Lawyers

A CRITICAL READER

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Chapter Eighteen

REPRESENTING THE POOR

Legal aid programs emerged in the United States as efforts by municipalities and philanthropies to assist recent immigrants in the late nineteenth century. They remained small, and timid, until Lyndon Johnson’s War on Poverty involved the federal government in 1965, expanding national expenditure from less than $5 million to more than $300 million at the end of the Carter Administration. The following excerpt describes the experience of being a legal services lawyer; elsewhere the book contrasts that with legal aid before 1965.

POOR PEOPLE’S LAWYERS IN TRANSITION

Jack Katz

POOR PEOPLE’S CONFLICTS AND LAWYERS’ WORK PROBLEMS

Confinement to Proximate Social Environment

The setting for civil legal work for the poor contrasts dramatically with the setting in which lawyers work for wealthy corporate and individual clients. Whatever their own inclinations and abilities, lawyers for wealthy clients are expected, assisted, and at times formally directed to treat their work as significant. This expectational environment has its fundamental source not in client preferences but in the social networks that attend wealth and other sources of power. Conversely, lawyers for the poor, regardless of their competence and values, confront an everyday environment that treats their work as routine by assuming, suggesting, and at times demanding that it ought to be regarded as insignificant. Lawyers for large corporations, unions, and government agencies represent representatives. The lawyer’s actions will signify broadly; they will ramify in implications throughout the social relations that create their clients’ social status. More important, so will the lawyer’s inaction. In some of the most remunerative civil legal practices, it is unusually easy to treat work as unusually difficult. Lawyers for clients with significant interests often create a collegial environment in which each encourages the other to see complexity in the situation at hand. There is typically no elaborate social network attending problems when they are presented to legal assistance lawyers.

The poor seek out lawyers for assistance with personal troubles that are often in or near a crisis state: having been denied public aid, having received an eviction notice, having had utilities shut off, having had a violent domestic argument. Often the situation is within or at the edge of litigation, the client with court papers or “final” dunning letters in hand. This context of personal conflict initially gives the work of the legal assistance lawyer a very local setting. Poor clients may insist their problems are of unsurpassed importance, and their lawyers may agree; but the latter will not be urged to that opinion by adverse parties and opposing counsel. Adversaries are not likely to treat conflicts with the poor as worth much investment. Courts often follow suit. When legal services lawyers began bringing unprecedented questions of law to state courts, they found judges dominated by local perspectives and geared to summary treatments. Dramatic conflicts sometimes followed. As indicated in the following report by a Chicago Legal Services lawyer of his experience in 1968, the reason for judicial hostility may not be antipathy to the poor so much as an insistence on everyday predictability.

I went into [Judge] Hermes’ court with a motion, not a long one but the longest one he had on his desk, and he rolled it up into a ball and threw it at me. Literally? Yes. A hundred lawyers in the courtroom were laughing. They would decide things without ever reading them. He just wasn’t going to do that kind of work in his court. Later, when I came back down from the Supreme Court with an order, he enforced it without hesitation. That was
the normal order of work he was used to. But on
that motion he said, "If you want this decided, take
it to the Supreme Court."

On what definitions of the lawyer's role do clients
leave the office peacefully? First, they often
accept "eligibility rules" as precluding further ser-
dvice. Prospective clients may be induced to leave
by the citation of rules limiting eligibility by
income or organizational priorities. As examples
of the latter, the Chicago programs in the early
1970s officially refused to perform bankruptcies
for the unemployed and to prosecute uncon-
tested divorces where there were no minor chil-
dren in the family.

Poor people also often accept "hard realities" as
a reason they should not expect to receive elabo-
rate legal assistance. They may be told, "You need
more evidence," "You haven't been damaged
enough," or simply, "It's not fair, but there's no
legal remedy." If the legal assistance lawyer
accepts the client's objective as within the organi-
zation's competence and advises that something
can be done about it, the client will often be con-
tent with the advice that not much need be done.
Poor people are often content to leave legal assis-
tance offices without receiving commitments for
far-reaching or long-lasting service, provided
they obtain an indication that the end of the cur-
rent contact does not end the relationship. Legal
assistance lawyers quickly learn that an effective
way to overcome a client's reluctance to leave is to
announce open-ended conditions for another
contact.

Discontinuities Between Cases

In any contact with a client, a lawyer may have to
negotiate an understanding of what the client
wants, determine what the relevant facts are, and
convey comprehensible advice. For lawyers who
have long-term relations with clients, the accom-
plishment of these tasks on any given occasion is
also an investment in subsequent work. The
requests for help typical at legal assistance offices
center on crises; the urgency implies that the
lawyer-client relation will be short term or one-
shot. Moving from one short-term client to the
next, legal assistance lawyers experience prob-
lems in making work on one problem useful for
the next.

Large organizations and wealthy people often
place their lawyers "in house" or on retainer. In
such relations, the lawyer may provide service
without the client even perceiving a need for it;
for extended periods of work, the lawyer may
avoid the need to negotiate a definition of service
with the client. In contrast, the stream of per-
sonal crises brought to legal assistance offices
makes the task of learning what the client wants
an everyday experience. The following excerpt is
taken from an intake interview conducted by a
lawyer who at the time had two years of experi-
ence in legal assistance. It indicates how idiosyn-
crasies in perception and style of expression limit
the ability to use the experience of one client
interview in the next.

Cl. enters L.'s office with the standard intake card.
It has been filled out by a secretary, and it indicates
that his problem is "social security." His income is a
bit over scale, there's one in his family, and he's 66.
L. at first assumes Cl. has a social security prob-
lem. Cl., realizing that L. is going on a reading of the card, says: "No, I don't care what she
puts down there." L. finds Cl. difficult to under-
stand, as do I. He mumbles and seems to be talking
on irrelevant topics about his family, his first and
second wives, and their relatives. Social security seems
somewhat relevant; he keeps referring to what "the
man at Social Security" told him. L. keeps asking,"What's the problem?" Cl. keeps saying, "I don't
have a problem. I'm here because you white folks
have common sense, and I don't."

Cl. mentions something about being taken for
less than 65 at Social Security. He is 65, he insists,
although his birth certificate shows him to be
younger. L. pursues this, trying to pin down his age
and what was determined about his age at Social
Security. But Cl. frustrates this line of questioning.
He indicates that he's got a job for the next few
months, and then he'll be 65 even according to his
birth certificate.

Cl. also mentions that he got married without
divoring his first wife. His second wife died. The
Social Security guy told him he was a bigamist. He
doesn't want to break the law, and he realizes that
bigamy is illegal. He never has broken the law, and
"I don't want you white folks to throw me in jail." At
first L. brushes this aside as irrelevant but then tries
the idea that divorce is the reason he came in. But
no, he doesn't want a divorce.

Now L. is enjoying this fellow and the struggle to
figure out why he came in. He asks a series of ques-
tions on family history and status. At least that's a
line of questions he can pursue in an orderly fash-
ion, and it seems somehow relevant. At various
point, L., concerned that he’s misinterpreting C’s
reads back his interpretation of C’s statements:
“OK, now look, you’re married now, you’ve got two
kids, you never were divorced from the first mar-
rriage.... Right?”
Finally L. figures that when C. went to Social
Security, someone jokingly told him he was a
bigamist. C., afraid of being a “criminal,” came in to
see if he needed a divorce to avoid jail. L. reads this
back. C. nods “yes.” L. tells him there’s nothing to
fear, that he should return if he wants to remarry but
otherwise “there’s no problem.” As C. is leaving, L.,
thinking of claims that the first wife might make
against him, asks if he has any property. C.: “Just
the clothes on my back. Thank you, white folks.”

Discontinuities Within Cases
Pressed by expectations to remain within a local
social environment, hemmed in by difficulties in
making efforts on one case relevant to the next,
legal assistance lawyers run into still tighter
restrictions on their work: extraordinary risks
that investments made in the initial or prepara-
tory stages of cases will never be realized. Short-
term relations preclude supervision of how
clients use advice beyond the office doors. I inter-
viewed L. after he completed his first month in a
neighborhood office.

I feel a tremendous pressure to do something that’ll
be of value for people who come in. I feel I’m not
doing my job if I just tell them that there’s nothing
to do. Maybe they’ve been waiting for weeks for an
appointment, or an hour in the waiting room;
their’s been some money to get here, or they’re tak-
ing the time off work and losing money that way. So
I do a lot of social work... But then if I don’t make a
case out of it, when they leave the office I don’t know
how their lives are going to be affected. I don’t even
know if they understood me. You know, sometimes
I’ll be going on, telling them where to go and what
to do to handle something on their own, and then
when they’re smiling, about to leave, I’ll ask them
something and it’s clear they never knew what I was
talking about. And— I thought of this for a while—I
guess it’s not my place to call them up and find out
what happened. That’s too paternalistic.

Legal assistance lawyers believe that their clien-
tele contains a sizable percentage of “crazies.”
Whether or not they are crazy before coming to
legal assistance offices, poor people often appear
crazy when they leave before the lawyer is able to
grasp their perspective; and given the pattern of
short-term relations with unscreened clients, this
is a frequent event. For the lawyer, the upshot is a
sense—sometimes bitter, sometimes absurd—of
wasted effort. The lawyer may render his experi-
cence of incomprehensibility and absurdity com-
prehensible and rational by imputing craziness to
clients. As the effort to identify client objectives
may be rendered futile by “crazy” clients, so the
effort to establish facts may be undercut by
“clients who lie.” Several lies are said to be typi-
cal: a husband’s insistence that he cannot pay
support because he is unemployed; the claim by a
defendant in an auto accident damage suit that
his car was stolen on the fateful day and later
returned, all mysteriously; a tenant’s claim that
he did not receive the notice required by statute
to initiate an eviction.

Whether or not poor people do lie to lawyers
with unusual frequency, the legal assistance
lawyer is in a relatively impotent position for pro-
tecting himself against client deceit. In contrast
to “clean” law practices, which arrange the use of
organizational property or power on the basis of
documentary evidence, legal assistance lawyers
primarily handle “dirty” work. They can be sud-
denly and visibly stained by an unexpected
appearance of client immorality.

Becoming a Poverty Lawyer

Making Cases Significant
Legal assistance lawyers have attempted to make
their work significant to audiences beyond their
proximate social environment through a variety of
reform strategies. These include using class
actions; bringing law reform cases, which illumi-
nate doctrinal issues for a broad legal commu-
nity; representing militants whose actions are
symbolic to supporters and opponents; and coor-
dinating complaints into campaigns to put noto-
rious merchants out of business. The common
methodology is to redefine an individual client’s
problem as it has been narrowly defined by an
adversary so that it impinges upon greater inter-
ests. These strategies raise the stakes for Legal
Services practice, with the result that work expe-
rience literally becomes more challenging.

Rates of turnover have been consistently
higher in neighborhood offices, where lawyers
must respond to requests by individual clients to handle their problems, than in "downtown" positions, where lawyers are expected to concentrate on reform litigation. I interviewed a lawyer working in the Family Division of the Legal Aid Bureau:

Are there some cases that you've had that have been more memorable than others? Yes, my free-transcript case. That's where I changed the law. How did that come about? I took a crappy case and developed a side issue from it. [The issue is a free transcript for appeals in divorce cases for "paupers." The Legal Aid director has spoken of L.'s success with great pride, emphasizing to me how excited L. was over handling the case—the most excited he'd ever seen L. in his work.] It was my first appeal in five and a half years [at Legal Aid.]. L. describes the case in detail and with an enthusiasm that exceeds his response to any other topic I've raised in this two-hour interview.

Even more telling are accounts in which involvement is seen to fluctuate with periods of participation in reform litigation.

I'd always been concerned with professional growth, that there wasn't any on this job. Then it seemed from time to time something would happen to give me renewed hope.... From the [client] interviews, some things came up that developed into appeals. Like this case against the debt-pooling outfit. It's a class-action. It's not like the kind of trivia you usually get.... We've been working nights and weekends on it. We've done a lot of work on it. We put in a 55-page complaint.... I got in with A. [another lawyer] on [this] case, and later into the voter's rights case [on the provision of election instructions in Spanish in voting booths]. I did the brief in support of the TRO [temporary restraining order], and the direct examination in federal court. For the first time, I felt that the Spanish-speaking people felt that I was doing something useful. Oh, you always get individual signs of gratitude, from individual cases. But we got a lot of response from people not directly involved.

Achieving Autonomy

Recent graduates saw their poverty litigation experience as extraordinary relative to the opportunities their law school peers were finding.

One day we were going down to Springfield to argue a Supreme Court of Illinois case. I said, let's go over the arguments that you [a more experienced and older Legal Services lawyer] will make. He said, "What do you mean, I'll make? You'll do the oral argument." I said, "But you could do it better." I'd just been admitted a month before. I was just 24 years old. My friends hadn't even made it to traffic court yet. He said, "Don't worry, they won't listen anyway." After I was out [of Legal Services], friends would call me all the time on how to do things. I'd been in every court from the municipal court to the Supreme Court; I'd been in the newspapers and on TV. I knew I could do anything that I wanted.

Several of the most consistent law reform litigators fought program leaders for control of their "big" cases.

The odd nature of this business, it's totally different from private practice, in that in private practice the work comes in from the top. If it's my client, I'm the senior man. The client comes to me and tells me what the problem is. I have the client contact; I know what the client wants; I go to the meetings with the client; you work for me. In this business, the client comes in on the bottom. You know what the client wants.

A recent law graduate who had entered the LAB expressly to prepare for a move to a neighborhood office recalled using various strategies to achieve autonomy on his "desk."

I forced that desk to get into interesting issues. It had been a nonlitigating desk, but it was the greatest vehicle for litigation. But there were all these limits: $300 maximum recovery; no punitive damages; and class actions were hard to bring off. I had to work on [LAB officials] for changes in these rules.... What changes did you press? and which did you get? Changes in the type of case. For example, they had a rule—or no rule that you wouldn't take a case if it was worth less than $50. I got that prohibition in. I wouldn't take any plaintiff's case for less than $50. I had to scream and yell for that, but I finally convinced [the officials].... I started to take different kinds of cases: the first employment discrimination that had been taken off that desk.... I was getting into utility cases, which was supposed to be J.'s area. But I'd write it up so that I'd get it.

Elaborating a Culture of Significance

The third condition of involvement is the symbolic transformation of moral pressures toward routine into themes of transcending significance. Downtown lawyers in Legal Services Programs characteristically have been relieved from intake responsibilities. In contrast, neighborhood staff lawyers have faced a routinely discouraging environment. The maintenance of peer relations that
could provide a collective forum for the expression of a transcendent culture was an uncommon and unstable achievement.

Neighborhood lawyers who described themselves as demoralized spoke as isolated individuals. One was discouraged by a supervisor who identified with the local professional environment.

I [would] frequently...talk about leaving. A. [his office supervisor] would always say, "You're doing all right, fine. You're too hard on yourself." ...She would say, "You get good pay, you're a good lawyer, things aren't going badly." Her competence is different from mine, in terms of what she'd be satisfied with. I combine law reform with top quality. She emphasizes top quality but isn't that oriented to changes in the system. She has accepted the court system as it is, and most of the statutes she works with. She tries to win the cases on the facts. She gets along fine, fits right in with the p.i. [personal injury] bar.

Conversely, career interviews showed the quick development of involvement when a collegial relation that expressed this culture was struck up. The supervisor of one office emphasized the impetus he received from the supervisor of another office on a jointly handled case.

One of my problems...is that I can't sustain B.'s rage, a rage in self-righteous terms.... You must dehumanize the opposition, identify yourself completely with the client, and believe completely that the other side is really bad. You must be brutal, unrelenting. B. is good at this; he can sustain a tremendous indignation and energy.... How did this Credit Systems case develop? A year and a half ago, I had a case through intake.... I knew the defenses if we'd be sued, so I just sat on it. Then I talked to people in other offices, to B. and C., and they had clients who had problems with Credit Systems too, so we decided to file a class action.

Entering and leaving a collective culture of significance was closely related to the rise and decline of involvement. From 1966 to 1974, there were six dyads containing lawyers who maintained an involvement in reform litigation during careers of two or more years in Chicago's neighborhood offices. The members of each of these pairs shared "latent culture," background characteristics formally irrelevant to their jobs, which they drew on to form close friendships. The lawyers in five of the pairs broke down the distinction between "job" and "personal life," regularly seeing each other and talking about work after hours and outside of the office. In each of these pairs, when one member moved out of the office, the other soon left as well. Significantly, the members of the dyads did not always practice together on litigation. They helped each other sustain a posture; they did not necessarily help one another with professional tasks. In some of the pairs, one supplied technical knowledge, the other moral outrage.

How does the culture of significance work to sustain involvement? At least three themes in the culture can be isolated. The first is that problems that would otherwise mean frustration can be transformed into resources for reform.

Every instance of significant litigation expresses this theme. Individuals who have suffered a harm that legal assistance lawyers previously had been unable to remedy are cast as representatives of others in a judicial drama that promises to turn moral discouragement into exemplary reform. Reform litigation contains a paradoxical principle. Its excellence depends on the depths of misery of its beneficiaries.

[While I am interviewing A. in his office, B. comes in and asks] "How do you find out if a property is FHA financed?" [B. has a client whose rent has been raised. The financing information may indicate some way to gain leverage over the owner. A., realizing it will not be easy to get the information, wonders if the effort will be worthwhile. He asks:] "One client, or the whole building?" [B. laughs]: "Oh, there are hundreds of people in this building."

By expecting cases to be handled according to their routines, judges, adversaries, and opposing counsel imply that the interests at stake are insignificant. Given the right perspective, the more outrageous these pressures, the more easily they can be transformed into resources for reform. A stupid decision by a state judge may be taken as an occasion for mounting a general attack on the lower court systems. To this end, an otherwise unremarkable issue for appeal may be phrased as an indictment:

[From CLC (Community Legal Counsel) activity reports] A. and I presented a motion on [misdemeanor defendant's] behalf to obtain a free transcript of the proceedings for appeal. The motion was based on the U.S. Supreme Court case of Williams v. Oklahoma City, which is directly in
point. Magistrate Jankowski denied the motion because the U.S. Supreme Court's interpretation of the U.S. Constitution is not the law of Illinois, and he will follow the law of Illinois. We then went to Judge Lahowski and asked him to reverse Jankowski. He refused to make any decision and said the magistrates could use their own discretion. [In a subsequent report]: The question to be reviewed [in the U.S. Supreme Court] and which Magistrate Jankowski and the Illinois Supreme Court needs [sic] the U.S. Supreme Court to answer is: "Whether the decision of the U.S. Supreme Court in Williams... is applicable in the State of Illinois and binding on the Circuit Court of Cook County." [This was celebrated by its inclusion in numerous reports, which were circulated through the organization.]

In the same spirit, unethical behavior by opposing counsel may be made a basis for a disbarment effort. Deceitful and harassing methods of collection may be described in a counterclaim for punitive damages that is added to the defense of a debt suit. And "incompetent" representation by an opposing counsel that makes "unnecessary" work for the poverty lawyer may be argued as a basis for charging the adversary with the costs and attorney's fees of the litigation.

Dramatic instances of unbending militance in the face of restraints received extensive collegial review. Several versions circulated of the following demonstration of involvement under fire.

Another hilarious scene: King got assassinated... I remember it got real quiet. I went outside, and you could hear a pin drop. The next day they started rioting in the morning. I was in the office with L. and G. [two staff lawyers]. L. was having a big controversy with this guy who represented some models, and I remember hearing L. say, "Fuck you, you son of a bitch," and he hung up. And oh, about a minute later C. [the opposing counsel] calls back, and they engage in more heated debate, and L. ends it again with, "Oh fuck you, you son of a bitch," and hangs up again. Two minutes later A. [director] calls up. C. had called him. They used to do that all the time, report us to the higher ups, and A. would never back us up. So A. calls back and he'd just hear L. 's end of it, and they engage in a heated debate on it, and L. hangs up on him. A. had apparently said, "you're fired," and L. had said, "You can keep your goddamn job." Wham. [Laughs] It didn't bother him. He was working; he was writing a brief or something. And these calls would come in—"fuck you, you son of a bitch"—and he'd keep writing. The guy's really composed. It's just remarkable. He's really composed. Then A. calls back again. Then he unfires him. Then he fires him again. And while all this is going on, they're burning down the West Side. Incredible. You hear gunfire out there [laugh].

A second cultural theme is that the lawyers may distance themselves from pressures toward routine with incredulous outrage and humorous ridicule. These techniques can be used to sustain an impetus toward reform in the face of an infinite number of frustrations. By expressing incredulity at judicial or adversarial conduct, a lawyer can assume a posture of righteous superiority. Incredulity implies the disruption of naivete, but its use is not limited to new or inexperienced lawyers. On the contrary, it can be practiced most effectively by experienced lawyers. The emphatic assertion that behavior is extraordinarily improper requires confident assumptions about what is ordinary and proper. Performing one's first professional expression of incredulity with flawless self-confidence is a significant status passage in the career of a poverty lawyer.

Incredulity guards a perspective on significance cautiously. By refusing to expect the identity that others expect of them, poverty lawyers take care not to assume it. Various ridiculing devices are also used to set oneself off from the person others expect. One lawyer cast his frequent opposing counsel in the characters of Snow White's dwarfs and gave them roles in allegorical comedy routines he borrowed from the professional comedian, George Carlin. Many mimicked adversaries, judges, and clients to resist identification:

[Jim gets off the phone with an opposing counsel, laughs, and says], "Hey Jimmy, [chewing an imaginary cigar], whaddaya say we make a deal?"

The functional value of ridicule was articulated for me by a consumer protection litigator who enjoyed an unexcelled reputation for venting outrage. Each of the six or so times I had been in his office, I had witnessed mocking activities. He would describe angrily the conduct of an adversary to another staff lawyer, who would supply heavy sarcasm and transform the atmosphere to one of ridicule. The two had apparently been doing variations on this ritual virtually every day for over four years.
The main way we work together...is his main virtue and the main virtue of the job to me, is that it lends itself to a lot of laughs. It's like reading a good novel—very humorous—that exposes human frailties, foibles, idiocies, human greed. It's a wonderful position to observe all this in: co-workers, clients, judges, opposing counsel, people working for the schlock companies. But most people don't appreciate it to the full if they don't have a sense of humor. Our clients, they're of course not to be laughed out of the office, but there's an opportunity for a lot of laughs. And we are able to laugh at it...the collection lawyers, a bunch of phonies, going in for sham continuances, the threats they use, making fools of themselves in court, shouting at us for the benefit of their client, making facetious arguments before judges, posturing. I love it all. It's like one of those British movie comedies, or like a sarcastic Dickens novel, Or Alice in Wonderland. Honestly, I really love this job.

A final theme in the culture of significance exploits the possibilities for irony in the reform litigator's work. Rich contrasts may be drawn between the abstract, promissory stature of reform suits and their immediate implications for concrete clients. A theme of the absurd simultaneously portrays futility and promotes involvement. The portrayal responds to discouragement by tacitly affirming a transcendent spirit. An accomplished act of describing absurdity paradoxically presumes the rationality, meaningfulness, and value of its own creation. It denies absurdity by celebrating it.

A final example shows how poverty lawyers can create a culture for involvement by appreciating dearly a client whose personal struggles cast their own as insignificant. By dwelling on the pathos of the client, the lawyers can celebrate their work as an absurd yet therefore heroic attempt to achieve significant results with makeshift means against apparently hopeless odds.

[Cl. comes in, and A. introduces him to me as “the third-largest manufacturer of cornhusk brooms in Chicago.” Cl. is an old man, without teeth, who mumbles with a heavy black accent. His clothes are crumpled and dirty: an old beret, pants which were once part of a suit but are now thread-worn work clothes. He has huge fingers that appear extremely arthritic. A. later tells me that that’s from the bones breaking repeatedly when working machines.]

[They talk about corporate business forms and financing. I'm wondering: This man owns a business? A. later tells me that his brooms are of excellent quality and much desired, but by a decreasing number of people. He had a chance to make or break himself for good a few years ago when a deal with Sears was in the works, but he couldn’t meet their volume. Some time ago A. and B., another staff lawyer, worked on his case. He defaulted on a $50,000 loan from the Small Business Administration (SBA) and is now persona non grata there. He’s been literally keeping his business going on shoestrings and other waste materials.]

[A. is determined he can keep him going by pursuing credit under the right façade. Cl. and A. talk about a legal shell that will disguise Cl.’s control enough so that he can get credit, but not so much that it will pass control to the friend whose credit reputation will be the key to the scheme.]  
[B. comes in, and now both he and A. have great fun with Cl.]

[B.]: I was over around your place the other week, and the wreckers were there, working next door. And the construction guy said to me, pointing to your place, “We could take the ball and go over there next.”

[Cl.]: They ought to. It’s a terrible building.

[A.]: That’s not a rough neighborhood, is it Cl.?

[Cl.]: It’s getting rougher. I’ve got to move. They did [this and this] to me. It’s getting too rough for me.

[They all laugh. It’s been incredible for years that he could stay there, given the crime and economic dangers. When Cl. says he’s moving, B. asks if he can move his equipment without it falling apart in the move. This occasions laughter from A. and B., and, after a pause, from Cl.]

[B.]: How’s your rooster?

[Cl.]: Fine.

[Then A. recounts how Cl. defaulted on the SBA loan, IRS men were sent out to padlock his building and equipment. From fear of the neighborhood, they were constantly looking over their shoulders. One said, “I’ve got to get out of here, this place is too rough for me.”]

Then they got inside and found that [Cl.] has chickens around that eat the droppings from the corn that goes into the brooms. And he has a rooster there. It is ferocious and it attacked one of the IRS men as he was trying to padlock [Cl.’s] equipment.

[On Cl.’s way out, B. and then A. repeat]: Whatever you do, don’t send anything into SBA with your name on it. It’ll be thrown right out again. They’ve got your file, and when they see your name, they’ll check their files and will pull out your old one. So if you send anything to the SBA, don’t put your name on it. Put your friend’s, else it will come right back at you. [A. and B. laugh again and again at this.]
DISCUSSION QUESTIONS

1. Outside the United States, most legal aid is delivered by private lawyers reimbursed by the government—a scheme Americans call "judicare" (by analogy to Medicare). Why did we choose salaried full-time poverty lawyers instead? Britain is moving toward "franchising" a limited number of solicitors firms to provide the bulk of legal aid. What are the relative advantages of the two systems with respect to the following:

   a. clients (eligibility, access)
   b. subject matter covered
   c. cost
   d. quality (including caseload)
   e. tactics
   f. commitment
   g. political support
   h. amount
   i. personnel

2. In the late 1960s and early 1970s legal services attracted "the best and the brightest." Does it still? If not, why? Should and could anything be done about this? What factors other than salary affect the choice of such a career? Should we be concerned about high turnover in such jobs? Should we require a post-law school internship in legal aid or some other public interest organization as a condition of bar admission?

3. The U.S. Supreme Court has never centrally addressed the question of a constitutional right to civil legal services. Can you make such an argument? What should be the content of the right?

4. Many observers, both supporters and critics, see legal aid as inescapably "political." Can you offer an apolitical justification? Should the state be involved in funding political activity? Are there any kinds of activities in which legal aid lawyers should not be involved? Who should be making the decisions about hiring, which clients to serve, which cases to take, which strategies to follow? How could we insulate legal aid programs from political "interference"? Now that the federal government has placed severe restrictions on what the lawyers it funds can do, where should legal services look for alternative funding?

SUGGESTED READING


Representing the Poor


For comparisons of legal aid in other societies, see Mauro Cappelletti, James Gordley, and Earl Johnson Jr., Toward Equal Justice: A Comparative Study of Legal Aid in Modern Societies (1975); Frederick Zemans (ed.), Perspectives on Legal Aid: An International Survey (1979); Bryant Garth, Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession (1980); Erhard Blanken-
Because the U.S. Supreme Court held in 1938 that the federal government was constitutionally obligated to provide free representation to indigent criminal defendants and, in 1963 and 1972 respectively, that states were required to do for those charged with felonies or crimes punishable by imprisonment, both levels of government have had to create mechanisms to ensure criminal defense. This article describes the experience of public defenders.

THE PUBLIC DEFENDER: THE PRACTICE OF LAW IN THE SHADOWS OF REPUTE

Lisa J. McIntyre

"WE ARE THE BASTARD CHILDREN OF COOK COUNTY"

WHEN I asked current public defenders what had surprised them about the job, almost all responded by saying that one of their biggest surprises (and disappointments) had been the lack of respect. Some put this assessment quite succinctly: “We have a reputation as crummy lawyers”; “Everybody thinks the Public Defender’s Office is just dreck.” “There is a notion,” another lawyer said, “that public defenders are an inferior breed compared to real lawyers.”

Although some public defenders believe that many judges are prosecution minded, they seem to regard this as inevitable, if not entirely fair. What the lawyers find less easy to accept is that judges often treat them as second-class lawyers. In some courtrooms, this merely meant that judges are more considerate of private attorneys, calling their cases before calling the public defenders’ cases—so that private defense attorneys do not have to “hang around all morning to get through their call.” “There is good reason,” one public defender allowed, “for calling the public defender’s cases last: time is money for the private attorney.” “But still, the private attorney walks in and gets his cases called and he’s out of
