, and the emergence of a stratagem of action.

B. Legal analysis and representation directed toward reform where the law is vague, uncertain, or destructively complex

The poor live in a legal universe which has, by and large, been ignored by legal scholars. Low visibility decisions decide their destiny;\(^{12}\) official discretion determines their fate; and rights, even with lawyers to assert them, take a destructively long time to ascertain and vindicate. All of us are subject to the law's delay, to official obtuseness, and to unreasoned discretion. But persons with resources can avert the hardships these factors work. Status affords protection. Businessmen and officials alike take pause and reflect before acting to the detriment of persons who are not defenseless. The poor have no such protection against unreasoned, or unprincipled thoughtless, action. And for this very reason, there is a greater need for clarification of legal status, policies, and rights in those areas of the law which affect the poor most frequently and adversely. Here the rationality of the law can offer a first line of defense. Thus, for instance, it is primarily the poor for whom a prosecutor will dictate an informal separation and support agreement as the quid pro quo for not prosecuting a husband for assault on his wife. Similarly, it is primarily the children of the poor who are affected by the lack of procedural safeguards in juvenile proceedings.\(^ {13}\) Yet the conflicting, unarticulated policies which underlie the seemingly benign paternalism of juvenile court judges, police officers, and prosecuting attorneys require intensive scrutiny and evaluation. Vigorous representation can, on occasion, precipitate a reassessment and clarification of the law in such situations. Yet improvident insistence on "rights" can also produce rigid and ill-considered law which may yield neither short-run nor long-run benefits. Here intervention and advocacy on behalf of the poor must be accompanied by extended scholarly considerations of the policies, alternatives, and costs involved. A neighborhood law firm concerned with this dimension of the law as it affects the poor should have some formal nexus with the academic world. The law, as experienced by one stratum of society, must be made known to legal scholars so that it can be scrutinized, so that knowledge of it can be disseminated through the law school curriculum.

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\(^{13}\) See Note, District of Columbia Juvenile Delinquency Proceedings: Apprehension to Disposition, 49 GEO. L.J. 322 (1960), for an excellent survey of the law and practices regarding juveniles.
and the evolution of what we might term "urban law" proceed rationally and at an accelerated pace.

C. Legal representation where the law appears contrary to the interests of the slum community

Here skillful representation can often mitigate the harsher effects of the law, can delay or nullify its operation, and on occasion can prompt reassessment and change.

In a society interlaced with governmental welfare and rehabilitative programs, much of the law encountered by slum dwellers is the rules of eligibility which entitle them to partake of the benefits of numerous governmental and quasi-governmental programs. Violation of or failure to fulfill such conditions operates to bar participation. Many of these rules not only work hardship but often operate to defeat the underlying purposes which the program was instituted to achieve.

Typical of these rules are those which deny benefits to families where an adult male capable of supporting the family is present, which prohibit participation in job retraining programs by persons with police records, and which call for the expulsion of families from low income projects if the families' income rises above a specified amount. The value of such rules, particularly when sporadically and punitively enforced, is certainly dubious. The "man in the house" rule, for example, creates a financial incentive for the break-up of low-income families, undermines the male ego attuned to our society's work ethic, and increases the likelihood of promiscuity, illegitimacy, evasion, and crime. Eviction from housing projects of families whose income has risen above a certain level imposes a sanction on upward mobility and operates to deprive the project community of those members who have roots there and who might provide leadership, stability, and role-models for their neighbors. Refusal to make job retaining available to persons with police records operates quantitatively to exclude much of the potential target population and qualitatively to bar precisely that group which has already manifested some alienation from the law and which is most likely to be in need of intensive vocational training and personal therapy.

Such rules are symptomatic of a failure to provide responsiveness to the conditions and needs of the groups purportedly served, and are indicative of the lack of leverage and articulateness possessed by such groups. Where the rule, statute, or regulation works a hardship, legal representation may be able to suspend or postpone its operation, permit a period of transition, and otherwise mitigate its hardship. Often there will be statutory grounds for the exercise of such discretion; and often, the rule will have been promulgated by the very official who subsequently asserts that his hands are tied. The effect of representation, however, can go beyond simply securing a delay in eviction from a housing project or a single exception to the rule barring persons with police records from a job retaining program. It may, for instance, result in an administrative qualification of the rule to the effect that eviction shall not be required until the city has discharged its obligation to relocate the family in suitable quarters, or lead to a construction of the eligibility requirement to the effect that juvenile offenses and misdemeanors do not constitute a “police record” within the meaning of the criteria.

Administrative power to classify and construe can be exercised in other creative ways. The family whose income is too high to continue living in a low income project may be eligible for a middle income project unit if one is available. Besides seeking to obtain a preferred position on the waiting list for vacancies, an attorney can also explore the possibility of having specific apartments in the low income housing project reclassified as apartments for middle income families. But until proposals for the use of unexercised powers are made by skilled advocates who know the desires and needs of the neighborhood and who can devise possible ways of implementing the, there is little likelihood that such possibilities will even be explored by officials.

Among the means at a lawyer’s disposal in his ability to make collateral attacks on a rule. This may result in slackened enforcement, non-enforcement, and possibly an increased willingness to reconsider the wisdom of the rule itself. One rule which seems somewhat vulnerable to such an attack is the “man in the house rule” which is invoked to discontinue payments under the

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16. This might reduce the transiency of the project’s population and, if successful, might provide the basis for the neighborhood to urge that the project be turned into cooperative housing, where the city owned half the apartments making them available to low income families and where families whose income had risen owned the other portion. Such joint city-private ownership would eliminate some of the financial risks of shareholders' liability which normal attend cooperative housing projects. And the undesirability of home ownership in such a neighborhood would not affect, in the same degree, families whose friends and associates were drawn from that area.
Aid to Dependent Children program where there is an able-bodied man present in the home. Application of the rule has, on one occasion, been prevented by a ruling to the effect that a visit by a father to his children does not constitute the presence of a man within the meaning of the rule. Similarly, the admission of evidence indicating the presence of a man may be prevented by objecting that the evidence had been secured through an illegal search. One of the most corrosive effects of welfare programs is the extent to which officials administering them assume that the recipients have waived fundamental rights of privacy. And it has been urged that many of the midnight raids and inspections now carried on are violative of the fourth amendment. To the extent that certain rules providing for the termination of benefits depend upon illegal methods of detection and harassment for their enforcement, the exclusion of illegally obtained evidence can mitigate their effect and perhaps even stimulate a reappraisal of the rule.

Finally, in some situations it may be possible to make a direct attack on the validity of a rule or regulation. The following do not purport to represent exhaustively researched legal theories; they should be read only as illustrative of questions which might be explored to invalidate a rule, or which might be advanced in order to prompt officials to reconsider the policies and assumptions which led to the rule's promulgation. For instance, can a case be made for the proposition that an official rule barring persons with police records (construed as including juvenile offenses) from state and federally financed job retraining undercuts the rehabilitative philosophy of juvenile proceedings? Alternatively, does such an eligibility criterion contravene the purpose of the federal statute establishing the retraining program or involve a denial of equal protection or constitute a form of bill or attainder?

Does labor required of persons imprisoned while awaiting trial because they are unable to put up bail


"It is obvious from the evidence of record that the children herein could not be supported without the aid from the Department of Public Welfare," the Judge said. "It also seems clear that this aid ought not to be forthcoming only at the price of disassociation of the family. Any such policy which would deprive the children of that support because of visits from their father would be against public policy."
Id. at A4, col. 4.

A permanent court order to this effect affirming the earlier temporary restraining order was issued on June 9, 1964. See Washington Post, June 9, 1964, at B8, col. 5.


constitute "involuntary servitude" within the meaning of the thirteenth amendment?

Statutory interpretation as well as constitutional exegesis provides additional basis for calling rules and practices into question. Thus, where the rent charged to tenants of slum housing acquired through condemnation is the same as that charged by a slum landlord, there may be grounds for arguing that the rent charged by the city during the period prior to demolition (which may be years) should be reduced to conform with the public purpose of slum clearance on which condemnation was based. Although present federal regulations may raise certain obstacles, such a possibility should certainly be explored where the condemnation award was based on the exorbitant return obtained by ignoring the city's housing code.

Representation by counsel should thus be understood as both different from and related to the exercise of political and governmental power. It can provide a voice in the decision-making process which can gain for the poor a fair hearing and political due process; it can initiate a decision-making process, or make visible such a process where its existence would not otherwise be suspected. In a limited sense, then, the assertion of a right which had previously been ignored, the exhortion to exercise discretion, or the successful advocacy of a proposal leading to innovation approximates the legislative process. However, it is very much more limited in the changes it can effect, and particularly in the redistribution of resources and the increased flow of new resources which it can bring about. But it can at least bring issues into focus, prompt inquiry, and force scrutiny and reevaluation.

D. Legal representation in contexts which appear to be non-legal

Often we are blinded to the efficacy of legal representation as a potential route to a desired result because other modes of communication, organization, pressure, and protest suffice—at least for the middle class. The need for extensive pressure to force official compliance can often be significantly reduced by a legal determination of whether alleged fiscal or administrative barriers really exist. And in some situations the simple communication of legal authority for certain action may be sufficient to get officials to respond and to change a policy which inertia, timorousness, or lack of imagination appeared to have firmly ensconced.

Such representation may be of critical help in nurturing the growth of embryonic civic organizations in neighborhoods where apathy and defeatism
prevail. It may prove virtually impossible in slum communities to mount a major extended campaign to persuade local officials to permit the community to use school facilities and recreational areas during summer months, evenings, or afternoon hours. Here legal representation can conceivably supplement local pressure in overcoming official reluctance to expend funds for lighting, janitorial services, and police protection against vandalism. Denial of access to such facilities for periods of time might arguably constitute a deviation from a plan submitted by a redevelopment agency to obtain federal funds where that plan committed the city to maintain minimal recreational and other community facilities and where that plan treated the school building and yard as partially fulfilling that commitment. While it by no means follows that such a commitment could be enforced by court action, the mere threat of publicity or litigation or consultation with federal officials may suffice. Or local officials may be quite willing to cooperate once presented with a theory to defend expenditures which they would otherwise have feared to make.

Legal theories are, in short, a form of discourse which can on occasion have a force equivalent to that which inheres in organization, status, or wealth. Where what is ought is a change of conduct or perception, the legal theory used as a form of discourse need not have the relative impregnability or authority required to obtain a court judgment for damages or specific performance. Consequently, even novel theories, where they effectively communicate the equities, can be of significant use in remedying situations characterized by excess of authority, abuse of discretion, abuse of a confidential relationship, or omission amounting to negligence.

Thus, when a principal orders all boys to come to school dressed in coats and ties without regard for the economic burden this imposes upon the parents; when a guidance counsellor consistently advises Negro students to take a vocational training course regardless of aptitude; or when a teacher repeatedly singled out a boy for ridicule and discipline, there is unlikely to be a clearly established cause of action for damages, injunction, or specific performance. But we ought not to conclude therefore that the lawyer is of no utility in such circumstances.

Utilization of administrative proceedings to challenge a ruling, exercise of an administrative or statutory option to take an aptitude test or to transfer to a different class, or to challenge factual assertions made by persons in authority can often secure a remedy and alter habits of official arbitrariness. In these contexts the ability to read the statutes and to ferret out regulations is important; but more important are the lawyer's sense of bureaucratic structure
and administrative process, his skill in presenting a complaint in its strongest posture, and his instinctive predicate that ingenuity and persistence can either secure redress or locate a higher level of appeal.

In many such instances there will be no legal theory available. Most typically, these will involve relationships where the person responsible for the grievance is accountable to his superiors. His duties and responsibilities will not be considered as vesting a basis for formal complaint in the person inured. The chain of duty usually extends up the line of authority leaving the "consumer" of these services in a state of helpless dependency. Such duties ought to be translated into obligations which vest rights downward. But even where they are not, it may be possible to secure the delineation of responsibilities and the firmly supervised discharge of those responsibilities by converting all phases of decision-making into informal adversary proceedings. Whatever that process—be it gathering facts, making rules, applying standards, evaluating results, or revising policies—adequate representation of the poor is necessary to assure that their needs and point of view are fully considered.

The civilian perspective requires a fair hearing for the views and needs and grievances of the citizenry. And as lawyers well know, a fair hearing is not possible without adequate representation. This principle requires implementation in contexts which are not viewed as legal—but where the function of advocacy is no less indispensable. And this is, in the broadest sense, the mission of the neighborhood law firm. To carry out this mission the neighborhood law firm will have to provide representation for members of the slum community in all the four above-mentioned fields. If, as can be anticipated, the firm meets with an ever increasing volume of requests for assistance, there will arise a need to develop rational criteria for selecting those cases which are to be handled.

For analytic purposes, it is useful then to distinguish between a service function (providing legal services to all persons in need) and a representative function (providing representation to individuals and groups in cases which have broad institutional implications and widespread ramifications). This distinction is not a clear-cut one—it will be necessary for a firm choosing the second function also to perform a service function in order to earn the

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21. It also requires a neutral forum. But the advocate’s function is as much to seek an impartial judge and jury as it is to present to them the best possible case.
confidence of a community. And without performing a service function, there will be no way of knowing what the most fundamental and recurrent problems are. In addition, the firm's obligation to provide broad legal services for all who request them will vary with the adequacy of existing legal aid and public defender organizations to provide legal services for the firm's neighborhood. Where these are adequate, the firm should not attempt to duplicate the work of such institutions.

In the final analysis, the decision to take or refuse a case will be a matter of intuition, empathy, and hunch. The single most important consideration will be that of the civilian perspective, of the avowed purpose of effectively articulating the grievances of a community and thereby increasing the responsiveness of officials and private parties to the equitable demands of that community's members. Criteria can do no more than suggest when a case might help a community or an individual to shake off a paralyzing sense of despair and helplessness. Thus it might be appropriate to specify certain considerations which at least prima facie would not constitute a proper reason for turning down a case.

It would appear inconsistent with the overall purpose of the firm to refuse a particular case simply on the grounds that representation would disturb city, state, or federal officials, would disturb welfare agencies, or would offend certain private interests such as merchants, real estate agencies, or landlords.

One of the less obvious ways in which such considerations can induce inaction by a neighborhood law firm is through "phasing." Indefinite postponement of involvement in controversy is the surest way to vitiate the entire project. Because of a natural desire for approval and acclaim by officials and by the larger community, and because it will be necessary in the beginning to go through an initial experimental and exploratory stage, there is constant danger that "phasing" will subvert the underlying purpose of the program. Ultimately, if the firm is to fulfill its function and represent previously unrepresented segments of the community, someone will have to be offended. Advocacy, not forbearance, is the firm's _raison d'etre._

Yet the task of "representation" involves many different and often mutually exclusive functions. Thus, the considerations which might be mentioned as militating in favor of taking a case are not susceptible of exhaustive enumeration—nor can any single consideration be given too much stress without destroying the representative function itself. Recognizing, then, that a delicate balancing process is involved, it is possible to suggest at least some of the considerations which might provide an appropriate basis for taking a case:
a. If the situation were representative of larger social ills rather than the product of a relatively unique interaction between an individual and his environment.
b. If there were no existing facilities which could adequately handle the situation (including individual attorneys or legal aid and public defender agencies).
c. If the case required urgent handling such that failure to take it would be interpreted by the neighborhood as a form of betrayal or rejection.
d. If the case provided an opportunity to establish or strengthen a functional relationship with other legal and social agencies that would be of use in the future and that might affect the general responsiveness of the appropriate officials towards persons from the client neighborhood.
e. If the case were sufficiently representative and symbolic so that vigorous advocacy would alter the pattern of official, civic private response in a way deemed desirable.22
f. If service to the particular client would also serve the needs of other individuals including the client's family.
g. If service now might reasonably be expected to arrest the development of a potentially dangerous pattern of rejection.
h. If the particular client had potential for leadership or civic activity which might be significantly increased by legal assistance.

Rendering legal assistance in cases manifesting these characteristics would appear to be consistent with the purpose of the civilian perspective. Yet each of these considerations must be approached carefully lest it be used improperly as a reason for taking or refusing a case. For instance, taking a case because of its highly "symbolic character" could readily result in sacrificing an individual client to a "greater cause." Similarly, the desire and the need of the law firm for acceptance by the neighborhood should not be equated with blind submission to the prejudices of that community and should not be used as a reason for refusing a case simply because it involves representing a person or a cause which is unpopular to the neighborhood. As one example, neighborhood groups reacted with hostility to one of the authors' participation

22. This criterion emphasizes the impact of advocacy beyond a particular case. In this respect it differs from criterion (a) which emphasizes the subject matter of the case (e.g., individual merchant credit abuses which are widespread) as a factor distinct from whether or not advocacy in that particular case will have any effect beyond helping that particular client (e.g., affect the future behavior of that or other merchants).
in the defense of a Negro charged with the rape of a white woman. The Negro community was deeply ashamed and mortified by the prosecution, viewing it as a confirmation of the stereotypes which they themselves had internalized. Members of the community were brought, only by degrees, to understand in some measure the meaning of the presumption of innocence and the right of every accused person to a vigorous defense. At last the willingness of a lawyer to champion the cause of the accused acted in some manner to lessen their own sense of shame and guilt and to enable them to understand that only the accused and not the entire Negro community was on trial.23

Finally, there is a particular danger that in selecting cases and favoring certain clients the firm will arrogate to itself the function of choosing who shall be the community's leaders. Accepting a case in order to assist a potential leader can readily become a means for helping only "acceptable leaders" who advance the "community's interest" in the "right manner." In part, such a danger can be averted by insisting that the substantive views of the leader, his methods, and his goals are not for the firm to judge, so long as he is articulating concerns and grievances felt by members of the community. But even this definition of leadership, which denies to the firm a censorial power over the content of the leader's speech or cause, provides only a partial solution to the danger of choosing a neighborhood's leaders. When the issue is simply representing the downtrodden community against the "outside world" or the "power structure," the function of representation is relatively clear-cut. The more difficult problem is posed when the firm is faced with two potential clients from the neighborhood who have opposing views and interests. When the neighborhood's interests become heterogeneous and factions within the community come into conflict with each other over particular issues, it may be appropriate to inquire whether the firm is taking one client ought not to assume some obligation to assure that the opposing factions have access to representation.

23. Talks with the civic association of the overwhelmingly Negro housing project in which the wife and five children of the accused lived had at least one tangible consequence. Prior to the talks by the neighborhood attorney, the children of the accused had been completely ostracized by their peers. Several weeks after the conviction and sentencing of the accused, a parade was held to which the project's civic association contributed a float. One of the five children selected to represent the housing project on the float was the defendant's oldest child. This action was taken without the knowledge or prodding of the attorney, and so far as can be ascertained, was part of a larger attempt in good faith by the members of the civic association to help the convicted man's wife and family make a successful adjustment to the tragedy they had just experienced.
In sum, the function of representing a community and of implementing the
civilian perspective becomes as complex as democratic leadership itself—and
the neighborhood attorney must daily tread the narrow line between
representing and leading, between obeying and teaching, between heeding
demands and educating the demander.

Fulfillment of these complex tasks is only possible if the firm has both the

liberty and the resources necessary to proceed. CPI's experience with
neighborhood legal services indicates that such liberty may not be available
where the lawyer's decision to take a case or represent a client must be
subordinated to the concerns, perspectives, and phasing of a comprehensive
community action program. The law's capacity to create issues, to bring
controversies into focus, tends to make neighborhood legal services too
controversial for an organization to absorb if it must retain the support, or at
least the sufferance, of the major institutions in a city.

The firm's liberty will, however, require more than independence form the
organizational superstructure of a comprehensive program. It will require both
fiscal independence and the approval of the bar. That portion of the bar which
draws clients from slum neighborhoods will doubtless feel threatened by such
an institution as the neighborhood law firm. Experience both with CPI and
with New York's Mobilization for Youth indicates that the fears of economic
competition need not materialize and that, in fact, a strong cooperative
relationship between the local bar and the neighborhood legal services is likely
to evolve. Such cooperation is indeed necessary, and it may be of great utility
for the neighborhood firm not only to refer clients to local attorneys, but also
to utilize local attorneys in a consultative and auxiliary capacity in order to
reduce the caseload it would otherwise have to carry.

The financial basis for such a firm involves even more complex
considerations; government or foundation grants might provide support for the
operation on a temporary, or possibly a long-term basis. Yet numerous other
possibilities will have to be explored, including registration fees and retainer
fees from local community groups.24 The recent case of Brotherhood of
Railroad Trainmen v. Virginia ex rel. Virginia State Bar25 portends a major

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24. In his 1964 Law Day speech at the University of Chicago Law School, Attorney General Robert
Kennedy urged law firms to contribute the time of partners and associates on a continuing basis for work
with the poor.

25. 84 Sup. Ct. 1113 (1964).
series of changes in group legal services—but it is too early to predict the course of that evolution.

Finally, there will be difficult questions of professional ethics, involving the solicitation of cases, barratry, etc., which require extensive consideration. Assuming, however, that these problems can be worked out, and that legal services in the four above-mentioned areas should be provided, it becomes necessary to sketch briefly some of the structural components of a neighborhood law firm.

Because the ready availability of legal services is a prerequisite to their increased use, it would seem desirable that the firm maintain several offices scattered throughout the target neighborhood, each of which would be manned by a person trained to perform an initial interviewing, screening, and referral function.

The firm would be composed of lawyers who possessed a range of specialties and trial experience and yet retained awareness of the limitations of their own discipline and of the extent to which giving content to legal conclusions often demands utilization of the insights of other professions. Provision would have to be made for hiring investigators, and for obtaining the services of experts such as psychiatrists, accountants, and social workers. Other resources, including a supply of assistants who could prepare memoranda of law for trial and for appeals and a procedure for keeping up with recent developments in the law would also be necessary.

For a prototype neighborhood law firm, these and other needs for manpower skills and perspective could most readily be provided through affiliation with a law school. Such an affiliation would yield many dividends. First, an urban law internship program for select graduate or laws students could serve at once to fill the neighborhood law firm's manpower needs and to create a group of young lawyers and professional persons knowledgeable in urban legal affairs. The intern could presumably be of assistance at all stages of trial

26. Suitable locations would be: in (or in proximity to) the public housing project, the junior high or high school, the shopping center, the police precinct station, the welfare office, or the well-baby clinic.

27. Experience with both the New Haven and Washington, D.C. Legal Aid Agencies indicates that provision should be made from the outset for:
   a. Screening of intern applicants (including initial screening, periodic checks to insure that the internship is not adversely affecting academic performance, and review of the intern's work).
   b. Orientation lectures (e.g., on the firm's purpose, work procedures, ethical and practical problems, problems related to the attorney-client privilege, dangers of being accused of trying to bribe, intimidate, or distort the stories of hostile witnesses, phases of the legal process in both civil and criminal cases).
work: investigation, legal research, pre-trial and trial preparation, presentence and "environmental" investigation and appellate research.

The university affiliation would also serve as the vehicle for the examination and development of legal doctrines and interdisciplinary perspectives through research papers and seminars based on case material developed from the law firm's files and participated in by the lawyers and student interns involved in the case.28

Finally, both the university and the law firm might join efforts in providing opportunities for the recruitment and training of indigenous leaders from the target community. A carefully planned, legally oriented training program could sensitize persons in the community to effective methods of handling grievances, of community organization, and of asserting legal rights.29 Job assignments in a progression of roles (such as contact or referral agent, receptionist, interviewer, investigator, and including auxiliary roles throughout the trial and post trial process)30 could, if properly designed and supervised, enable those involved to feel less in awe of the system and more competent to articulate grievances, to seek remedies; and to turn to the appropriate authorities or

d. Periodic review of overall work record.
e. Case assignment reports including summary of work, daily time sheet, and expense voucher.
f. Letter or card designating student as firm's agent or employee for specified purposes.
g. Final certificate and letter of evaluation for student intern's personnel file.

Provision should be made to increase the intern's sense of responsibility and participation by allowing him, where permissible, to sit at counsel's table in court, to be present at interviews with clients, to be introduced to local members of the bar, and to share in the firm's strategy sessions and social occasions. In addition, it may be advisable to employ interns at an hourly rate for a portion of the time they contribute and to obtain course credit for student interns where "on the job" training is combined with formal writing projects or seminars.28

28. The seminar should include the practicing lawyers, faculty members with relevant fields of specialization, and faculty members from fields other than law. The difficult problem will be determining in advance the general focus of discussion. Thus, for instance, an eviction case might deal with landlord-tenant law, rent strikes, relationship of contract to conveyancing law in the law of real property, legislative proposals, urban renewal, education in housekeeping for the urban migrant, etc. It might, however, be just as amenable to a discussion in depth of the cause of eviction brought to light by student investigators — and thus might deal with domestic relations, unemployment, automation, disorderly conduct, etc. A prior decision on the focus of discussion will be necessary to work out an outline, a list of required and optional readings and a list of guest participants.

29. The job need not be full time. Candidates might well include gang leaders, unemployed persons, mothers on welfare (subject to welfare job restrictions), store front ministers, etc.

30. These should include the same "prestige" symbols as those available to student interns. Of greatest potential as a law sensitizing experience is that of fact-finder, because of the value-impregnated and conclusion-oriented nature of that task in the law.
professionals for assistance where needed. Supplemented by academic work designed to increase self-awareness and comprehension of larger community problems, such a work-training program could open new vocational and professional roles.

Perhaps most important, it would create a form of vertical mobility which, rather than entailing alienation, would rest upon community service and leadership. Such persons, in their turn, could disseminate not simply legal knowledge, but, more vital, could impart the spirit of hope, dignity, militant citizenship, and constructive advocacy which together comprise the civilian perspective.

31. Such community investigators would hopefully help to bridge any felt distance between the law firm and the community.

32. The either-or alternative posed by modern education between academic seclusion and meaningful civic participation must be altered both for the sake of the present student body and for that broader student body of the community which the urban university must increasingly come to serve. President Johnson observed at Irvine, California on June 20, 1964:

Just as our colleges and universities changed the future of our farms a century ago, so they can help change the future of our cities. I foresee the day when an urban extension service, operated by universities across the country, will do for urban America what the Agricultural Extension Service has done for rural America. And I am asking the United States Commissioner of Education to meet with the leaders of education . . . to see how that can come to pass.