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Charles Grosser
New York University

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Erratum

On page 152, line 19 which read: publically Should have read: publicly.

COMMENTARY

THE NEED FOR A NEIGHBORHOOD LEGAL SERVICE AND THE NEW YORK EXPERIENCE*

CHARLES GROSSER**

S CANT recognition has been given to the fact that the provision of services to citizens, when it is stipulated by specific legislation, is a matter of right, not a "charity." When these services are not provided as stipulated, the service agency has abrogated the rights of the client and is guilty of subverting the intent of the law, if not of violating the letter. Redressing grievances of this kind cannot be a matter of noblesse on the part of the public agency. Yet neither law nor social work, the professions most directly concerned, has devoted itself to dealing with this issue. The rights of clients to public services as a matter of inherent social justice, although articulated by some social-policy planners,¹ have been observed more in the breach than in the reality.

The Legal Services Unit of Mobilization for Youth was proposed as an attempt to meet some of these needs. With the opening of the action phase of the Mobilization for Youth program, it soon became apparent that the legal problems of residents of New York City's Lower East Side were of great magnitude and that successful operation of the program required the development of some stratagem for dealing with these problems. It was decided therefore, to incorporate legal services as part of the demonstration design and to develop techniques for making full use of the existing legal resources in the community. The VERA Foundation² was therefore asked to study our program for several months and to submit a proposal for a legal-services unit.

The final proposal, prepared by VERA and amended by Mobilization's Board of Directors, was discussed in detail with representatives of the Legal

* This article was prepared for presentation at the Conference on the Extension of Legal Services to the Poor, Washington, D.C., November 12, 1964. Another paper delivered at the same conference bearing directly on the same subject is: Spangenberg, *Legal Services for the Poor—the Boston University Roxbury Defender Project*, 49 Mass. L.Q. 319 (1964), 17 J. Legal Ed. 311 (1965). See also Paulsen, *The Expanding Horizons of Legal Services*, 67 W. Va. L. Rev. 179 (1965); *The Availability of Counsel and Group Legal Services: A Symposium*, 12 U.C.L.A.L. Rev. 279 (1965); Sparer, *The New Legal Aid as an Instrument of Social Change*, 1965 Ill. L.F. 57. [Ed.]

** Associate Professor, New York University, Graduate School of Social Work. Former Assistant Executive Director, Mobilization for Youth.

1. Itzin, *The Right to Life, Subsistence, and the Social Services*, 3 Social Work 4 (October 1958).

2. The VERA Foundation, a non-profit, public service organization has spearheaded reforms in bail procedures and other aspects of the law as it affects the indigent. Its major success, the Manhattan Bail Project, wherein pre-trial release on the accused's own recognizance has been substituted for bail, has been copied throughout the country with much the same success. VERA felt that the traditional measure of a person's willingness to appear for trial—the ability to post bail—was an invalid measure and as such discriminated against persons lacking usually not only money for bail but most times unable even to raise the bail bondsman's fee. Other criteria more germane to the issue of whether or not the defendant would appear were substituted, *viz.*, the person's marital status, employment, length of time in the community, in short, the stability of the defendant. [Ed.]

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Aid Society, administrative judges, the district attorney's office and the Bar Association, so as to avoid conflicts of jurisdiction with existing legal entities. The proposal was then submitted to a committee of the Board comprised of those members who were trained in the law. Although it had been thought that the unit might be sponsored entirely by Mobilization for Youth or contracted to the VERA Foundation, the committee urged that a law school be sought out to undertake sponsorship, both to absolve Mobilization from responsibility in an area in which it had no explicit mandate and to provide the unit with a mantle of respectability of the highest order. Since the law school of Columbia University, the academic sponsor of Mobilization, was prohibited by administrative restrictions from sponsoring service projects, a group of faculty, acting unofficially, agreed to constitute themselves an advisory committee. Two faculty members of the New York University Law School joined the committee at the invitation of their Columbia colleagues.

It was agreed that the committee would advise the unit regarding policy matters of law and that the Board of Directors would set the overall framework within which the unit would function. No thought was given at this point as to the possible substantive consequences of the engagement of the faculty committee in charting the course of the unit, though, as we shall indicate it turned out to have a strong influence on its ultimate character.

Subsequent to the formation of the advisory committee, the Legal Unit received permission from the courts under section 280 of the New York Penal Law to provide legal services to those unable to afford them. This section of the law, designed to prevent interference in the lawyer-client relationship, has the unintended consequence of inhibiting the practice of poor man's law.

The final proposal sought to establish a staff of four attorneys, augmented by volunteers, law students, and the personnel of Mobilization for Youth, and specified the major activities of the unit, as follows:

1. Provision of referral and preventive legal services;
2. Legal orientation of lay community leaders, professional staff, and clients; and
3. Use of the law as an instrument of social change.

The major area of concern, specified by the legal staff after consultation with general program staff of the project, is the poor man's rights vis-à-vis such public services as welfare and housing. The unit has also concerned itself with certain aspects of criminal law (particularly pre-trial representation of youth), with consumers' problems, and with the development of meaningful cooperation between lawyers and social workers.

When referral to appropriate private agencies, particularly the Legal Aid Society, or to such public agencies as the Consumers' Fraud Bureau is called for, the Legal Unit endeavors, through comprehensive preparation, to facilitate the speedy disposition of the cases and demonstrate efficacious use of existing resources.

In cases for which existent legal programs do not provide resources or when the project finds that certain law or administrative procedures cause pervasive problems among indigent clients, the Unit undertakes direct representation.³ The legal staff has been particularly interested in providing, through the services of lawyers, for the distribution of the resources of certain public agencies as a matter of right vested in law rather than as the largesse of the conferring official or agency.

It is hoped that the legal orientation of project staff, community leaders, and residents will diffuse throughout the community sufficient legal knowledge and sophistication to enable the residents to seek legal redress when appropriate. The use of the law for social change through advocacy and representation evolved as a major emphasis of the unit and was the one which would do most to familiarize local residents with the fact that the law could be their champion as well as their enemy.

The Legal Service Unit is currently staffed by six attorneys, and is physically located in a converted brownstone in the heart of the Lower East Side tenement district. However, the intensity and scope of its activities are greater than the size of its staff suggests. Legal services are actually made available by some 400 staff members of Mobilization, including social workers and indigenous family aides working in storefront service centers, street workers assigned to antisocial gangs, crew chiefs and vocational-guidance counselors training unemployed school dropouts, community organizers attempting to bring residents together in self-help efforts, recreation leaders and group workers in mass youth organizations, teachers and guidance counselors attempting to reduce problems of school-community relations, and clergymen, social workers, and community leaders in local agencies and institutions providing services as part of Mobilization for Youth's contract program.

The cases referred by these workers reflect, to an extraordinary degree, the basic needs of impoverished slum residents. However, by the nature of the program, the various political, housing, educational, and other grievances of the urban poor are filtered through a battery of service personnel in the process of determining their amenability to legal intervention. This process somewhat distorts the nature and limits the scope of the grievances. It is our hope that workers' awareness of the distortion, their commitment to serving the needs of the indigent community and the rooting of the program in the local neighborhood at least partially compensate for this limitation.⁴

3. The New York State Welfare Abuses Law is a case in point. The application of this law produced problems for so-called non-residents at a rate which precluded the intervention of social workers on a one-to-one basis. The legal unit therefore undertook to solve the problem for all clients in this category, and has in fact done so. This was accomplished by successfully taking a case through a Fair Hearing procedure conducted by the New York State Department of Welfare.

4. Until October 1965 the Legal Services Unit was located within the administrative offices of Mobilization for Youth. Now that it has its own quarters on the street there has already been a large increase in the number of direct referrals.

The institutionalization of service through complex social organizations is unavoidable. Despite the canons of the bar sanctifying the particularistic relationship between attorney and client⁵ the plain fact is that the services of counsel are rarely made available except through the offices of some intervening social organization—unless, of course, the client is a rich man. The poor man has no direct access to a lawyer, nor have any practical suggestions been advanced by which direct access without an intervening agent may be realized. We, therefore, attempt to create a new entity or utilize an existing one that is sufficiently congenial and dedicated to provide a level of service which will effect “the translation of an ethic of benevolence into a statutorily affirmed constitutionally guaranteed legal right.”⁶ This search for new instruments to meet the needs of the urban poor pervades the present thinking of most service fields. Social work and medicine, in particular have been grappling with this problem, having realized that in the main, they either fail to serve or underserve the poor. Some of the consequences of the development of large scale organizations are increased formality, red tape, the delaying of gratification, centralization, waiting lists, highly explicit eligibility requirements and rigorous means tests, and an impersonal atmosphere which produces a loss of individuality. Service organizations, public and private, share to one degree or another these attributes. These consequences, difficult as they may be for the articulate, knowledgeable, middle class person are of sufficient magnitude for lower class folk as to keep them from contact with such organizations. Differential distribution of community resources resulting from this alienation which low income persons experience is reflected in many studies documenting the disproportionate representation of lower class minority persons in various service programs.

In his history of the New York Legal Aid Society, Harrison Tweed, a former president of the society, states

No appraisal of the services of the society can ignore the fact that the number of applicants for help on the civil side has not increased over the last forty years, during which there has been such a vast increase in the population of Greater New York.⁷

Mr. Tweed suggests that this is a result of a lessening of legal needs of the poor caused by a decrease in immigration, the existence of claims procedures which do not require a lawyer to be present, the increase in the provision of direct and indirect legal services by unions and political clubs, the improvement of business practices, and the redistribution of income. The argument can be made, however, that the legal needs of the poor have not decreased, but that alienation and self-selection, identical with those experienced by other professional institutions, are the cause of the phenomenon.

The existence of unmet needs, or a number of unserved eligible recipients

5. One might also cite in this regard the Hippocratic admonitions to the medical practitioner, or the code of ethics prescribing the conduct of social workers.

6. Smith, *The Right to Life* 60 (1955).

7. Tweed, *The Legal Aid Society in New York City, 1876-1951*, at 96 (1953).

is a mandate to seek new organizational forms by which to provide service. Reaching out in the local community, located in informal congenial settings, (storefronts, apartments), making services readily available to all, and avoiding prejudgments as to appropriateness of service requested are ways in which the neighborhood idea can overcome the inadvertent selectivity of the large central service organization.

Too often, we seek our solutions in the talents and dedication of outstanding individuals. But the image of the individual entrepreneur, the symbol of an earlier day, is no longer realistic. The majority of practicing professionals work directly for large formal organizations, and most of those who do not are so dependent on such large organizations as to make the distinction academic. We know that location within such bureaucratic entities profoundly affects behavior in many ways. The organization determines who shall be served (and, therefore, who shall not be served) and how service shall be given (even to the technical strategies of intervention). In addition, it explicitly prescribes the routes by which the professional rises within the organization's hierarchy and institutes a system of rewards and sanctions. All this is done in the interest of orderliness and organizational stability. The result, it has been suggested, is that professionals have become sensitive to a set of pressures which are distinct and apart from the needs of the client. It has been suggested too that they have become cautious, conservative, and conforming.⁸

But such is the context within which we practice our skills—not that of a Paul Muni in dangling suspenders, or George C. Scott, with shirt open and tie askew. We are not suggesting that we simply resign ourselves to our lot. Recognizing the inevitability of filtering the legal needs of the poor through a modern bureaucracy is the first step in dealing with the problems thus created.

Important precedents have been set by recent United States Supreme Court decisions upholding the right of a collectivity to hire counsel to represent individuals.⁹ These decisions remove legal restrictions on the creation of instrumentalities to provide for the legal needs of the poor.¹⁰ Our efforts in the past, based on the puny resources of the individual or the magnanimity of the enlightened community, could be only residual and rehabilitative. Now our horizons may be broadened to consider permanent solutions, not necessarily by the elimination of the problem, but by the establishment of social machinery which will continuously and dispassionately deal with it. Our task, then, is to recognize the potential function of organizational strategies in facilitating the good life so that we may master their intricacies and turn them to our purpose.

The Legal Services Unit of Mobilization for Youth was an attempt to do just this. It is not our contention that the approach of this unit is the only

8. Cf. Merton, *Social Theory and Social Structure*, ch. VII (1956).

9. *Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1 (1964); *NAACP v. Button*, 371 U.S. 415 (1963).

10. Much as we have provided for such needs as those associated with disability, old age, unemployment, etc.

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and best way of dealing with the issue. There are, in fact, many viable alternatives.¹¹ The unit, however, reflects the uniqueness of the program of Mobilization, its setting, and the many distinctive forces with which it must deal. One such force is the Board of Directors of Mobilization for Youth, which was made up of representatives of the neighborhood, social agencies, the City of New York, and Columbia University. This Board was a microcosm of the total community, representing a variety of interests with overlapping membership, differing sources of influence, and a multiplicity of strategies and tactics which come together and separate from issue to issue.¹² Among the members of the Board with particular interest in legal matters, were members of the judiciary, the commissioners of the major city departments, a former officer of the existing legal aid organization, social agency executives and practicing attorneys. The various private special-interest groups, best exemplified by the real-estate associations, and the clients themselves, the residents of the Lower East Side, constitute two additional forces relevant to the provision of legal services to the Mobilization for Youth target population. The former are apparent for the aggressive volubility with which they press their interests, the latter because in the main they are without voice.

As Philip Selznick has said:

[A]ll formal organizations are molded by forces tangential to their rationally ordered structures and stated goals. . . . Moreover, the organization is embedded in an institutional matrix and is therefore subject to pressures upon it from its environment to which some general adjustment must be made. As a result the organization may be viewed as an adaptive social structure.¹³

The Mobilization for Youth Legal Services Unit, no less than any other formal organization, had to cope with these forces. Surely the limits of rationality must be strained by the image of a project funded heavily by the city, undertaking the task of representing the legal needs of the poor under a hypothesis which makes the city itself the likely object of such legal activity. It would seem that such a dilemma could be resolved only by betraying the interests of the client or by becoming totally alienated from the city; yet such is not the case.

The mechanics by which this phenomenon was achieved have an infinite number of combinations. In one instance, those on the Board who urge discretion in dealing with the city and predict dire consequences for the organization are complemented by the legal advisory committee, which reminds the Board that once a lawyer has undertaken to represent a client (under policy set by

11. *E.g.*, the Ohmbudsman system developed in the Scandinavian countries, the Citizens' Advice Bureaux and governmental-subsidy plan of Great Britain. The approaches being demonstrated in the projects of the President's Committee on Delinquency throughout the country have already added to the 80 odd years of experience amassed by the Legal Aid Society.

12. *Cf.* Polsby, *Community Power and Political Theory* (1963).

13. Selznick, *T.V.A. and the Grass Roots* 250 (1949).

the Board) the ethics of his profession permit nothing to interfere with the diligent pursuit of his client's interest. The committee may further point out that permission to practice law granted by the court to the legal unit was predicated on this diligence. When in turn the advisory committee expresses a preference for research and documentation, rather than representation, and voices its pessimism over the precedent-setting ability of test cases, lawyers and social workers pressed by the daily demands of a service-based program point out that the efficacy of the neighborhood-law concept will not be tested if these demands are ignored. On the other hand, the social workers' plea that all needs be met, brings forth the rejoinder from the lawyers that resources are finite and that the general notion must be tested on the basis of a selected caseload. It is further argued that such caseload must not duplicate services offered elsewhere and must be such that the advocacy of counsel will be particularly potent. Finally, at the same time that groups of landlords pressure funding sources to interfere with the organization because of its actions regarding rent withholding or reduction, 13,500 residents of the Lower East Side sign a petition and 750 professionals and friends in the city take an ad in support of the project. It was stratagems such as these that facilitated, under social work and legal professional guidance, a publically funded social agency's ability to institute a program of genuine legal representation for the poor.

Institutional sponsorship, entailing the use of public funds, is the *sine qua non* of strategies for dealing with the legal (and other) problems of the poor. At the same time, because of the heavy involvement of the poor in the welfare establishment, the public agency frequently becomes the target of the intervention. When these strategies involve advocacy, as in the law (and even when they involve conciliation, as in social work), we are faced with the accusation of biting the hand that feeds us. Understandably (the admonition, "it's good to be sued," made by Elizabeth Wickenden to the 1964 Eastern Meeting of the American Public Welfare Association, notwithstanding) the targets of legal action see themselves as combatants rather than as allies. That this will continue to produce stress is clear.

The experience of the Legal Services Unit is a part of the total experience of the Mobilization for Youth project. Its active pursuit of the interests of the poor have paralleled those in education, employment, social services, and community development. All these efforts will be futile if we are unsuccessful in identifying the social causes of human failure or, once having identified them, in developing effective strategies for eliminating them. Failure can also take place if the society, unready or unable to incorporate what we have learned, offers no more than token services.