

## THE WAR ON POVERTY: A CIVILIAN PERSPECTIVE\*

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PRESIDENT Johnson has declared unconditional war on poverty. The strategy of that war appears to have been shaped by an awareness of the interrelatedness of the social, economic, legal, educational, and psychological problems which beset the poor and by a recognition of the necessity to involve all segments of society in a many-pronged attack on these problems.<sup>1</sup>

At present, a half-dozen or so pilot projects<sup>2</sup> already in existence have attempted to deal with the problems of poverty by employing this comprehensive approach. If these offer any indication, the war metaphor is more than effective rhetoric. It is an approach which views poverty as posing a series of complex problems in logistics: how to supply the needed food, housing, medical care, education, jobs, and skills to one-fifth of a nation. The need for such a massive movement of social services, facilities, education, guidance, jobs, and

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\*We wish to dedicate this article to the beloved memory of our father, Edmond Cahn.

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1. See generally SELECT SUBCOMMITTEE ON POVERTY OF THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE, 88TH CONG., 2D SESS., THE WAR ON POVERTY, THE ECONOMIC OPPORTUNITY ACT OF 1964 (Comm. Print 1964).

2. Such projects are presently in various stages of action, demonstration, and planning in New Haven, Boston, Oakland, Philadelphia, Cleveland, Charleston, Houston, Minneapolis, Washington, New York, Chicago, St. Louis, Syracuse, Detroit, Providence, Los Angeles, Lane County, Oregon and North Carolina. See AMERICAN COMMUNITY DEVELOPMENT, PRELIMINARY REPORTS BY DIRECTORS OF PROJECTS ASSISTED BY THE FORD FOUNDATION IN FOUR CITIES AND A STATE (1963); PRESIDENT'S COMMITTEE ON JUVENILE DELINQUENCY REPORT (1963). Of these projects, only a few have passed from the planning stage to the demonstration and action stages.

training to the front lines in the struggle against poverty can hardly be gainsaid.<sup>3</sup>

We support both the objectives of the war and the methods it employs. Nothing less than a concerted, comprehensive attack on the sources of poverty holds any promise of significant success. Consequently, we are not concerned with assessing the positive values of the "military approach"; we take these for granted. Rather we are concerned with the deficiencies which can flow from failure, in the course of this effort, to incorporate what we term "the civilian perspective."<sup>4</sup> That perspective is, in essence, one of dissent, of critical scrutiny, of advocacy, and of impatience. It is a perspective customarily suppressed or disregarded in time of war — even when the war is one to preserve democracy. We are concerned that it not be so dismissed in the war on poverty.

These deficiencies have, however, emerged in varying degrees in the comprehensive community action projects with which we are acquainted. They stem from correctable, though deep seated, tendencies rather than from inevitable and irremediable characteristics. There is no reason why, with proper awareness, these cannot be avoided in programs which come to be launched under the Economic Opportunity Act of 1964 as part of the war on poverty.

The legislation submitted by President Johnson manifests an awareness of the dangers of a purely military approach, for it requires "maximum feasible participation"<sup>5</sup> by the poor themselves. Thus, there is an explicit legislative vehicle for the civilian perspective and a clearly expressed mandate to give that provision content. If this legislative requirement is not to become a meaningless exhortation, then the nature and deficiencies of a purely military approach must be fully appreciated. Only then can the civilian perspective itself begin to take form. What that civilian perspective is in the context of the current approach to poverty, why it is essential, and how it might be implemented form the subject of this article.

#### I. THE STRICTLY MILITARY APPROACH TO URBAN POVERTY — COMMUNITY PROGRESS, INC.

We begin with a description and analysis of what has often been referred to as a prototype of the war on poverty<sup>6</sup> — a comprehensive social services program launched over two years ago in New Haven, Connecticut, and ad-

3. See SELECT SUBCOMMITTEE ON POVERTY, *op. cit. supra* note 1; see also HOUSE COMMITTEE ON EDUCATION AND LABOR, 88TH CONG., 2D SESS., POVERTY IN THE UNITED STATES (1964); HARRINGTON, *THE OTHER AMERICA* (1962).

4. Cf. Cahn, *Law in the Consumer Perspective*, 112 U. PA. L. REV. 1 (1963); Cahn, *THE PREDICAMENT OF DEMOCRATIC MAN* (1961). Our indebtedness to Edmond Cahn's concept of the "consumer perspective" goes far beyond mere verbal similarity.

5. Economic Opportunity Act of 1964, H.R. 11377 § 202(a)(3), 88th Cong., 2d Sess., 1964.

6. See, *e.g.*, Cater, *The Politics of Poverty*, *The Reporter*, Feb. 13, 1964, pp. 16, 20.

ministered by a private, non-profit corporation called Community Progress, Incorporated (hereinafter CPI).<sup>7</sup>

New Haven's comprehensive program was undertaken as an attempt to deal simultaneously with education, recreation, delinquency, housing, unemployment, and the problems of the aged. Its designers' and sponsors' appreciation of the interrelatedness of these social problems was coupled with an awareness of the frustrations and shortcomings experienced in social welfare programs which invariably encountered problems broader than their artificially defined jurisdictions.

This approach was the logical outcome of developments toward increased coordination and communication among varying social service and related agencies; it was also the product of a growing consensus amongst persons working in education, juvenile delinquency, urban renewal, and related fields that the only enduring solution to urban ills would result from a program that viewed the city as a whole and had the capacity to restore health to the entire organism.

*Opening Opportunities*, CPI's program prospectus, contained two complementary components. The first set forth a number of problem areas including the aged, employment, housing, juvenile delinquency, and recreation, which were city-wide in dimension and were to be approached through a central planning and research operation which would analyze the problems and design and supervise the action programs.<sup>8</sup> The second component provided for an attack on neighborhoods (a geographic as distinguished from a functional approach) through a Coordinated Community Services Program.<sup>9</sup> A variety of service programs were to be operated on a decentralized basis from offices located in the community school for each of the seven blighted target neighborhoods. The purpose was to integrate a wide variety of programs by making available at a local level the following types of personnel: initially, community workers, homemaking advisers, and legal advisers; and eventually, public health nurses, doctors and dentists, public welfare workers, family caseworkers, school social workers, police youth officers, housing inspectors, and sanitarians. Each neighborhood office was to be staffed by a Neighborhood Coordinator assisted by a "community worker," a non-professional person,

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7. New Haven was one of the first cities to undertake such a program. With a progressive mayor, a nationally known urban renewal, redevelopment, and rehabilitation program, a newly approved bond issue for extensive school construction, and a new superintendent of schools, New Haven provided a propitious and not unmanageably large experimental site. In accordance with plans drawn up by the Mayor's staff and personnel of the redevelopment agency, CPI was chartered in 1962 to receive a 2.5 million dollar grant from the Ford Foundation, which was eventually more than matched by supplementary grants from various federal agencies and private foundations.

8. OPENING OPPORTUNITIES, NEW HAVEN'S COMPREHENSIVE PROGRAM FOR COMMUNITY PROGRESS 8-25, 31-38 (1962).

9. *Id.* at 26-30.

known to the neighborhood, who would serve as a "bridge between residents and service agencies." Patterned after the street workers of New York and Chicago, the community worker was to know, and to be known in, the community by his presence in homes, on the street, in pool rooms, taverns, churches, and jail. In two of the neighborhoods — one Negro, the other Italian — an attorney was employed as a member of the neighborhood team.<sup>10</sup>

As this program went into operation, certain fundamental characteristics emerged which were, indeed, implicit in the prospectus and which we consider to form the core of the purely military approach.

First, the war initiated by CPI is one to be fought by professionals on behalf of the citizenry through service programs. By service programs, we mean the rendering of assistance to persons in whatever form the professional deems appropriate: *e.g.*, advice, medical care, financial aid, education, training, or material goods. Traditionally, such benefits have been given piecemeal in particular circumstances to alleviate hardship and to enable a person to be housed, fed, and cared for in accordance with our conception of minimal standards of decency and humanity. CPI retains this "service orientation" but attempts to dispense such services on a comprehensive, integrated scale. Nevertheless, the scope of services rendered does not alter the basic relationship between agency and clients. That relationship, as perceived both by the agency and by the client, remains one of donor-donee. The target group and the agency remain aware that those who initiate and administer the program establish the criteria for eligibility and judge, on a continuing basis, whether those conditions have been met.

Second, as exemplified by CPI, the military approach attempts to retain and utilize the support, energies, and resources of the incumbent political administration and major local commercial, charitable, and educational institutions. Structurally, this cooperation with the existing network of principal institutions was achieved through provisions of CPI's charter giving them permanent representation on the Board of Trustees.<sup>11</sup>

Third, the mapping out of an overall plan — the delineation of objectives, the designing of phrases, and the assignment of priorities — is a fundamental part of the military approach. Adherence to the plan and to the strategy devised becomes obligatory once the offensive is launched.

These characteristics of the military approach are fundamental: they flow from the logistical dimensions of the war on poverty. Yet these characteristics, when not balanced by the civilian perspective, have limitations and involve costs which become known only with the passage of time. It is to an examination of these costs which we now turn. Such an examination is necessarily a statement of tendencies rather than absolutes, of probabilities rather than certainties.

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10. *Id.* at 27.

11. CPI's charter gives permanent representation on the Board of Trustees to the Mayor, the Redevelopment Agency, Yale University, the Citizen's Action Commission, the Community Council, the United Fund, and the Board of Education. *Id.* at 48.

A. *Limitations deriving from a professional service-orientation*

Poverty in America is not just a lack of material goods, education and jobs; it is also a sense of helplessness, a defeatism, a lack of dignity and self-respect, all of which are externally confirmed in varying degrees. It is exceedingly difficult to have dignity without food or clothing or a job.<sup>12</sup> But it by no means follows that the provision of services and the supplying of material wants will yield a sense of self-respect. And the elimination of want will not necessarily produce the kind of alert and concerned citizenry on which our democratic process relies.

The most disturbing defect of CPI, viewed as a military service operation, lies in its record of enervating existing leadership, failing to develop potential leadership, undercutting incipient protest, and manipulating local organizations so that they become mere instruments of the comprehensive strategy. A service-oriented program not only neglects to provide for and instill the civilian perspective; it is likely to be subversive of that perspective, particularly because of the donor-donee relationships which are established. All too easily such relationships become a means of perpetuating dependency rather than terminating it.<sup>13</sup> A service program fills a need, but experts, not recipients, designate the need to be filled and establish the criteria for eligibility for aid. Typically, there is no effective means of challenging the basic criteria or for obtaining review of particular decisions applying those criteria.<sup>14</sup> The pattern of aid is one of a donee's unquestioning acceptance, of an expert's dictation of

12. Even if poverty were only these, there would be quantitative as well as qualitative problems related to the service approach. The paradigm of such comprehensive service-in-depth would be to provide each client with the simultaneous services of Jane Addams, Clarence Darrow, Sigmund Freud, John Maynard Keynes, John Dewey, and others together with such assorted facilities as better schools, recreation, housing, health centers, and, of course, an adequate income throughout the entire therapeutic regime.

Yet the quantitative limitations on such a selective service approach may well make it impractical. Provision of service in depth to all persons in need is a task of potentially infinite magnitude. And those few who are aided by services which can be made available may well revert to their old patterns and problems if the *larger* societal malfunctions and institutional defects of which they are, in part, the product, persist. For these reasons, comprehensive programs are likely to produce an illusion of comprehensive service — a multi-faceted, but nonetheless superficial rendition of services which will confuse the recipient and produce disillusion among those who assumed that the "comprehensive" approach was a panacea.

One other consideration, the "contextual dimension," may operate to make the saturated services model quantitatively inadequate. A neighborhood is not a static entity; a city is not a closed system; a region is not a controlled experimental laboratory. The poor will still flow into the slums; and the successful will still leave them. Movement and migration can wreak havoc on the most comprehensive of plans.

13. This is a feature of service programs, whether fragmented or comprehensive. See *e.g.*, MAY, *THE WASTED AMERICANS* (1964); Reich, *The New Property*, 73 *YALE L.J.* 733, 758 n.127 (1964). See also Jones, *The Rule of Law and the Welfare State*, 58 *COLUM. L. REV.* 143 (1958); KEITH-LUCAS, *DECISIONS ABOUT PEOPLE IN NEED* (1957).

14. See *e.g.*, Reich, *Midnight Welfare Searches and the Social Security Act*, 72 *YALE L.J.* 1347, 1359-60 (1963).

what is "good for the client," and of an administrator's unchecked and unreviewable authority to terminate assistance. That power defines a status of subserviency and evokes fear, resentment and resignation on the part of the donee.

In theory, the needs being filled are ones which will enable the recipient to become self-reliant, permitting the vicious cycle of dependency and helplessness to be broken. Yet, men with merchantable skills will not necessarily be able or inclined to cope with the complex society in which they live, let alone participate effectively in the decision-making processes of that society. The mentality of despair, apathy, passivity, and the vulnerability to exploitation, harassment and manipulation will not automatically disappear because a vocational skill has been acquired. Indeed, reinforcement of those patterns may be the price which the customary donor-donee relationship exacts for the service or goods imparted. And this is perhaps the most serious cost of a service orientation: it neglects the poverty of the spirit in ministering to the needs of the flesh.

B. *Limitations deriving from the coordinated community-wide structure*

The costs and dangers of a community-wide structure, as well as its merits, are most readily comprehended if we view this arrangement in terms of a monopoly — on social services, public housing, police protection, jobs, charity and education — in short a monopoly on all the opportunity and assistance available to the urban poor. Such a monopoly has the distinct potential advantages of superior resources, efficiency, economies of scale, research facilities and capacity for innovation. Indeed, much of the impetus for the creation of CPI came from a realization that piecemeal competition can be extremely wasteful and destructive.

There are, however, tendencies traditionally associated with a monopoly which may thwart the realization of such potential. Monopolies are characterized by tendencies to expand, to perpetuate themselves and to operate at less than optimal efficiency. These tendencies do not disappear when the market monopolized is the market for social services or when the product is social change. In such a market monopoly power presents special hazards because it can be used to achieve insulation from the democratic market place, to secure relative immunity from criticism and evaluation, and to obviate genuine responsiveness to consumer demand. This is likely to obtain where both the *power* and the *incentive* to seek insulation are present. There is reason to believe that both factors are present as a consequence of the second characteristic of the military approach: the coordinated, community-wide structure.

The power to achieve insulation is present in comprehensive programs to a degree at least commensurate with their enormous potential for good. Criticism can be stilled or ignored by token responsiveness and publicity. A half-dozen "rehabilitated" persons make good photographs, good news stories, and good research material. Local leaders who feel that the program is doing too little too slowly can be silenced, undermined, discredited — or hired.

And in such neighborhoods, the leadership is unlikely to be so rich or so secure as to withstand the temptation of an honorary appointment or a job with prestige and a salary of several thousand dollars. Should a potentially powerful neighborhood organization prove bothersome, it can be rendered ineffectual by absorption, by being given official status, or by setting up a rival dummy organization. Finally, something approaching a show of support and endorsement can be compelled by communicating to the target population the probability of temporary curtailment of program operations, rent increases in public housing, welfare crackdowns and a variety of other consequences.

The incentive for this destructive use of power is also likely to be present. No matter how safely ensconced the program as a whole may be, none of its constituent parts is immune from criticism and attack unless it avails itself of the monopoly structure for protection. The incumbent political administration is particularly faced with this temptation. At present, programs are only instituted with the encouragement and support of forward-looking political leaders. And the programs are identified as achievements of the administration which drew up the plans and secured the grants. Embarrassing revelations about the program's deficiencies are not likely to be welcome, particularly around election time. To the extent that deficiencies in existing programs or questionable practices by governmental and private authorities are uncovered, the alliance upon which the program is founded is threatened. Thus, not just the mayor but the employment service, the retraining programs, the police, the recreation department and school officials all may be anxious that their colleagues not be criticized for fear that such criticism will in turn reflect on them, resulting in investigation of their performance.

This use of monopoly power can be and is rationalized in numerous ways by men of good will: they are doing their best; they are providing important services and goods; ingratitude should not be allowed to reflect on their professional integrity. Further, the reputation of the whole program, its future, and its potential for good should not be jeopardized simply because defects show up and because dissatisfaction is engendered by certain "minor" and "temporary" deficiencies. The individual and his complaint, the neighborhood and its grievances must be sacrificed to the greater good.

The incentives for stifling criticism stem from vulnerabilities other than elections and the need to secure new grants and prevent old ones from being terminated. Also at stake are the images of the persons administering the programs. Churches engaged in social welfare must function above reproach; charitable institutions must justify their activities to their donors; community organizers must draw support rather than criticism from the community; and public benefactors must not be tainted with charges of paternalism or ineffectiveness. And there will be those who lack such altruism of purpose. Such programs do, after all, attempt to utilize and mobilize the entire power structure of the community to attack such evils as slum housing, illusory social welfare services, credit or other business abuses, and lack of responsiveness by elected and appointed officials. Parts of the very structure being utilized will

necessarily have tolerated, fostered or even profited by some of those evils now being attacked. Even where there is no specific interest in preserving the status quo, there may still be desire not to be forced to exert oneself unless utterly necessary. All of these play a part in creating an incentive to abuse monopoly power.

There is a similar incentive, aggravated by the effective insulation from criticism, for the monopoly to operate at less than optimal efficiency. The monopoly is created by a process of combination which, by and large, leaves the composite parts of the amalgamated enterprise as they were — with obsolete methods, with a tradition-oriented and tenure-entrenched staff and with an independent executive structure ready to guard past prerogatives jealously and willing to subordinate itself to a larger structure only in return for an aggrandized role.<sup>15</sup> Internal reorganization and restaffing are not, and for the most part, cannot be exacted as the price of participation. Rather, each participating agency believes itself entitled to share in the larger salaries, new resources, and new positions made available by the comprehensive program. In addition, participation enables them to feel tacitly exonerated for past failures of omission and commission. Decentralization and fragmentation of services are made the scapegoat.

Whereas gains from increased productivity, innovation, change in product, and risk ventures could be obtained only by changes in the internal operations of the component agencies, the gains from a successful promotion program require no such sacrifice or discomfort. In effect, "coordination" and "comprehensiveness" became the trademark of a monopoly created by an association of independent agencies. The result is often better public relations with no compelling necessity for a commensurate improvement in services.<sup>16</sup>

The place of this economic model in the overall military approach can be summed up by saying that the monopoly exercised by the military is a monopoly on the arms necessary to combat poverty. Yet, here, "the right of the people to keep and bear arms" serves a vital function.

### C. *Limitations deriving from an overall plan, phasing, and the assignment of priorities*

Wars require recruitment, mobilization, internal discipline, a careful assessment of objectives, and a comprehensive strategy for victory. The war on

15. Indeed, Oakland's and Boston's comprehensive programs operate in large part by giving grants to already existing social service agencies. *American Community Development*, *op. cit. supra* note 2, at 11, 21.

16. There appears to be more than a tacit acknowledgement of this in the statement of the Executive Director of Action for Boston Community Development, Inc.:

Assessing our experience during the first year of the Ford Foundation and Federal grants, we can cite the following significant points:

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There was a growing realization that there is little really brand new in the attack on social problems; for the most part, old approaches are refitted to meet new situations.

*Id.* at 15.



poverty is no exception. Phases and priorities will have to be designated; and these will determine what will and what will not be done, what evils will be eradicated or significantly alleviated, and what evils will be tolerated or ignored. Consequently, the nature and potential effectiveness of the total effort will depend upon the composition of the group which maps out the war strategy and upon the considerations which it deems most important in assigning priorities and designing phases.

To a large extent, decisions as to phasing and priorities will be made by two groups: the persons who presently control the major political, social, economic, educational and charitable institutions, and the new personnel who are selected to staff the organization which will plan and administer the comprehensive program. The newly recruited personnel will, however, have been selected by, or subject to the approval of the first group, and in some instances will be drawn from that group. Usually, the decisions of the new organization will be subject to modification, and in certain respects to vetoes by the first group. In short, those who already determine the shape of community affairs will exercise a significant, and at points a controlling voice in determining the contours of the plan for social change.

To be sure, there will be genuine concern that the poor themselves be consulted and have a say in the design and implementation of the plan. Typically, this will be done by presenting portions of the plan at public meetings to which the neighborhood is invited. Under such circumstances the poor are not equipped to analyze or criticize the comprehensive plan, partly because of the difficulty in discerning its nature and import from the generalities of a prospectus, partly because of lack of information, expertise, articulateness and resources, partly because of a paralyzing sense of futility, fear, or apathy, and partly because, overwhelmed with today's needs, they are neither prepared nor inclined to project themselves into tomorrow's unpredictable problems and possibilities. Consequently, the planners will select those representatives of "the people" to whom they will listen, and at appropriate intervals the organization will conduct a plebiscite on a fully worked-out plan. Suggestions and criticisms will be welcomed, considered, and perhaps even incorporated in the plan where possible. For most purposes it will be sufficient to demonstrate that the plan had the approval of a few persons who can be designated as leaders. Acquiescence is more important than participation, and so the main features of the plan will be fixed by the planners who, after all, know best how to fight this kind of war.

The experience with C.P.I. suggests that certain fundamental considerations will be reflected in the following tactical guidelines:

- a. An overall perspective of the resources, costs, and risks will determine the framework within which any decision to take or not take action will be made;
- b. Preservation of the alliance requires viewing each participating ally as a vital part of the total effort. A commitment to allied solidarity and a united stand is indispensable to internal morale;

c. A unified command with clear lines of authority and responsibility must be defined and maintained so as to insure a coordinated offensive and prevent divisive and tangential efforts;

d. Continuous mobilization and planning must take precedence over immediate field operations. A general holding action, including strategic retrograde movements may be required to permit full mobilization;

e. Impressive initial maneuvers involving a minimum of risk, planning, and resources must be launched immediately for propaganda, promotional and recruitment purposes. These must be executed with extensive safeguards to prevent the possibility of a humiliating setback;

f. Avoidance of precipitous, risky programs is necessary to prevent controversy and to permit consolidation of community support.

In operation, each of these tactical principles can readily become the rationale for converting a potentially effective program into a massive holding action which yields only those minimal gains necessary to substantiate the need for more funds and to insure that confidence in the military command does not wane.

For instance, under the principle of overall perspective, any single neighborhood's distinctive needs — such as cafeteria facilities in schools where working mothers will not be home at lunch-time — can be denied on grounds that any departure from uniform treatment will unbalance the overall allotment of funds. The same city-wide perspective can dictate the termination or curtailment of on-going programs for particular neighborhoods — such as a summer day camp — where it is financially unfeasible to provide such a program in all neighborhoods and politically inexpedient to maintain a program which has become highly visible in only one neighborhood even if the need there is demonstrably greater. Such a perspective of delicate balances has, in more than one comprehensive program, led to particular, and even general prohibitions, being placed on neighborhood attorneys' participating in litigation which might stir up antagonism and jeopardize other portions of the program. And this policy can prevail in situations of imminent injustice and can override the most desperate individual pleas for assistance.

Preservation of the alliance is translatable into avoidance of any activity which might reflect adversely on any member of the alliance, and particularly on the incumbent political administration. Thus, the uncovering of improper police tactics or of unauthorized questioning of juveniles, may not be allowed to become issues. Such problems are instead to be studied, and dealt with at some unspecified later phase of the program. Should the redevelopment agency fail to enforce the building code vigorously in certain neighborhoods or continue to charge impoverished tenants of property acquired by condemnation the same rents previously charged by slum landlords, the solution may be sought not in broad correctional action aimed at large scale revisions of policy but rather at discreet modification in particular isolated cases.

A unified command in effect means that professional decisions normally made by an educator, social worker, community organizer or lawyer in accordance with the dictates of his discipline and in the exercise of his professional judgment become subject to review and reversal by the program's administrators. The maintenance of such a unified command will necessarily involve giving it access to confidences normally reposed in the neighborhood staff and professionally considered as privileged communications. Neighborhood workers, moreover, may not be permitted to present the concerns of the neighborhood directly to the appropriate authorities, since such relations with major institutions call for top-level negotiations. The result of such reinterpretation, several removes from the source of need, will likely be that some of the urgency, as well as the substance, of neighborhood concerns will never be effectively communicated. Differences of opinion between field staff and central coordinating staff tend to evolve into divergent perspectives because of the differing day-to-day experiences and identification of each group. Such differences are resolved by the executive director and will tend to reflect his own identification with the central coordinating staff on such matters as the granting or withholding of service and the involvement or abstention from issues and controversies. Thus, for instance, staff members may be enjoined from attendance at or participation in some or all community meetings, and these prohibitions may center upon particular issues, such as refraining from mobilizing or even ascertaining sentiment over proposals to alleviate *de facto* school segregation. And typically the ban will preclude all involvement (including even the rendering of advice) with demonstrators attempting to end discriminatory employment and promotion policies. Such involvement would not only be "unseemly"; it might adversely affect the placement of persons participating in the comprehensive program's job-training programs. These and other decisions will, of course, be final; there will be no compulsion to articulate criteria; and thus there will be no guaranty of consistency in future decisions.

The continuous need for new sources of funds and for renewal of existing grants can result in actual service activities remaining sharply curtailed for an extended period while field staff gather data and write up project and research proposals. Their initial service efforts may be directed toward developing select case histories which serve primarily as excellent anecdotal material for applications.

Projects initially undertaken must yield quick, dramatic results with a minimum of controversy and investment of resources. The job retraining program may thus utilize an elaborate screening process to select as its first crops of trainees the most promising and able applicants, having the highest qualifications in terms of skill, motivation, acculturation and past experience. These will be trained for occupations such as draftsmen and X-ray technicians in order to fill local industry's most pressing demands for skilled labor. Such programs are, of course, necessary and desirable. Yet it should be noted that the assign-

ing of priority in training to such a group bears an inverse relationship to the needs of the inhabitants of the slum community. The really difficult job is not to "retrain" a high school graduate with proven aptitude and middle-class aspirations; rather it is to take the persons truly cut off from the mainstream of employment and give them the training in depth, the supportive therapy, the aspirations and the opportunity necessary to function in an industrialized and increasingly automated society.<sup>17</sup> Training the most readily trainable is laudable in itself; but it becomes objectionable if it purports to solve the whole retraining problem, and if it is undertaken with no concomitant determination to tackle the harder, riskier, and less spectacular tasks.

To the extent that comprehensive programs become involved in problems of residential segregation, they may manifest the same tendency by focusing upon finding homes in mixed and all-white neighborhoods for prospective Negro homeowners with steady incomes and middle-class backgrounds. Yet, the critical problem in minority group housing is equal opportunity in rental housing for lower class Negroes with small incomes, large families, and poor housekeeping habits. Tackling these problems may be deferred indefinitely.

Risk avoidance is, at least in the initial stages of a program, likely to play a particularly important role. The definition of controversy, moreover, is likely to grow to embrace any situation which might possibly antagonize any interest in the community, including activity such as vindication of legal rights, which are by definition a legitimate form of controversy. In particular instances, this may mean that a complaint alleging illegal housebreaking by police in a slum neighborhood will not be pressed. Nor may neighborhood lawyers be permitted to participate in or be identified with the defense of a Negro accused of assaulting a white policeman or raping a white woman. Even in less emotionally charged situations the attorney may be asked to drop a case or refer it to another lawyer if it appears to the program's administrators that the client may be found guilty. In such cases only the innocent, as prejudged by the executive staff, may be given representation.

Precipitate involvement in unseemly controversy can also be carefully averted by phasing. In legal service programs this means that only ordinary civil cases — wills and domestic relations — will be handled at first; major criminal offenses will be handled at a much later stage, and representation in disputes with municipal agencies will, predictably, be postponed to the last phase of the program.

Such a policy of phasing and risk avoidance is, of course, understandable. Yet it is at least arguable that a program should be pursued most resolutely and definitively at the beginning because it then has an enormous reserve of good will which tends to evaporate after the first flurry of news releases heralding it as a panacea. In addition, the initial projects can set the tone for the entire program, gaining at one stroke the confidence and good faith of those whom it purports to serve.

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17. See, N.Y. Times, May 24, 1964, p. 1, col. 1.

All of the above tactical guidelines are interrelated and to a certain extent overlapping. In particular, all six partake of and perhaps derive from the first and overriding principle — that every particular decision be reached after assessing all surrounding and competing considerations. In sum, the decision as to whether or not any single demand or criticism is heeded will depend upon a two step analysis. First, there will be a reckoning of the institutional costs of granting assistance, such as inconvenience, internal friction, political danger, expenditure of staff, alienation of allies, and estrangement of potential allies. Then the individual's plight and ability to mobilize community criticism will be reckoned and weighed against the potentially vast institutional repercussions which might flow from rendering the assistance requested. And so, "enterprises of great pith and moment . . . lose the name of action."

## II. THE CIVILIAN PERSPECTIVE

We have attempted thus far to delineate the principal features of what we have termed the strictly military approach to the war on poverty:

A war — fought by professionals on behalf of the civilian population;

An offensive — launched by the establishment of multiple donor-donee relationships;

Mobilization — achieved by the creation of monopoly power;

Strategy — mapped out by the military to minimize casualties to the military.

This may be an over-schematized model. And the experiences on which it is based may not be fully representative of even the pilot projects from which they are drawn. Future efforts, including those of CPI, may vary significantly from the characteristics we have set forth, for the pattern is hardly foreordained. Our point is that, in so far as the war effort conforms to these fundamental characteristics, certain deficiencies and certain limitations will tend to result. And these deficiencies may vitally affect the chances for a meaningful victory. It is our contention that the war on poverty need not and should not conform solely to these characteristics. If this is to be so, it will require that what Madison termed the "censorial power" be vested in the people over the military. This means that the ultimate power to govern must not only reside with the governed, but that such power must be susceptible of continuous and effective, rather than nominal and sporadic, exercise. It must include both the power to give and to withhold assent. The ultimate test, then, of whether the war on poverty has incorporated the "civilian perspective" is whether or not the citizenry have been given the effective power to criticize, to dissent, and where need be, to compel responsiveness.

On a verbal level, there is considerable agreement that programs aimed at slum communities must be responsive to residents' concerns and must enlist their participation. Yet such agreement is meaningless unless it can be effectuated. It is our experience that this goal calls for more than pious exhortations that officials be responsive to the desires of the people and more than provid-

ing forums of discussion where the citizen can express his views. It requires nothing less than vesting in the citizenry the means and the effective power wherewith to criticize, to shape, and even to challenge the actions or proposed actions of officials. Rarely can this be done by consultation in advance, by meetings of citizens' groups, or by formal presentation of program plans. For criticism and dissent, insights and needs arise in the context of specific situations and specific grievances. And it is here, in the midst of battle that the military are least prone to suspend operations and consult the wishes of the civilian populace. This is not a criticism of the substantive provisions of any of the programs launched. Rather, it is a concern with the need to alter the basic processes of decision-making which are presently built into the structure of such operations.

There are at least two compelling reasons for fostering and, where appropriate, subsidizing institutions and vehicles of dissent in slum communities. First, free expression by the slum community is a concomitant of our faith in the dignity and worth of its individual members. The denial of effective censorial power to the poor regarding the most fundamental conditions of their existence — their needs and aspirations — is a denial of their own worth and a confirmation of their impotency and subserviency. And it will be so perceived by them. In this context, protest must be viewed as a first step toward full citizenship for an electorate which before has spoken largely in the language of alienation — of crime, delinquency, and dependency — but which now seeks other more positive forms of expression and involvement. Second, protest and criticism can be viewed as a form of dissent which should be promoted for the corrective insights and wisdom it may offer. Comprehensive action programs, devised by professionals and accepted by the dominant social, political, educational, and economic institutions are simply a majority consensus on how to solve certain social problems. To date the silence of the poor has deprived us of a major relevant source of information and insight. We have paid for the lack of this information in other social experiments — public housing, urban renewal, welfare programs — in large part because we have not taken steps to assure that the censorial power was effectively vested in the people who were the subjects of such experiments. Token approval, acquiescence, and resignation have been eagerly equated with meaningful citizen participation. In doing so, we, as a society, have deprived ourselves of the only form of validation yet devised for a majority consensus — critical scrutiny and dissent by those with a different perspective. The need to avail ourselves of the views of the poor and to promote and subsidize the articulation of their felt needs<sup>18</sup> and grievances becomes all the more critical in the context of comprehensive planning and monopoly power, where the commitment of resources is greater, the sources of dissent more readily silenced, and the scope of potential error increased many fold.

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18. By the phrase "felt needs" we wish only to indicate the distinction between needs as subjectively experienced by members of a slum community and needs as analyzed and diagnosed by educators, social workers, psychologists, etc.

Thus, the civilian perspective requires that the promotion of neighborhood dissent and criticism be an avowed goal of the war on poverty, that its organizational structure make provision for the establishment of groups and institutions with the independence, power, and express purpose of articulating grievances, that the natural incentives to absorb, stifle, or undermine dissenters be countered with the creation of incentives to nurture, promote, and heed criticism, and that the elimination of poverty be understood as comprehending spiritual as well as physical subsistence and as involving the assurance of civic as well as economic self-sufficiency.

No prediction can be safely ventured about the forms which the civilian perspective should or must take, for that will necessarily depend on the context within which it operates and the problems upon which it focuses. However, within the context of a specific program such as CPI, it is possible to suggest tentatively the kinds of relationships and organizations called for by the civilian perspective. Here, the civilian perspective emerges as a set of directives which correspond roughly to each of the three characteristics of the program set forth above. First, the donor-donee relationship as a conduit of benefits and services must be altered so that the beneficiary perceives such benefits as deserved and no longer regards himself at the mercy of the donor's largesse. Relationships characterized by mutuality of obligation and by rights vested in the donee might provide the formal framework,<sup>19</sup> but these changes must be accompanied by an operational emphasis on the dignity of the individual recipient. Second, a monopoly of the processes that shape social change should, at least, be subjected to a comparable countervailing power and preferably to the free play of multiple competitive forces. And finally, a numbing contemplation of the infinite ramifications and costs which attend even the minutest change must give way to a coruscating sense of felt need, impatience and indeed, lack of perspective.

Part III of this article sets forth a proposal for one kind of organization which might fulfill the objectives in some measure, which could function side by side with a comprehensive program as an institutionalized advocate of dissent and grievance, and which would have both a commitment to championing the civilian perspective and the requisite resources, expertise, and independence of decision to operate as an effective countervailing power to the military command. Yet, this proposal, which was evolved in response to the authors' experience with CPI, clearly has its limitations and is not presented as a panacea. A variety of means to implement the civilian perspective will be necessary, and hopefully an awareness of the deficiencies of a purely military approach will spark other proposals.<sup>20</sup>

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19. See Reich, *The New Property*, 73 YALE L.J. 733 (1964); Jones, *The Rule of Law and the Welfare State*, 58 COLUM. L. REV. 143 (1958).

20. Thus, for instance, the institution of Ombudzman, an impartial investigator and arbiter of grievances which are not judicially cognizable, has been successfully tried out in Denmark and Sweden and has great potential as a means of effectuating the civilian perspective. Similarly, a myriad of other relevant activities, attempts, and proposals

Yet whatever form the endeavor takes and whatever the context to which it responds, it has, as a matter of definition, one necessary characteristic — that it voice the concerns of individuals in their capacity as citizens. And this characteristic alone poses problems and paradoxes with which any attempt to implement the civilian perspective must reckon.

Our form of government vests final authority in the governed and assumes, perforce, that they are capable of exercising that authority intelligently and responsibly. Yet the duties of citizenship have become too complex and demanding for them to be discharged adequately by persons lacking in skills, resources, and knowledge. This is particularly true where the exercise of citizenship requires formulating demands or criticizing highly technical and complex administrative bodies or assessing alternative proposals put forth by such agencies. These tasks are often too complex or burdensome for the citizen with a high school education, a job, and a relatively satisfactory standard of living. Thus, when we speak of implementing the civilian perspective in segments of society which are without resources, skills, education, organization, and other forms of leverage we are speaking of persons who lack the critical means necessary to implement the civilian perspective and to participate effectively in the democratic process. And so, the underlying problem becomes how, with any fidelity, to reproduce and amplify the voices of protest and grievance that in a society as complex as ours will otherwise remain mute.

One answer — but it is only a partial answer — is to create within those segments of the populace a supply of persons (often referred to as “indigenous leaders”) who are capable of articulating the demands and concerns of their “constituency.” Yet leadership for any constituency including that of the poor requires professionalization because the duties of citizenship have become so complex. Thus, the very process of developing leadership involves imparting skills, motivations, attitudes, and power which will operate to differentiate and distance the “indigenous leader” from the poor. Indigenous leadership must not only be created; it must be kept faithful. Yet the paradox must be accepted that leadership necessarily enters into the ranks of the military to some degree, and tends to acquire its own bureaucratic approach, its own needs, and its own desire to secure dominance over other leaders and other sources of dissent. This does not mean that indigenous leadership should not be developed — though it does suggest that it must be widely dispersed.

Creating indigenous leadership as an approach to implementing the civilian perspective should be recognized as offering only one means — a selective and

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offer different and significant possibilities for insuring that the comprehensive community action program does not maintain a monopoly on the processes of social change. Rent strikes, picketing, demonstrations, and sit-ins are among the most current means. Proposals for and experiments with gang workers, neighborhood workers, domestic peace corps, neighborhood credit unions, worker priests, clean block campaigns, block clubs, voter registration drives, cooperative consumer enterprises in food and housing, and neighborhood associations all might be considered.



restrictive means — of ensuring that the needs, concerns, and grievances of the citizenry will be adequately represented. Knowledge of the most fundamental evils that beset the poor may remain inaccessible to all leadership since these grievances are often caused by those myriad indignities undergone by those who are not shielded by leadership status. And here we encounter the problem of implementing the civilian perspective in still greater multiplicity with less potential for articulateness, less skills, resources, self-awareness and self-assurance. Yet such insights are not the less meaningful because the product of callousness, indifference, connivance, exploitation and manipulation practiced on a far more trivial and more pervasive scale. These are the final bastions of poverty — and here the civilian perspective requires implementation at a far more petty, but in some sense, more profound level. For here we are amplifying not the voices of dissent but the voices of silence; here we are trying to fashion sounds and words out of gestures of despair and postures of surrender. At stake is the practicability of democracy. The solution must be found in means which will effectively enfranchise the silent poor, which will vest them with true censorial power.

It was to one aspect of the disenfranchisement of the urban poor that the Supreme Court addressed itself in the malapportionment cases. Yet the process of enfranchisement must not cease with the composition of the legislature; it must take place in all the organs of government — both public and private — where law is made. For law 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."<sup>21</sup>

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 law-making bodies is possible only if the citizens themselves are enfranchised and given effective representation in the processes which determine modes of official behavior.

Part III sets forth a proposal for a neighborhood law firm as one means of providing such representation and thereby implementing the civilian perspective.<sup>22</sup> In the final analysis the worth of the following proposal will de-

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21. LLEWELYN, *THE BRAMBLE BUSH* 13 (1951).

22. 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.

pend 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.

### III. IMPLEMENTING THE CIVILIAN PERSPECTIVE — A PROPOSAL FOR A NEIGHBORHOOD LAW FIRM

If the foregoing analysis is correct, it suggests that there is a need for supplying impoverished communities the means with which to represent the felt needs of its members. 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 leadership amongst the community’s present inhabitants. Such an institution would include a staff of lawyers, research assistants, and investigators who would represent persons and interests in the community with an eye toward 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-demeaning 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 out-reaching 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 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.<sup>23</sup> A lawyer need not be apologetic for being partisan, for identifying.<sup>24</sup> 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<sup>25</sup> 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.

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23. 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.

24. 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.

25. See, e.g., Silberman, *Up From Apathy — The Woodlawn Experiment*, Commentary, May, 1964, p. 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. *Ibid.*

quate, 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 the assumption that the problems which beset the poor are not "legal" is frequently based on an artificially 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.<sup>26</sup>

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.<sup>27</sup> Effective legal representation for the indigent accused of

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26. 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.

27. 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 is both symbolic and symptomatic of his larger helplessness.

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.

a crime is but one part of this need; of equal importance for the poor are the assertion of rights in areas of the law involving landlord and tenant, install-

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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 a 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 a repossessed 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.

ment 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"<sup>28</sup> 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 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

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28. 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.

form of an association of tenants,<sup>29</sup> 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.

The potential of such forms of representation was strikingly borne out in one of the authors' experiences as neighborhood attorney for a group of

29. The need for attorneys in organizing such groups and pressing their demands is graphically illustrated in the following excerpts from Miller 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 that genuine conflicts of interest exist, reflects the general ideological dilemma facing American administrative liberalism today. In the course of the national struggle between welfare statism and free enterprise, the officials 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 proportional 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 state takes a clear second place to the American conception of freedom as successful competition.

*Id.* at 287-88.

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.<sup>30</sup> 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."<sup>31</sup> 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.

*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;<sup>32</sup> 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

30. 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.

31. N.Y. Times, Dec. 31, 1963, p. 32, col. 1.

32. See, e.g., Goldstein, *Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice*, 69 YALE L.J. 543 (1960).



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.<sup>33</sup> 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 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.<sup>34</sup> 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 fam-

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33. 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.

34. See, e.g., Note, *Charity Versus Social Insurance in Unemployment Compensation Laws*, 73 YALE L.J. 357 (1963); Reich, *The New Property*, 73 YALE L.J. 733 (1964).

ilies' income rises above a specified amount.<sup>35</sup> 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 retraining 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 retraining 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.<sup>36</sup> But until proposals for the use of unexercised powers

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35. See "Welfare Ruling to Haunt Wake of Father of 11," *Washington Post*, Nov. 14, 1963, p. 1, col. 1.

36. 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 normally attend cooperative housing projects. And the

are made by skilled advocates who know the desires and needs of the neighborhood and who can devise possible ways of implementing them, there is little likelihood that such possibilities will even be explored by officials.

Among the means at a lawyer's disposal is 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 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.<sup>37</sup> 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 argued that many of the midnight raids and inspections now carried on are violative of the fourth amendment.<sup>38</sup> 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 offences) 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 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.

37. See Washington Post, May 29, 1964, p. 1, col. 7.

"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 p. 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, p. B8, col. 5.

38. Reich, *supra* note 14.

constitute a form of bill of attainder?<sup>39</sup> Does labor required of persons imprisoned while awaiting trial because they are unable to put up bail 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 exhortation 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

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39. See Comment, *The Bounds of Legislative Specification, A Suggested Approach to the Bill of Attainder Clause*, 72 YALE L.J. 330 (1962).

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 sought 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 singles 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 injured. 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<sup>40</sup> — 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.<sup>41</sup> 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 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 con-

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40. For a useful analytic framework setting forth the various components of decision-making, see McDougal, *The Comparative Study of Law For Policy Purposes: Value Clarification as an Instrument of Democratic World Order*, 61 *YALE L.J.* 915, 943-45 (1952).

41. 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.

siderations 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'être*.

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.<sup>42</sup>

f. If service to the particular client would also serve the needs of other individuals including the client's family.

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42. 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).

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 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.<sup>43</sup>

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

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43. 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.



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 in taking one client ought not to assume some obligation to assure that the opposing factions have access to representation.

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 from 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.<sup>44</sup> The recent case of *Brotherhood of Railroad*

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44. 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.

*Trainmen v. Virginia ex rel. Virginia State Bar*<sup>45</sup> portends a major 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,<sup>46</sup> 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 law 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.<sup>47</sup> The intern could presumably be of assistance at all

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45. 84 Sup. Ct. 1113 (1964).

46. 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.

47. 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).

d. Periodic review of over-all work record.

e. Case assignment reports including summary of work, daily time sheet, and expense voucher.

stages of trial 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.<sup>48</sup>

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.<sup>49</sup> 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)<sup>50</sup> 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 professionals for assistance where needed.<sup>51</sup> Supplemented by academic work designed to increase self-awareness and comprehension of

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.

48. 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 causes 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 foci of discussion will be necessary to work out an outline, a list of required and optional readings and a list of guest participants.

49. 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.

50. 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.

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

larger community problems,<sup>52</sup> 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.

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52. 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.