AN ANALYSIS OF INCENTIVES FOR PROVIDING PRO BONO LEGAL SERVICES AND IMPLICATIONS FOR FUTURE LEGAL SERVICES CORPORATION POLICIES

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PREFACE

The only solid base for a social program is reality. When it is built on foundations composed of what "should" be, the program begins in a perilous position. Community action programs ignored local political realities, commodity programs ignored what the poor really eat, and the Legal Services Program of OEO ignored how the legal profession would react. It is the purpose of this thesis to help overcome some of this problem in the area of legal services by providing information about the environment in which it must function. By adding information about the small town to that previously gathered concerning urban and rural areas, the analysis of the environment becomes more complete. This should allow policymakers a better idea of which programs can work and which ones cannot.

Many people deserve thanks for their help in preparing this thesis. Most specifically, thanks should go to my adviser Dr. Robert Spurrier, and my committee members Dr. Robert Darcy and Dr. James Lawler who have helped with the many problems along the way. Equally important, but in a much different context, I wish to thank all my friends who were kind, considerate, and supportive throughout the project. Their kindness will not be forgotten. Legal Services Corporation also deserves credit for helping supply needed materials.

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CHAPTER I

JUSTIFICATIONS AND NEED FOR CIVIL LEGAL AID

Introduction

In 1919 Reginald Heber Smith published his treatise Justice and the Poor and it quickly became a landmark in both legal aid literature and the legal aid movement. The text indicted the legal system as unfair to the poor because of procedural defects, one of which was the deficiency of low-cost legal counsel.[1] To describe more graphically the effect the deficiency of legal assistance had on the individual, Smith used what he considered a "homely analogy." Describing the legal system as comparable to an automobile, Smith likened the law to the engine, the judge to the driving controls, and the lawyer to the gasoline. If identical cars were given to two men, but only one of the cars was filled with gasoline, it would be hard to imagine the ensuing race fair.[2]

Recognizing that the absence of the counsel of a lawyer renders trials unfair has led those interested in providing justice to an attempt to correct the problem. The attempts made include providing legal assistance to those who cannot afford to pay--the pro bono service of private lawyers. Most lawyers report that they perform some free service for the poor as a regular part of their private practice, considering it their moral and professional duty. Dealing with civil

cases only, the questions addressed by this paper will analyze the incentives for lawyers to perform such services, the characteristics of the environment that give rise to these incentives, and in what manner pro bono legal services may be integrated with the organized legal aid programs of the Legal Services Corporation. Without disputing a base of altruistic motives underlying pro bono activities, it is hypothesized that lawyers can and do use the activity to further personal economic goals. The significance of such an understanding lies not in normative terms, but in policy implications. By enlarging our understanding of the reasons that lawyers do pro bono service, the activity can be integrated more effectively into the organized legal aid programs of the Legal Services Corporation.

Justifications for Civil Legal Aid

Introduction

More complex justifications for providing civil legal aid to the poor exist than the unfair race described by Reginald Heber Smith. Three justifications--due process, equal protection, and the adversary system--deal with rights and assurances of fairness in the legal system that call for the provision of free legal services for those who cannot afford it. Another justification points to the legal monopoly held by lawyers in the provision of legal services, and calls for free legal services for the poor as a method to repay this grant from society. Finally, and perhaps the major justification for legal aid as a benefit for the total society comes from its role in preserving order. By resolving legal claims through the legal system, the country preserves protection of its citizenry from anarchic extra legal and nonlegal

solutions. Each of these justifications carries with it ample reason for providing legal services to the poor. Combined they give overwhelming reason for its installation as a right, not a privilege.

The Due Process Clause

The Due Process Clause of the 14th Amendment guarantees each citizen that life, liberty and property will not be denied without "due process" of law.[3] Since the 1930s the Supreme Court has interpreted this provision as requiring free legal assistance for the poor in some criminal cases to ensure fairness.[4] Basing their decision on the guarantees of the sixth amendment and the peculiarly coercive nature of a criminal trial, the Court ruled in Gideon v. Wainwright that legal counsel is "essential to a fair trial" in felony cases.[5] Using the rationale found in Gideon, the Court expanded coverage of the protection to any time the accused stood a chance of being deprived of his liberty by a jail sentence regardless of its length.[6] The extensions of the right to legal counsel show the Court's preoccupation with ensuring a fair criminal trial. By their logic, how can the right to legal assistance be denied in civil trials when the same coercive power of state backs the courts' decisions, and the defendants have no reason to be better prepared to conduct their own defense?

One explanation for the reason that the Due Process Clause does not protect property as it does life and liberty is found in the Seventh Amendment to the Constitution. Dealing with the safeguards provided in civil cases, the founding fathers made no mention of a right to counsel. Advocates of this view cite the right to counsel specifically granted in the Sixth Amendment's protections of criminal procedures as showing

the founding fathers' intentions to limit guaranteed protection to this area. By 1789, England, from where the United States drew much of its legal heritage, provided legal counsel for indigents in civil cases as a matter of course. They did not, however, extend such rights to those facing the court system under criminal charges. In some criminal cases legal counsel was not allowed regardless of the defendant's ability to pay.[7] In England, the use of counsel was forbidden in treason trials until 1837.[8] The founding fathers could have intended the specific delegation of the right to counsel in criminal cases to be all the protection necessary, taking for granted its implied provision in civil cases.

Another argument for provision of legal counsel to the poor only in criminal cases based its reasoning on the severity of possible punishment. Advocates explained that the degree of deprivation in civil cases cannot rival jail sentences or the death penalty, and therefore, do not warrant similar protection to ensure fairness. This ignores some civil proceedings which closely resemble criminal actions in the degree of deprivation possible. Examples of such fundamental civil interests include juvenile hearings, habeas corpus procedures, civil commitments, and custody hearings.[9] The loss of such cases provide similar deprivations of liberty as would loss in a criminal case.

The same inabilities that disadvantage a poor criminal defendant also disadvantage a poor civil defendant. They both must prove complex issues of legal proof, follow complicated legal procedures of which they may be ignorant, and show abilities in legal research beyond common individual capacity in order to win their case. If they do not win, losses may ensue similarly severe for both criminal and civil cases. While criminal defendants are ensured counsel, civil litigants

are not. One attempt to rectify this disparity came about with the development of the Small Claims Court. This however has proven to be largely ineffective in protecting the poor civil litigant. Businessmen have used the court as a tool to improve collection of debts, while the poor have ignored it for reasons similar to their abilities in the regular courts. Studies have found the poor to be ignorant of its existence, its procedures, and its demands that legal proof be met.[10] If today's poor civil litigants wish to find free legal counsel, they must turn to other than the Due Process Clause to supply their needs.

The Equal Protection Clause

Another line of reasoning suggests the poor client's lack of counsel may be a denial of the equal protection of the law--also guaranteed by the Fourteenth Amendment.[11] Various Supreme Court decisions have supported such an accusation. In 1963 the Court stated that denial of a criminal appeal because the defendant could not afford the required trial transcript gave an unfair advantage in the legal system to those who could pay.[12] The same year they also ruled that the right to counsel must be provided to indigent criminal defendants making their first appeal. Without counsel they found the indigent's appeal to be a meaningless ritual quite unlike the appeals of those who could afford counsel.[13] Extending the equal protection safeguards even further, the Court again ruled in 1971 that an indigent criminal defendant cannot be denied trial records because only a fine, not a jail sentence, was involved.[14] This was expressed as a "flat prohibition against pricing indigent defendants out of as effective an appeal as would be available to others able to pay their own way."[15] Extension to civil cases fits the logic but has never been made.

Expansion of equal protection to indigents in court procedures was hampered by the increasingly conservative mood of the Burger Court. One such limiting precedent refused to extend the indigent's right to counsel to a second discretionary appeal from a criminal conviction.[16] Recently, the Court declined to require the right to counsel in a criminal case where a jail term or fines were statutorily available as punishment as long as the state realized it was then bound to issue only a fine.[17] Once again, despite application in the criminal area, the Courts have stopped short of extending the right of legal counsel to civil litigants regardless of similarities between the two.

Lawyers' Repayment for Grant of Monopoly

One justification of legal services to the poor is based on an equal protection of all citizens, including indigents, but does not depend on society to pay the costs. This argument shifts the burden onto the legal profession's shoulders as repayment for state-granted monopolies over legal services. Legal aid advocate John S. Bradway concluded in 1940 that the privilege of monopoly over legal services requires lawyers to fulfill the obligation of the Constitutional guarantee of equal protection for all clients regardless of their ability to pay.[18]

The bar has not resisted such a burden, especially when fulfilled by their own delivery methods and used to their own advantage. The bar's advocacy of legal aid increased during the Depression and shortly thereafter, and may be considered to be a public relations effort. It was during this period that the economic condition of the bar induced a program of prosecuting laymen and agencies who practiced law without a

license. Their purpose was to keep as much scarce legal business in lawyers' hands as possible. Their enthusiasm went to the extent of banning the radio program, "The Good Will Court." Legal profession members regarded this program as improper advertising of the relationships between attorneys and their clients.[19] Bradway described the public's reaction in the following quote:

> The public thereupon inquired what the organized bar, having thus announced its exclusive proprietary right to the field of law practice, was prepared to do for those clients who could not afford to pay a fee. The obvious answer was the legal aid society.[20]

Thus the legal profession has made the trade of some free or low fee legal service for the poor in return for the economic benefit that they now enjoy.

Historically, little nonlegal competition has existed for the low fee paying client.[21] This may not always be the case, however. Advocates of "delawyerizing" the law call for further development of Small Claims Courts to overcome their problems in helping the poor. As happened in the case of property abstracts, removal of such simple tasks as uncontested divorces to nonlegal specialists has been suggested. This action could cut deeply into some lawyers' practices. Increased use of negotiation, community courts, and ombudsmen are all suggested and could further erode monopolistic advantages.[22] Such threats to the monopolistic privilege may act as a challenge to the bar to provide more comprehensive service.

The Adversary System

A far simpler argument bases a need for legal aid in civil cases on the demands of the adversary process.[23] This practice of truth

finding by combatants is based on the premise that "justice is the inevitable composite effect of vigorous partisan interests, both in litigation and in other law-developing processes."[24] When the availability of legal services is not given to the poor, the moderate income, the minorities, or anyone, it raises doubts about the validity of the premises underlying this adversary system of justice.[25]

Breakdown in Legality

One of the general purposes of a system based on laws and legal procedures is to provide a non-violent forum for the redress of grievances. This fundamental premise helps a society to provide protection to its citizens--a major theoretical reason for the development of society. For the system to provide such protection, it must be considered the proper manner in which to settle disputes, and also be considered accessible to all. If such is not the case, citizens resort to nonlegal methods to achieve a sense of justice.[26] Such anarchic systems lend little to the guarantee of protection to the citizens of a society, and may lead to violence and political change.[27]

It is seen therefore, that ensured admission and faith in a legal system helps protect social stability and social order. Both altruistic and self-interest motives can be derived from such a system. For the privileged, it is a way to placate the underprivileged and stop left-leaning movements which threaten ownership and wealthy interests.[28] For the havenots, it represents a possibility of vindicating wrongs and equalizing strength with the assistance of powerful state machinery.

The Poor's Need for Legal Assistance

An important issue in legal aid literature deals not with the justification for extending legal aid to the poor, but with the need for such services. The quest has provided researchers with particularly difficult problems. Methodological problems have included finding the poor, sponsoring a large-enough sample able to be generalized to the general public, and measuring a need that may be present but has gone unrecognized. An article dealing with such methodological problems is, "The Legal Needs of the Public--A Survey Analysis," by Preble Stoltz. This article pointed to strengths and weaknesses in many of the earlier survey designs, and lent insight into the weight of their validity.[29]

One specific area in which many recent studies have provided information concerns the legal needs of the rural poor.[30] Acknowledging that "the city has no monopoly on wickedness, and evil hearts are to be found 'far from the maddening crowd'," writers have attempted to bring this special need to light.[31] This trend acted as an impetus to bring legal services to rural areas, where previously they had only been available in urban centers.[32]

Regardless of extension of services, the primary question of the poor's legal needs still remains to be answered. To date, a study group headed by Barbara Curran has provided the most authoritative data available. From October, 1973, to March, 1974, they conducted interviews using a National Opinion Research Center (NORC) multistage probability sample. They limited the universe from which they choose their sample to Standard Metropolitan Statistical Areas and contiguous counties within the continental United States. The major problem of

this study, however, was its small sample size. The team surveyed only one hundred households,[33] thus raising some question to the sample's ability to be generalized to the population. Also, the problem of unrecognized legal need may mask the findings, making them seem weaker than they are. Although the study of the Curran figures showed higher use of lawyers to incidences-of-need ratios for low income groups in some areas such as torts and juvenile-related matters, the expected trend for the lower-income group to follow the higher-income group in incidence/use ratios was generally the case.[34]

Probably the most convincing argument in keeping with the previously mentioned justifications for legal services emerged from an analysis of the Curran study by Yakov Avichai.[35] Developing a model to determine the number of legal problems faced by all respondents as a function of age and generation, Avichai fit the variable data to a least squares line. The closeness of fit of his equation was evidenced by an R^2 of .97, or in other words, by explaining 97% of the variance.[36]

The results showed an accelerated number of problems encountered over the last fifty years by those in the Curran sample. Speculative reasons for this trend included an increase in awareness of the law and a changing society that has increased greatly the exposure of ordinary citizens to legal problems. Examples of such changes included a consumer problem increase because of greater affluence and more easily available credit, a real property acquisitions increase as a result of greater mobility and affluence, and a divorce and alimony problem increase because of changing social attitudes.[37]

One relevant area of analysis showed the mean expected age for a person to encounter his or her first legal problem decreased from 21.8

years in 1933, to 19.5 years in 1953, and 19.2 in 1973.[38] A decreasing mean age for acquisition of real property may partially explain such an increase in lower age groups facing legal problems. From 1951 to 1960 the mean age for first acquisitions was 33.8 years. From 1971 to 1974, the mean age dropped to 29.6 years.[39] Furthermore, the trend showed that each succeeding generation acquired more property.[40] This increase in ownership coupled with another evidenced trend, a dramatic increase in property damage or theft for all ages, was seen to cause even more legal problems. The rate of incidence for damage and theft almost doubled from the 1950s to the 1970s.[41]

In light of such increases in real property, divorce, and consumer affairs problems, one would be hard pressed to develop a scenario where the poor had no legal counsel needs in civil cases.[42] Such a need will be taken as a given for the purposes of this paper, without further explanation into the exact degree of legal need which exists. Researching this answers a different policy question than the one to which this paper is directed.

Conclusion

Examination of justifications and need for free legal services was intended to give the reader a theoretical background on which further analysis may build. The summary of United States legal aid development in Chapter II should help broaden this base of understanding, and provide the background needed to analyze lawyers' incentives for pro bono service in civil cases.

FOOTNOTES

[1]Reginald Heber Smith, Justice and the Poor (Boston, 1919), passim.

[2]Ibid., p. 181.

[3]The Fourteenth Amendment's Due Process Clause has made many of the Bill of Right's protections applicable to the states. This was not previously the case. Each provision has been incorporated individually on a case-by-case basis.

[4]In the case of Powell v. Alabama, 287 U.S. 45 (1932), the Supreme Court ruled the Sixth Amendment's Right to Counsel was necessary for due process of law in capital cases where the defendants were indigent and incapable of adequately defending themselves because of ignorance, feeblemindedness, illiteracy, or the like. This rule was limited, however, to providing only this coverage in Betts v. Brady, 316 U.S. 455 (1942). Here the Court ruled, in a felony trial, an indigent defendant of ordinary intelligence, who was not unfamiliar with court procedures, need not be supplied with counsel in order to ensure a fair trial. This gave rise to the "special circumstances" doctrine of providing specific inability before counsel needed to be appointed. The question had been settled more liberally at the federal level with the case of Johnson v. Zerbst, 304 U.S. 458 (1938) requiring appointed counsel for indigents in criminal cases.

[5]Gideon v. Wainwright, 372 U.S. 335 (1963), p. 344.

[6]Argersinger v. Hamlin, 407 U.S. 25 (1972), passim.

[7]Jeffrey M. Mandell, "The Emerging Right of Legal Assistance for the Indigent in Civil Proceedings," Journal of Law Reform, IX (1976), p. 555.

[8]Delmar Karlen in collaboration with Geoffrey Sawer and Edward M. Wise, Anglo-American Criminal Justice (New York, 1967), p. 30.

[9]Mandell, p. 558.

[10]Jerome E. Carlin and Jan Howard, "Legal Representation and Class Justice," U.C.L.A. Law Review, XII (1965), pp. 421-423.

[11]Mandell, pp. 559-562.

[12]Griffin v. Illinois, 351 U.S. 12 (1956), passim.

[13]Douglas v. California, 372 U.S. 353 (1963), passim.

[14]Mayer v. Chicago, 404 U.S. 189 (1971), passim.

[15]Ibid., pp. 196-197.

[16]Ross v. Moffitt, 417 U.S. 600 (1974), passim.

[17]Scott v. Illinois, 99 St.Ct. 1158 (1979), passim.

[18]John S. Bradway, Forms of Legal Aid Organizations in Middle Sized Cities and Smaller Communities (Durham, 1940), p. 2.

[19]John S. Bradway, "National Aspects of Legal Aid," Annals of the American Academy of Political and Social Science, CCV (1939), p. 105.

[20]Ibid.

[21]Karl Llewellyn, "The Bar's Troubles, Poultices--and Cures?," Contemporary Problems, V (1938), p. 125.

[22]James N. Adler, Raymond C. Fisher, James L. Marable, and Loren R. Rothschild, "Pro Bono Legal Services: The Objections and Alternatives to Mandatory Programs," California State Bar Journal, LIII (1978), pp. 28 and 30.

[23]Jerome H. Skolnich, "Social Control in the Adversary Process," Journal of Conflict Resolution, XI (1967), passim.

[24]Barlow F. Christensen, Lawyers for People of Moderate Means (Chicago, 1970), pp. 1-2.

[25]Ibid.

[26]John S. Bradway, The Bar and Public Relations: An Introduction to the Public Relations Field of the Bar (Indianapolis, 1934), passim.

[27]Albert P. Blaustein and Charles O. Porter with Charles T. Duncan, The American Lawyer: A Summary of the Survey of the Legal Profession (Chicago, 1954), p. 69.

[28]Ronald M. Pipkin, "Legal Aid and Elitism in the American Legal Profession," in John J. Bonsignore, Ethan Katsh, Peter d'Errico, Ronald M. Pipkin, and Stephen Arons, Before the Law: An Introduction to the Legal Process (Boston, 1974), pp. 158-161.

[29]Preble Stolz, The Legal Needs of the Public--A Survey Analysis, Research Contributions of the American Bar Foundation Pub. No. 4 (Chicago, 1968), passim.

[30]For further readings on rural legal problems, see Lee Reno, Florence Roisman, and Susan Schapiro, "Out in the Country: Legal Aid Services and the Rural Poor," NLADA Briefcase, XXXIV (1977), pp. 70-73

and 87-93; Frederick J. Templeton, "Legal Aid Problems in a Rural County," Annals of the American Academy of Political and Social Science, CCV (1939), pp. 95-100; and Sargent Shriver, "Rural Poverty--The Problem and the Challenge," Kansas Law Review, XV (1967), pp. 401-408.

[31]Templeton, p. 98.

[32]The Research Institute of the Legal Services Corporation, Residents of Sparsely Populated Areas (Washington, 1979), p. 1.

[33]Barbara Curran, The Legal Needs of the Public (Chicago, 1977), p. 33.

[34]Ibid., pp. 153-157.

[35]Yakov Avichai, "Trends in the Incidence of Legal Problems and in the Use of Lawyers," American Bar Foundation Research Journal, MCMLXXVIII (1978), pp. 289-313.

[36]Ibid., pp. 296-297.

[37]Ibid., pp. 296-298.

[38]Ibid., p. 298.

[39]Ibid., p. 300.

[40]Ibid., p. 301.

[41]Ibid., p. 303.

[42]In Harry P. Stumpf, Community Politics and Legal Services (Beverly Hills, 1975), p. 126. Professor Stumpf calculated that in 1970 there was a ratio of 1:622 lawyers for all citizens in the United States, when using all lawyers with listings in the Law Directory. He compared this to a ratio of about 1:5,000 ratio of lawyers involved in a law practice with the major purpose of serving the poor. For this ratio he used all lawyers estimated to be working for organized legal aid services as reported by Nathan Hakman, "Political Trials in the Legal Order: A Political Scientist's Perspective," Journal of Public Law, XXI (1972), pp. 73-126. A further ratio removing the 25,500,000 poor from the total population of 203,184,773 showed a ratio of 1:500 lawyers for the nonpoor, showing a more accurate, though not much different comparison in Dr. Stumpf's figures. It is this gap that unorganized pro bono service does and can increasingly act toward fulfilling legal needs.

CHAPTER II

COMMON AND EXPERIMENTAL LEGAL SERVICES DELIVERY SYSTEMS

Introduction

Once the need for free legal assistance is recognized, the manner in which the service is delivered is next considered. Until recently, lawyers have used three major types of delivery systems. These common types are pro bono service, lawyer referral service, and organized legal aid service. The term organized refers to services developed solely to provide legal aid to the poor. Other service types are considered unorganized when private attorneys provide legal aid in addition to their regular business. Pro bono and lawyer-referral are both considered unorganized forms of service, with lawyer referral being a variation of pro bono service.

In addition to the common service delivery systems, the Legal Services Corporation is testing the effectiveness of innovative new delivery systems. These Demonstration Projects are evaluating the merits of judicare programs, contract programs, prepaid and group insurance programs, voucher programs, and integrated pro bono programs.[1] Each program will be described later in the chapter.

Each type of service delivery system has various strengths and weaknesses which are important to evaluate. The merits of each system will be analyzed to determine how much and what types of services can

be provided to the poor; as well as the consistency that the service can be expected to maintain. This chapter will provide the reader with a comparative understanding of the major delivery systems. With this background, the analysis of actors within the pro bono delivery system will provide a greater understanding of the overall situation.

The Three Most Common Delivery Systems

Pro Bono Services

Under the pro bono system, the indigent client comes directly to the private attorney's office for legal service. Each attorney determines his own eligibility criteria for this service at a reduced fee or completely free. Since there is no advertising of this service, the client may have discovered its existence in one of several ways. Various groups in the community act as intermediaries, bringing together the poor client and the willing lawyer. Persons who perform this role include social welfare workers, friends and relatives of the lawyer, the lawyer's paying clients, and indigent clients who previously have gone to the lawyer for such assistance.[2] The intermediary and the indigent client usually make contact when the client comes to the intermediary for help with a problem. Intermediaries recognize these problems as legal and refer the indigent to a lawyer they think may help. On occasions they may contact the lawyer themselves on behalf of the client. Such intermediaries often know the attorney personally through professional or social contacts.[3] The most common relationships between the intermediary and indigent client are the employer/supervisor and employee contact, or the friend and relative contact.[4]

Merits of pro bono services include its simplicity and its low cost. No additional administrative oversights or costs are involved. The lawyers' concern for maintaining a good reputation helps to keep the quality of service acceptable. The greatest merit of the service lies in providing services for complaints common to their regular practice. This is especially true when the complaints can be resolved by advice, negotiation, and by less time-consuming activities such as uncontested divorces.[5] Such divorces may easily "be slipped in with the other divorces he [the lawyer] planned to do anyway."[6]

Another merit of pro bono service, as seen by the lawyers, is that the service provides help to the poor without government involvement.[7] As a professional part of the captalist superstructure, lawyers' fears of government interference center around two major areas. First, many lawyers fear socialized law. They contend this would lower the quality of service as well as the profits gathered. Lowering of profits might further lower quality by causing the profession to fail to attract the highest qualified students.[8] They also contend that government controlled legal services encourage litigation in already overcrowded courts.[9]

The bar also finds merit in pro bono services in that they can be an outlet for public relations work. From the New Testament's chastisement "Woe unto you also, ye lawyers, for ye lade men with burdens grievious to be borne, and ye yourselves touch not the burdens with one of your fingers,"[10] to Shakespeare's quote, "The first thing we do, let's kill all the lawyers,"[11] we see a trend in literature to cast the lawyer as the villain. Furthermore, on a scale of honesty and ethical standards, 25 percent of the American public ranked lawyers above

average, 48 percent ranked them as average, and 26 percent ranked them as below average. However, for those with income less than $3,000, only 18 percent found lawyers above average, 48 percent as average, and 35 percent ranked them below average. These were the lowest rankings given by any subgroup of the population.[12] Any outlet for public relations work can help the profession, but legal aid also acts as a justification for their state-granted monopoly over legal services.

Although the merits of pro bono services make the delivery system appealing, it is less effective when used as the only type of available free legal service. The greatest limitation of pro bono delivery is its economic dependence on private lawyers.[13] One lawyer best described this weakness by saying,

> Once a lawyer gets out of school and hangs up that shingle, it is the paying clients that walk through the door that pay his salary and pay for things like the building and the electricity.[14]

Another lawyer furthered this point by acknowledging the limits in the amount of pro bono service self-employed lawyers can provide. He explained,

> If too many poor flood through the doors, eventually there will have to be a stopping place, and some would be turned away with nowhere to turn [if no organized legal aid program exists in the community].[15]

Besides the limit in total numbers able to be assisted, a limit also exists on the types of services available. Thus, they are inclined to specialize in the types of cases that will provide them with the best income.[17] This specialization of legal practices has led to the institutionalization of some areas of the law. Institutionalization describes the process of problems repeatedly making their way to an attorney. When such problems come regularly enough, the lawyers

and the general public begin to define such situations as legal problems. For example, sexual discrimination depends upon attitudes and information for viewing unfair practices as discrimination.[18] Since the type of problem, income, and location in the social structure affect contacts with lawyers, institutionalization of the problems of the poor seldom occur, leaving many such problems undefined.[19] This line of reasoning prompted Leon Mayhew to write, "The poor have fewer legal problems only in the narrow sense that they have fewer problems that the legal profession habitually serves."[20] Therefore, unless a program renders poverty cases lucrative enough to encourage specialization; unless it is recognized by the poor often enough to become institutionalized, private lawyers will deal with few poverty related issues.[21]

Another limitation of pro bono services is the propensity for lawyers to dispose of poverty cases in the most expedient manner possible. In a survey by Phillip Lochner, the attorneys queried were virtually unanimous in admitting they spent less time on low fee and no fee cases than on the problems of paying clients.[22] They also acknowledged a disinclination to take very difficult or highly complex cases.[23] According to the lawyers, they spent little time on legal research, and much more on advice and negotiation.[24] No lawyer in the survey had taken a case of a poor client to trial.[25] Such concern with expediency hampers the lawyer's ability to provide meaningful services to poor, civil ligitants.

A final limitation involves the consistency of availability of these services to the poor. Based on the economic condition of the bar, the poor may be turned away from a pro bono system in times of financial crisis. The Great Depression caused such a reduction, as

lawyer's services were one of the first budget cuts made by families trimming expenses.[26] During World War II some lawyers left the profession, taking jobs in defense plants or emergency government agencies to survive.[27] Once the poor are guaranteed legal services, and come to expect them as a matter of right, such reductions could provoke the poor into nonlegal alternatives or radical measures. This, once again, threatens the stability of the society and its ability to provide protection to its people. This is perhaps the most serious limitation to legal services provided by a pro bono delivery system.

Lawyer Referral

In 1937 John S. Bradway noted, "The History of legal aid has definately indicated that progress is made during those periods when machinery exists for encouraging thought and action."[28] In that same year one such development occurred--the development of the lawyer referral service. A system for delivery of legal services to the needy first appeared in Los Angeles in 1937. The same year the American Bar Association appointed a special Committee on Legal Clinics to investigate their usefulness and compatability with the bar.[29] Although this growth was caused to some extent by the needs of the Depression,[30] the programs that developed made little headway in the extension of services to the poor for almost a decade.[31] Lawyers in favor of the system stressed the practical as opposed to the ethical value of their service. They were not interested in simply providing equal justice. Instead they pointed first to their ability to keep people off relief rolls by getting back salaries or support as one of the merits of the program. Secondly, they noted lawyer referral's ability to educate

people who had never before used a lawyer's services concerning the value and necessity of such services. Third, they pointed to the fact that lawyer referral let younger bar members get valuable experience in dealing with clients. Finally, they acknowledged the contribution to the legal profession that lawyer referral performed by building the public relations image of the bar with the general public.[32]

In 1950, however, the social impetus for progress that Bradway had discussed a decade earlier came to the lawyer referral movement. In that year, Great Britain established the "Legal Aid and Advice Scheme." This Scheme provided a governmentally operated system to bring legal services to the British poor. Coming in the midst of Wisconsin Senator Joseph McCarthy's fight against "creeping socialism," the threat of government-controlled legal services led to the bar's mobilization to protect its vested interests.[33] In 1949, 43 percent of large United States cities were without any form of legal aid society, but by 1959 the percentage had been reduced drastically to only 21 percent.[34]

The basic lawyer referral service consists of a central office manned by a receptionist. The receptionist, often a qualified paralegal, establishes the client's eligibility based on local Bar Association criteria. Once eligibility is determined, the client is sent to a willing lawyer's private office. The lawyer has previously agreed to see the client on this first visit for free or for a low, pre-set fee made known to the client by the lawyer-referral receptionist. From this point, client and attorney negotiate what services will be performed and what fee, if any, will be charged.[35]

The most important advantage of this system is its flexibility. It can easily be adopted to almost any budget, making it a particularly

appealing alternative to pro bono services for the smaller town. Possible referral structures include a full-time referral office, a Bar Association office, or even an answering service to make appointments with lawyers in a prearranged order.[36]

Another merit found in the lawyer referral service as opposed to simple pro bono is the greater possibility of matching the client's problem with the lawyer's capability. Lists of cooperating lawyers may be categorized by field of specialization. Rotation of the lawyers then protects any from being over-burdened by low fee or no fee clients.[37] A lesser likelihood of the poor being turned away exists when the responsibilities are better dispersed among the legal community. Its ability to reach the poor for the first time was recorded by George G. Gallantz. He found that "as many as 80 to 90 percent of those who take advantage of lawyer referral have never before consulted a lawyer." These figures describe those of moderate means, coming to the lawyer for low fee work, not for free service given to the indigent.[38] This can be seen as a step forward for the legal aid movement since these people are often too wealthy to quality for organized legal aid services, but too poor to be able to pay a private lawyer his normal fee.

One advantage the lawyer referral service has over the pro bono system for the participating lawyer is the referrer. In a fully equipped referral service this referrer is the person in charge of referrals. He or she often screens applicants before sending them to the attorney. If qualified as a paralegal, the referrer can save the attorney even more time by dealing with the minor problems requiring only sound advice. This arrangement also weeds out problems not legal

in nature, sending them to social agencies or others for appropriate assistance.[39] Finally, just as in the pro bono service, the lawyer referral service acts as a public relations measure. It helps to "put the Bar in a new light before the many citizens who think of lawyers as selfish and self-centered, and who regard the law as the most unpopular of professions."[40]

The limitations on the lawyer referral services are basically the same as those for pro bono services. Once again, the legal assistance to the poor is based on the economic fortunes of private attorneys.

Furthermore, the problems of practice specialization and legal problem institutionalization are the same for both service delivery types. This is primarily caused by the weakness of the referral office. The lawyer referral system parallels a confederal form of government in structure, with lawyers retaining the authority over decisions on what cases to take and what services to provide.

One further limitation, though seemingly minor, may also effect client usage. The lawyer referral system with a manned office requires the poor client to first establish eligibility there, and then contact a lawyer in his private office at a later date. For the working poor this requires missing time from their job twice and may act as a deterent.[41]

Organized Legal Services

The definitive characteristic of organized legal services is purpose. Unorganized legal services rely on private lawyers to contribute time from their major purpose of running a private practice. On the other hand, organized legal services rely on lawyers working

directly for the legal aid offices, with their major purpose being delivery of free legal services to the indigent. A brief summary of organized legal aid history follows.

When in 1976 the United States celebrated its 200th birthday, the legal aid movement celebrated its one-hundredth. Founded in New York City in 1876 by the German Society, Der Deutcsher Rechts-Schutz Verein was seen as a response to the large German immigration following the Civil War. The society existed to protect these immigrants from "the rapacity of runners, boarding house keepers and a miscellaneous coterie of sharpers."[42] Under the leadership of Arthur V. Briesen, the organization removed the qualification of German birth in 1890. This action caused the German Society to withdraw their support, but community charities of a wider interest offered more support than ever before.[43]

Turning to the New York service as a guideline for development,[44] legal services spread until by 1910 organized legal aid work was reasonably well established in all larger eastern cities.[45] Since establishment of legal aid was considered a local concern, little was done before 1911 to organize legal services nationally.[46] In this year, representatives from fourteen local societies met in Pittsburg, Pennsylvania, for the first national conference on legal aid activities. The following year they established a loose confederation known as the National Alliance of Legal Aid Societies. This group's purpose was to bring about cooperation, increased interest in their work, and the formation of new societies.[47]

After the establishment of the National Alliance, development of legal aid started its slow movement west. The period from 1910-1913

saw development in the mid-west.[48] From 1914 to 1918 the idea spread along the Pacific Coast and into the Southwest until almost all major cities in the United States had an established legal aid organization.[49]

World War I caused a drop in legal aid interest, but this drop was made up for when Reginald Heber Smith's treatise, Justice and the Poor was published. His book provided the "necessary impetus for a new start."[50] Justice and the Poor was credited with leading the American Bar Association to form a Special Committee on Legal Aid in 1920, as well as inspiring the formation of the National Association of Legal Aid Organizations in 1923.[51] This association was a reorganization of the older National Alliance of Legal Aid Societies.[52] The reorganized group saw its main purposes as striving for better internal administration of societies, forming a central body to promote guidance in handling recurring types of cases, and in promoting public relations to encourage the growth of new societies.[53]

Other than a third reorganization of the above mentioned organization to the National Legal Aid Association,[54] and the development of the lawyer referral service previously mentioned, little progress was made in legal aid until 1965.

With the beginning of the War on Poverty, legal aid in the United States took on a new character. Congress established the Office of Economic Opportunity (OEO) in 1964, with its major goal being "to eliminate the paradox of poverty in the midst of plenty."[55] Although the Legal Services Program was not a part of the 1964 Act, it quickly came about as a result of administrative decisions.[56] The program might never have come into existence, however, if it had not been for

the work of current Supreme Court Justice Lewis Powell, then serving as American Bar Association President, in garnering the Association's support for the matter.[57]

Diverging from past legal services methods, the Legal Services Program of the OEO was designed to provide legal service in five areas: 1) client service, 2) law reform, 3) community education, 4) group representation, and 5) economic development.[58] Backup centers were developed to specialize in major areas of poverty law including such areas as housing, welfare, consumer education, and health.[59]

Regardless of the assistance that the Legal Services Program gave to the poor in overcoming poverty-related problems,[60] opposition to the program began to grow when in 1967 it became apparent the organization's national policy was to be law reform through the use of test cases and class action suits.[61] Almost all debate focused on the breaking away from a one-to-one client relationship and moving to test cases and class action suits as a means to challenge both private and public institutions' policies.[62]

Congressional subcommittees were further rattled by contentions that poverty personnel contributed to social unrest and precipitated riots in some cities.[63] One example of such activity occurred in Tulsa, Oklahoma, in March of 1967 when OEO funded Vista workers passed out handbills reading:

> You are Negroes, not Tulsans. South side children play in beautiful parks, while Negro children play in streets. Does City Hall care? No parks, no movies, no recreation at all. Funny thing about North Tulsa, there's nothing for Negroes, nothing for nobody, just nothing . . .[64]

That such activity proved to be inflammatory is an understatement. It was such activity, regardless of its purpose, that gave almost all OEO

programs a bad name with establishment officials nationwide.

The OEO's sponsorship of legal aid ended in July of 1974 when all responsibilities were transferred to the newly established Legal Services Corporation.[65]

A simple definition provided by the Corporation describes itself as a "private, non-profit organization established by Congress in 1974 (PL 93-355) to provide support for legal assistance to the poor in civil matters."[66]

Headed by an eleven member board of directors, the Corporation's major responsibility is to ensure that its grantees provide services effectively and efficiently, and comply with the rules and regulations of the Corporation and its enabling legislation.[67] Nine regional offices have been established through which the Corporation directly supervises these grantees.[68] The individual program grantees, however, have a wide range of flexibility within Legal Services Corporation guidelines. Each program is governed by its own board of directors, which includes both lawyers and eligible clients.[69] Although each program conducts its operations within the general guidelines of the Corporation's regulations and policies, they have broad authority within these limits to determine what emphasis their program will undertake.[70]

To assist the local programs, the Corporation was charged with the development of Support Centers and a Research Institute. The Support Centers help program lawyers with complex legal problems, especially those dealing with poverty law areas.[71] The Research Institute undertakes study projects involving a broad range of legal problems directly relating to services performed by local service programs.[71] Combined,

the two services attempt to find better ways to ensure civil legal services for the poor.

The advantages of the organized legal services programs such as the Legal Services Corporation rest largely in their economic independence from the private legal profession. Less disruption of services should be felt during times of economic downswings under such a system. In fact, the potential exists for more services being extended in such periods because of lawyers finding salaried jobs with the Corporation programs more lucrative than their private practice.

Another easily recognizable advantage is the ability of this type delivery system to specialize in poverty law matters because of governmental funding. Before government support was available, specialization in poverty issues was impractical for lawyers dependent on profits.

Similarly, since institutionalization of issues as legal problems is caused by the frequency with which such claims are brought, new areas of problems faced by the poor should be increasingly recognized as legal problems.[73]

Further advantages of the Legal Services Corporation specifically can be seen in Congress' attempt to avoid the political activities and resultant conservative backlash encountered by the OEO Legal Services Program.[74] By the Legal Services Corporation Act, employees of the Corporation are forbidden to engage in or encourage demonstrations, picketings, boycott strikes, rioting, violations of an outstanding injunction from any court, or any other illegal activity. This includes official identification with anyone performing such activities.[75] Beyond this, they are to refrain from taking any case that can possibly be fee-generating; from lobbying unless for a specific client or

requested by the government; and from furthering initiatives, referendums, and recalls with Corporation money.[76] To ensure a more traditional approach to legal services, no class action suits, appeals, or anicus curiae briefs may be undertaken without express approval of a local project director, according to policies established by the local governing board.[77] Finally, no connection is to be made by program lawyers with any partisan political activities.[78] Although many of these provisions slow the advances possible in the poverty law area, they also allow the service to work compatably with the established social interests. This has helped to avoid the political antagonism felt by OEO's Legal Services Programs.

Limitations on government supported legal services are derived primarily from its financial dependence on Congress. Since the Legal Services Corporation does not represent a strong economic interest, it must necessarily take a second place in a politically-oriented Congress. If increased support by the legal profession could be encouraged, this limitation might be lessened. Corporation researchers are presently studying the extent to which legal services should be governmentally financed, and the extent to which the private bar should provide non-subsidized legal services.[79] A program providing realistic incentives to private lawyers might both gather support in Congress and provide increasing pro bono activity for the lower income group.

A final limitation of the present organized delivery system is their reluctance to advertise because of budgetary restraints. In some areas, programs could not handle the increased turnout that might be caused by massive advertisement campaigns, since heavy turnout might cause long waits and strains to the project's capacity. As was

previously mentioned, once individuals are made aware of their rights, indigation and nonlegal solutions to newly perceived problems might follow.

Conclusion

This chapter has looked at the history, structural characteristics, advantages, and disadvantages of the three most common service delivery types--pro bono delivery, lawyer referral delivery, and organized legal services delivery. Now a brief discussion of the major experimental delivery types will be undertaken. Systems discussed will include those currently being tested by the Legal Services Corporation as suggested alternatives for the more common methods.

Experimental Delivery Systems

Judicare

Similar to the governmentally sponsored Medicare program, Judicare provides for the paying of private attorneys for providing certain legal services to the poor. Fees for such services are determined either on an hourly rate or as a set fee for a particular type of service. Generally this rate or fee charged is below the normal fees charged by the participating lawyer. After client eligibility is determined at a central legal aid administrative office, the staff sends clients to participating lawyers with proof of eligibility. The lawyer performs the necessary service and bills the administrative office of the local program for compensation.[80]

Contract Legal Services

Under this method of service delivery, contracts are made with private attorneys who have agreed to handle a small number of cases referred to them by a program office. This distinguishes the system from Judicare by obligating willing lawyers to take a certain number of cases per year. The program reimburses the attorney for services to eligible clients by either a set rate per hour or a set fee, usually at a lower rate than for the lawyer's private practice.[81]

Prepaid and Group Legal Insurance

Used as a supplement to organized legal services, this delivery system provides simpler, more routine services such as advice and simple document work. Fees charged to members are generally lower than those normally charged to private clients. Underwritten by insurance companies, the government pays a premium for each eligible client in the program. When and if services are needed by a client, the lawyer who performs them bills the insurance company for compensation. This is quite similar to the procedure involved in insuring auto repairs. Administration of such a program, including eligibility determinations, can be carried out through the organized legal services local program office.[82]

Vouchers

This method of legal aid delivery attempts to insure quality of services to the client by supplying him or her with a choice of lawyers. Eligible clients are given a choice of service from a local program staff lawyer or from the cooperating private lawyer of his choice. The

participating lawyers draw up an appropriate fee schedule for specific types of legal work. If the client chooses a private attorney, a voucher is made out in a predetermined amount depending on the staff office interpretation of the legal problem involved. The client then takes the voucher to the participating lawyer and receives the service called for on the voucher. For cost-overruns that are unavoidable, the attorney may request additional compensation if approved by the project director.[83]

Pro Bono Integration With Government Funded Referral Offices

Similar to lawyer referral in almost every characteristic, the major distinction in this plan resides in its governmental funding of the referral office. A similar referrer determines eligibility and refers the client to one of the program's unpaid participating lawyers. The client then travels to the attorney's private office for legal service. The referral office generally tries to get as many lawyers as possible to participate. This helps keep down the number of cases for which each attorney is asked to pledge service. Since an appointment with the lawyer is required, and a considerable wait may ensue, a staff attorney for emergencies is one significant variation for this program.[84]

Conclusion

Delivery systems, both common and experimental, have been examined in this chapter. Institutional structures provide an understanding of the advantages and the limitations of each delivery system in its

ability to bring legal services to the poor. An understanding of the unorganized delivery structures and their alternatives will facilitate understanding of the incentives for lawyers to perform such services. This is the topic of Chapter III.

FOOTNOTES

[1]Legal Services Corporation, Delivery Systems Study: A Research Project on the Delivery of Legal Services to the Poor (Washington, 1977), pp. 74-148.

[2]Phillip R. Lochner, Jr., "The No Fee and Low Fee Legal Practice of Private Attorneys," Law and Society Review, IX (1975), pp. 441-442.

[3]Ibid., pp. 434-438.

[4]Ibid., pp. 435-439.

[5]Ibid., pp. 455-459.

[6]Telephone interview with Mr. Stan Foster, Executive Director of Legal Aid of Western Oklahoma, Inc., May 15, 1979.

[7]For a more in-depth case study of the fears lawyers have shown toward encroachment of the government on the legal profession, see Harry P. Stumpf, "The Local Bar and Legal Services: A Conventional Program," Community Politics and Legal Services, Sage Ser. on Pol. and the Legal Order, Vol. 4 (Beverly Hills, 1975), pp. 183-204.

[8]Ronald M. Pipkin, "Legal Aid and Elitism in the American Legal Profession," in John J. Bonsignore, Ethan Katsh, Peter d'Errico, Ronald M. Pipkin, and Stephen Arons, Before the Law: An Introduction to the Legal Process (Boston, 1974), p. 159.

[9]John S. Bradway, "Developments in Legal Aid: Extension of Legal Aid Into Smaller Communities," Tennessee Law Review, XXII (1952), pp. 491-492.

[10]Luke 11:46.

[11]William Shakespeare, Henry VI, Act I, Scene 3.

[12]The Gallup Opinion Index (September, 1976), p. 23.

[13]Dorothy Maddi and Frederic Merrill, The Private Practicing Bar and Legal Services for Low-Income People (Chicago, 1971), p. 19.

[14]Personal interview with William J. Baker, former Oklahoma State University Student Legal Aid Attorney, Fall, 1977.

[15]Personal interview with Robert M. Murphy, Jr., former Vista volunteer to the Legal Services Program, Fall, 1977.

[16]Stumpf, Community Politics and Legal Services, pp. 121-123.

[17]John S. Bradway, The Bar and Public Relations: An Introduction to the Public Relations Field of the Bar (Indianapolis, 1934), pp. 56-67.

[18]Leon H. Mayhew, "Institutions of Representation, Civil Justice, and the Public," Law and Society Review, IX (1975), p. 404.

[19]Leon H. Mayhew and Albert J. Reis, Jr., "The Social Organization of Legal Contacts," American Sociological Review, XXXIV (1969), p. 309.

[20]Ibid., p. 317.

[21]Harry P. Stumpf, Henry Schroerluke, Forrest D. Dill, "The Legal Profession and Legal Services: Explorations in Local Bar Politics," Law and Society Review, VI (1971), passim.

[22]Lochner, p. 456.

[23]Ibid., p. 457.

[24]Ibid., p. 458.

[25]Ibid., p. 457.

[26]Earl Johnson, Justice and Reform, The Formative Years of OEO Legal Services Program (New York, 1974), p. 8.

[27]"The Gilt-Edged Profession," Forbes, CVII (September 15, 1971), p. 30.

[28]John S. Bradway, Legal Aid Bureaus, A Manual of Practice, Pub. Admin. Serv., No. 47 (Chicago, 1937), p. 72.

[29]George C. Gallantz, "Lawyer Referral: A Brief History," Journal of the American Judicature Society, XLV (1962), p. 306.

[30]Ibid.

[31]Johnson, p. 9.

[32]Ibid.

[33]Ibid., p. 18.

[34]Ibid., p. 9.

[35]Barlow F. Christensen, Lawyers for People of Moderate Means (Chicago, 1970), passim.

[36]Ibid., p. 174.

[37]Ibid., pp. 183-184.

[38]Gallantz, p. 307.

[39]Christensen, p. 174.

[40]Gallantz, p. 306.

[41]Christensen, pp. 194-196.

[42]Reginald Heber Smith, Justice and the Poor, The Carnegie Fndn. for the Advancement of Teaching, No. 13 (Boston, 1919), pp. 134-135.

[43]Ibid., pp. 136-138.

[44]Ibid., p. 140.

[45]Ibid.

[46]John S. Bradway, "National Aspects of Legal Aid," Annals of the American Academy of Political and Social Science, CCV (1939), p. 101.

[47]Ibid.

[48]Smith, p. 145.

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[50]Bradway, "National Aspects of Legal Aid," p. 101.

[51]Stephen K. Huber, "Thou Shalt Not Ration Justice: A History and Bibliography of Legal Aid in America," George Washington Law Review, XLIV (1976), p. 755.

[52]Albert P. Blaustein and Charles O. Porter with Charles T. Duncan, The American Lawyer: A Summary of the Survey of the Legal Profession (Chicago, 1954), p. 90.

[53]Bradway, "National Aspects of Legal Aid," p. 102.

[54]Blaustein and Porter with Duncan, p. 90.

[55]42 U.S.C. § 2701 (1964).

[56]Phillip J. Hannon, "From Politics to Reality: An Historical Perspective of the Legal Services Corporation," Emory Law Journal, XXV (1976), p. 641.

[57]Huber, p. 763.

[58]Ibid., p. 761.

[59]Ibid., p. 760.

[60]Harry Brill, "The Uses and Abuses of Legal Assistance," The Public Interest, XXXI (1973), p. 39. See also Daniel H. Lowenstein and Michael J. Waggoner, "Neighborhood Law Offices: The New Wave in Legal Services for the Poor," Harvard Law Review, LXXX (1970), pp. 816-822.

[61]Hannon, p. 642.

[62]Brill, p. 39.

[63]Hannon, p. 644.

[64]Shirley Sheibla, Poverty Is Where the Money Is (New Rochelle, 1968), p. 225.

[65]Huber, pp. 761-762.

[66]"Background Release," Legal Services Corporation News, April, 1978.

[67]U.S.C. § 2996c and § 2996e.

[68]Legal Services Corporation News, pp. 12-13.

[69]Examples of lawyer dominance on the local program boards may be found in Stumpf, Community Politics and Legal Services, pp. 232-233, 236.

[70]42 U.S.C. § 2996c.

[71]Legal Services Corporation News, pp. 4-5.

[72]Ibid., p. 5.

[73]Mayhew, "Institutions of Representation, Civil Justice, and the Public," pp. 409-410.

[74]Hannon, p. 643.

[75]42 U.S.C. § 2996e (b) (1) (B) (5).

[76]42 U.S.C. § 2996e (c) (2) (A)-(B).

[77]42 U.S.C. § 2996e (d) (4)-(5).

[78]42 U.S.C. § 2996e (e) (1)-(2).

[79]Legal Services Corporation, Next Steps for the Legal Services Corporation: A Set of Discussion Papers, April, 1978.

[80]Legal Services Corporation, Delivery Systems Study (July, 1977), pp. 74-91, 125-135.

[81]Ibid., pp. 92-105, 136-141.

[82] Ibid., pp. 106-118, 142-146.

[83] Ibid., pp. 147-148.

[84] Ibid., pp. 119-124.

CHAPTER III

THE ECONOMIC AND ROLE EXPECTATION INCENTIVES FOR PERFORMING UNORGANIZED LEGAL AID SERVICE

Introduction

As was discussed in Chapter II, unorganized legal services are dependent upon the economic situations of private lawyers.[1] In his book, How to Go Directly Into Solo Law Practice (Without Missing a Meal), Gerald M. Singer said quite aptly, "You must be more than just a good lawyer, you must get paid."[2] Since the lawyer is a self-employed businessman who must be concerned with profit, this leads to specialization in areas he or she expects to be lucrative. Institutionalization of these more lucrative-type legal problems then occurs. As it was previously described, institutionalization is the process by which problems commonly brought to lawyers come to be defined throughout society as legal problems. Since in civil cases lawyers have often specialized in business and property matters, these and related areas have become generally considered areas where a person needs a lawyer to resolve problems.[3] This has not been the case with many of the less lucrative problems faced by the poor. Housing problems, consumer credit problems, and administrative agency problems have not been similarly institutionalized.[4] They have, in effect, been priced out of an open-market system in which they cannot compete effectively.[5]

Because their problems have not been institutionalized, and because they have not been competitors in an open-market, the legal services lawyers have offered the poor generally have been simple services, quickly performed. Lawyers put less time into researching the no fee and low fee cases they received. They were not found to be inclined to take very difficult or highly complex cases on such a basis. Resolution of the pro bono case rarely was seen to involve the institution of any legal action, and more rarely still did such a case go to trial.[6] Instead lawyers preferred resolution of the problem through advice and negotiation.[7] It should be noted however, such simple services have appeared to be sufficient in many situations. For many poor clients, the problem resolved itself when the opponent learned the poor client had been properly advised. A few words from a lawyer have helped protect the client from the unwarranted threats of the opposing party.[8] Unorganized legal services programs perform best under such circumstances.

The number of indigent clients served by lawyers has also been limited by economics. Lawyers have acknowledged turning away poor clients for economic reasons.[9] In general, however, lawyers have seemed willing to perform pro bono work for the poor as a public service. The motivations behind the performance of this public service have been seen previously to include justifying their monopolistic grant over legal services,[10] and in improving the profession's public relations.[11]

Based on this background, and in keeping with the common economics of a private business, incentives exist to maximize returns on no-fee and low fee work if possible. In the legal business, the most rewarding

returns to lawyers seem to be help in building and maintaining their practices, and help in fulfilling their role expectations in the community. Each of these hypothesized incentives for doing no-fee and low fee work deserve detailed examination.

Building a Practice and Fulfilling Social Expectations as Incentives for Services

Building or Maintaining a Law Practice

First, to achieve his or her profit goals as a self-employed businessman, a lawyer must build and maintain a steady traffic of clients. Phillip Lochner researched this area in a survey of lawyers in and surrounding Buffalo, New York. He found that of those who responded to the question, 41, or 66 percent of solo practioners; and 36, or 67% of the firm partners described their primary motives for taking most no fee and low fee cases was to help their practice.[12] This he found to be especially true for the lawyer trying to establish a practice. These lawyers reported serving no-fee and low fee clients with the hope that someday they might become grateful paying clients. Lochner noted, "Today's impoverished unmarried graduate student, after all, might well turn out to be tomorrow's solidly middle-class university faculty member and family man with taxes to be paid, wills to be written and homes to be purchased."[13] Stephen Gillers, author of I'd Rather Do It Myself: How to Set Up Your Own Law Firm, also found this to be the case. He said, "My experience has been that an active interest in pro bono work helps get your name around and, in some inexplicable and indirect way, leads to work."[14] Another similar

incentive noted by young attorneys was that the case might generate favorable publicity that would attract clients.[15] Finally, the lawyers explained that what at first appeared to be a no fee or low fee case sometimes developed into a paying case on a contingent fee basis when all the facts were known.[16]

If younger lawyers use no fee and low fee cases to build a practice, then what incentives exist for more established lawyers to perform such services? Older lawyers reported finding pro bono service as a way to maintain their practice. Primarily, this occurred in two areas. First, the older lawyers found pro bono service to be an effective way of creating client loyalty. Such services acted as "loss leaders" given for minor services to both those who could and those who could not pay. The lawyers then hoped grateful clients would return at a later date with a more substantial matter that would make up for missing the earlier fee.[17] The second incentive for established lawyers to do pro bono work involved pleasing intermediaries. Intermediaries were described earlier as the persons who often define the poor's problems as legal, and who refer them to specific lawyers for help. Since solo practioners reported intermediaries were often superior in socioeconomic status than the client they recommended,[18] these attorneys' willingness to take the poor clients' cases cemented a relationship with someone who might come to them as a paying client.[19]

Compared to solo practioners, firm attorneys showed fewer economic incentives to perform pro bono service. Young firm associates, unlike young solo practioners, had paying legal work generated for them by their firm. Furthermore, it was found that intrafirm reputation was more important to young firm associates career advances than their

reputation with the legal community. Associates feared too much pro bono service might appear "dilettantish" in the eyes of senior firm members.[20] Because of this, when they did take pro bono cases, the case tended to be a larger and splashier case that would help make a name for the firm.[21]

A further study citing similar findings was "The Private Practicing Bar and Legal Services for Low-Income People," conducted by Dorothy Linder Maddi and Frederic R. Merrill. This survey of 604 private lawyers, including 204 in Miami, 202 in St. Louis, and 198 in San Francisco, paralleled the findings in the urban study by Lochner. Concerning the attorneys' experience in personally providing legal services to the poor, the surveyors found that solo practioners tended to report more no fee service than firm attorneys. Furthermore, they found that attorneys who normally charged higher fees to paying clients were more likely to charge no fee to the poor. Lower fee lawyers, on the other hand, tended to charge some fee for such services. This was interpreted as stemming from economic necessity, with the lower fee lawyers feeling a need to charge some kind of fee to every client if at all possible, while the higher-fee lawyers might not feel such a need. When queried as to what factors were considered when deciding whether or not to take a pro bono case, lawyers most often responded the "nature of the case." The next most frequent group of responses, however, included the attorney's professional situation at the time of the request and the sources of the referral as equally strong considerations. Of those persons whose cases were accepted, 75 percent had some prior personal contact with the lawyer, or were referred by someone who had.[22]

Strengthening Political Advantage

Another way lawyers can maximize returns from pro bono work is by using it to their political advantage. This will be seen later to fulfill social expectations about the lawyer's role in the community.[23] If such expectations are not fulfilled, economic sanctions may follow.

That lawyers tend to become politicians is an occurrence commonly recognized. The field of politics, like the field of law, has been seen to help raise a person's status in the community.[24] In fact, the two fields have been considered to have professionally converged. This convergence was said to occur when the two professions become more integrated into the political system, and their members begin to find "opportunities that facilitate the actual interchange of institutional positions, careers, and roles more than is the case with other occupations."[25] From campaigning for such political offices the lawyer generally increases his name recognition within the community. This consequently may increase the reputation of his practice, as well as the number of paying clients who will come for legal services.[26]

When interested in running for office, lawyers may be inclined to do favors and lower fees to garner political support. One such example was described by the Duke Law Journal's article entitled, "The Legal Problems of the Rural Poor." Blacks in the sample were thought by Black community leaders to be inhibited in seeking legal services because there was no Black lawyer available. They did, however, use the services of one particular lawyer who had at one time openly advised the school board against school desegregation. Since that time the lawyer had become involved in local politics. He was now inclined to

do no fee and low fee work in order to court the Black community's political support.[27]

It is evident, then, that incentives to do pro bono work exist beyond mere altruism. A "reciprocity system"[28] has been described whereby lawyers maximize their returns from pro bono services. Recognizable incentives exist, both in directly economic and indirectly, economic political areas. But what is it that both allows and causes such a reciprocal system to work as it does? The best answer to this question can be derived by examining separately the characteristics of each actor in the system.

Characteristics of the Poor That Keep Them Complacent to Unequal Legal Access

Introduction

Throughout this paper, stability of the regime has been alluded to as a reason for lawyers to perform legal services. Keeping the poor satisfied and with a sense of justice has been suggested as one reason for increasing legal aid. This sense of justice preserves faith in the system[29] and dampens the tendency of the poor to turn to left-leaning movements. If such is the case, why then have the poor accepted the institutionalization of economic legal problems while theirs have gone untended? Why have the poor accepted unequal access to lawyers who act as the gatekeepers of the courtroom? And finally, why have they accepted unequal treatment by lawyers who wish to hurry through their cases to get on with their paying business? The answers to these questions lie in the characteristics of the poor as a group. The poor have

not stormed the system, demanding equal access first, because they themselves do not recognize their problems as legal; and second, because they have social-psychological barriers that inhibit their ability to make legal demands. Each characteristic will be examined in turn to provide a better understanding of the limitations they place on the poor.

Unrecognized Needs

The process of institutionalization is largely responsible for the poor's lack of recognition of legal problems. As mentioned before, it limited the areas of problems that society consider appropriate to resolve by formal legal procedures. Since the poor's problems do not meet the criteria for such institutionalization, they go largely unrecognized by both the lawyers and the poor.

Examples of the poor's problems with recognition of their problems abound in the legal aid literature. One survey found that for every one civil legal problem a household recognized, three additional problems went unrecognized.[30] A survey of those who did not use available legal services, but were eligible, found that their reason for nonuse was the lack of property and personal problems they felt to be the basis for legal needs. This was despite over fifty percent of the sample being Aid to Families With Dependent Children (AFDC) mothers with the same characteristics of ninety percent of the legal service users. The survey also found a greater than normal portion of those interviewed as nonusers were elderly and did not recognize family or consumer related problems.[31] Another study found that 35 percent of Detroit survey respondents reported problems with governmental agencies. Of those who

considered these problems relatively serious, only 13 percent consulted a lawyer. This gap in problem solution through legal channels was not caused by fears of inability to pay or refusals of low fee or no fee service. Only one percent of the sample reported they had wanted to see a lawyer about this problem, but had not for any reason.[32] Many other descriptions of unrecognized needs exist.[33] A goal that various authors have shared was the desire to increase the ability among the poor to act as their own legal "self-diagnostician."[34] This is especially called for in our reactive, as opposed to proactive, system of legal access. The Canons of Legal Ethics demand lawyers be reactive --or wait for the client to come to him for service. A proactive system of access allows the advocate to search for clients with problems.[35] Unless the poor become better able to recognize their problems, or a trend toward proactive access occurs, the present system will continue to consistently avoid institutionalization of the poor's problems.

Once the poor recognize their problem as one to be solved best by formal legal methods, few differences can be seen in their use of lawyers than that of higher income groups.[36] Problems dealing with divorce, alimony, and child support have been found to show no relationship to income, occupational status, or education in the incidence of seeing a lawyer.[37] In fact, those having tort problems had a substantially lower mean income than those who did not use lawyers for such problems. This may have been caused by three factors. First, the higher income group probably sought restitution for property damage cases from insurance companies.[38] Second, property cases have been seen to be institutionalized in the law, making them more recognizable

as legal problems. Finally, lawyers were probably more willing to take tort cases on behalf of a poor client because such cases could be taken on a contingent-fee basis.[39]

Consequences Arising From Non-recognition of Civil Problems As Legal

Legal System Alienations and Misperceptions. Nonrecognition of civil problems raises consequences effecting the poor's attitude toward the legal system in general. The poor have been found mainly to consider the legal system in terms of criminal actions. One study found similarly that greater than 80 percent of the lower income group sampled believed the lawyer's principal job was "defending people who are presumed to have violated the law." Fourteen percent stated more clearly, but still without accuracy, that the lawyer's main function was "helping them to keep within the law."[40]

Prior contacts with the legal system resulted in an even stronger degree of alienation from the process.[41] The study by Carlin and Howard concerned those seeking to recover from losses arising out of a car accident. The data implied that those of lower socio-economic status tended to seek damages less often than those of higher socio-economic status. The lower socio-economic status group's inclination to seek such redress, either through the courts or through insurance claims was also inversely related to the number of times they had been in court for any reason.[42] The system did not seem to make the poor feel welcome within its procedures, thus helping to cause their alienation.

Cost Misperceptions. Another area that shows the public's general misunderstanding of the legal system involves misperceptions of legal costs. When researching those who did not go to lawyers because they did not think they had the ability to pay, one researcher found that respondents in all but the highest income levels thought legal services were beyond their means.[43] Other authors have also evidenced such misperceptions of fees among all economic levels, but especially the poor groups.[44]

Ignorance of Legal Services. One obvious reason that the poor let inability to pay hinder their use of a lawyer's services is their ignorance of legal aid services. Several authors noted a lack of information among the poor, about pro bono or organized legal aid services. One study reported 80 percent of lower-class persons interviewed had no knowledge of where free or low cost legal services could be found.[45] Another study similarly found that 76 percent of those surveyed were ignorant of such services.[46]

Nonlegal Alternatives. Alienation to the system, misperceptions of costs, and ignorance of legal aid can be seen to induce some of the poor to turn to other, nonlegal methods of solving their problems. Researchers have found the poor may turn to "outside community resources when their problem is associated with institutionalized legal work or police related issues." These researchers noted, however, the inability of outside resources to solve the hard-core problems of poverty.[47] An excellent example of such problems was reported by the Denver Law Journal in their article, "Rural Poverty and the Law in Southern Colorado." The survey found a system of help to the poor

made up of "confidants." Usually older, established members of the community, the confidant drafted single legal instruments, dispensed information to the poor, gave out quasi-legal advice and affirmatively interceded with other community members on behalf of the poor.[48] The study group found this confidant system to be strictly a Spanish-American phenomenan, however, probably arising out of the old patron traditions of early American, Spanish, or Mexican settlements.[49] Another method of solving problems that was noted by the Southern Colorado researchers was a propensity for the poor to resort to "self-help" and "interpersonal dealings" as a solution to problems. This the researchers also found to be linked to a Spanish-American tradition --the tradition of machismo. Examples of such self-help techniques included "common law" divorces, extra-legal division of properties when no will was left, landlord-tenant problems, and the formation of cooperatives.[50] The research team noted almost all nonlegal techniques were largely ineffective in non-institutionalized issues and in conflicts with the established order.[51]

Similar findings by the previously cited Duke Law Journal North Carolina rural poor survey showed a similar system among nonethnic poor. The tenant farm operators and an industrial plant operator performed a similar service to that of the "confidant." Their paternalistic actions included assistance in minor criminal matters including the payment of fines and posting of bail, as well as consultation and loans when the problem involved money. A further service performed for the poor also involved intercession on behalf of the poor with local creditors.[52] Effectiveness of this form of help was evidenced by the fact that over 50 percent of the poor respondents acknowledged

the inability to meet debts or make payments on purchases when due, but only 5 percent were ever sued and even fewer experienced repossessions.[53]

Socio-Psychological Problems That Keep Some Poor From Attaining Effective Legal Services

Introduction. Beyond the effects of nonrecognition and its many consequences, researchers have noticed problems that the individual poor person has in dealing with the rest of his or her community. Three such socio-psychological problems--fear of reprisals, inaction, and psychological distress--will be discussed to further the reader's understanding of the poor's complacency in the face of an unequal system.

Fear of Reprisals. Some poor persons have shown fear of reprisals from both private interests and public agencies, against whom effective action would have had to be taken to have relieved their problem. One study especially sighted fear of reprisals from landlords, employers, merchants, suppliers of public assistance, and the police.[54] Further study in the area contended that government "largess," or subsidies to the poor in the form of welfare benefits, tended to build pressures against contesting civil liberty issues. Afraid of losing their subsidy, the poor were found to be less willing to assert their Constitutional rights.[55] An example of such a feared reprisal happening was seen in the governmental reaction to the San Francisco Legal Assistance Foundation defeat of the California one-year residency requirement for welfare benefits. This defeat, along with other state developments,

triggered austerity measures which stiffened criteria for welfare eligibility, and tightened enforcement of these requirements. The restrictions were so great that total welfare recipients in California decreased despite an increase in unemployment.[56]

Inaction. Another characteristic of some of the poor that tends to dampen their demands on the legal system is a propensity toward inaction. When a person decides to take action he accepts the appropriateness, efficacy, and fairness of legal solutions.[57] A previously mentioned study by Carlin and Howard indicated such inaction among the lower socio-economic status sampled by the survey. Involving actions taken after an auto accident, 27 percent of the lower status respondents reported doing nothing, compared to only 2 percent of the higher status group.[58] Another student of the problem concluded that the poor are characterized, in general, by passive rather than active reactions to every day situations.[59] This would point especially to a low feeling of efficacy, or the ability to change things, in an economically based system.

Psychological Distress. A great number of poor nonusers of legal services gave field researchers the overriding impression that they were unable to use the program because of social and psychological disorientations. This nonuser subgroup appeared alienated, resigned to the status quo, suspicious, and lonely. Researchers recorded many negative comments about lawyers, including, "I would rather go to a member of the Mafia before going to a lawyer;" and "Most of them are nuts. They bleed you until you go to court."[60] The conclusions that were

drawn suggested that "the decision to request an offered service is beyond the emotional capacity of some of the potential clients."[61]

Conclusion. Research supports three major characteristics of the poor that act to keep them complacent in the face of an unequal access to the legal system. Non-recognition of legal problems, its consequences and social-psychological problems were substantiated by previous research. Backed by this understanding of the poor's complacency, an examination of problems in the lawyer's environment should bring increased understanding of why the lawyer needs to maximize returns on pro bono service.

Problems in the Lawyer's Environment That Lead Him to Maximize Profits From Pro Bono Service

Introduction

The development of lawyer referral was seen as a boon to young lawyers in search of clients.[62] The service referrer helped these less-established lawyers come in contact with needed clients. After this initial contact, the lawyer was free to charge anything he and his client felt was reasonable.[63] The lawyer referral system acted in such situations as a surrogate for direct solicitation, which is forbidden by the Bar Association's Canon of Ethics.[64] One such method of direct solicitation included in this ban includes some forms of advertisement. The effect of such a ban on advertisement has been seen to increase the difficulty of establishing a solo practice. An analysis of the ban on advertisement should provide better insight

of why the lawyer is able to use pro bono services to his economic advantage.

Later in this section, another problem that lawyers must contend with will be discussed. This problem concerns the need to fulfill social expectations of the lawyer's role or risk economic sanctions from the community. Two areas of expectations will be examined--the political and the philanthropic. These areas of discussion should further the understanding of the lawyer's needs that can be met by the pro bono service system.

The Ban on Legal Advertising

The Pros and Cons. The denial of legal advertising raises conflicting value questions. Advocates of the ban content that it protects the public from misrepresentation and overreaching on the part of ambulance-chasing lawyers. Second, they contend, the ban on advertisement is in the interest of society because it helps to avoid the stirring up of litigation that might not otherwise make its way to the courtroom. A third reason they forward to justify the ban involves a desire for those who have worked hard and built a practice to be able to preserve this advantage. Finally, the ban is said to serve a bar association desire to avoid the commercialization of the legal business for fear it will cheapen the services of the entire profession.[65]

Another set of equally cogent reasons calls for the removal of such a ban. Some contend that the removal of the ban will be in the public interest by increasing readily available legal services because of the increased information that would help potential clients recognize their legal problems. This is the service that is now allowed to

private lawyers and organized legal aid under the revised code of ethics.[66] A second reason seen for allowing advertisement is that it will improve the economic condition of the bar. This is almost a corollary to their first justification for removal of the ban. Advertisement in the legal business as in any other business can only be expected to bring in more clients. A final contention, and the most general of the lot, suggests that free enterprise in the legal system would promote both the public's and the legal profession's interests by ensuring quality and access to all, even if prices must drop.[67]

A Revised Code. Mention was made above of the revisions made in the code of ethics and its ban on legal advertising. A recent U.S. Supreme Court decision caused a modification in the ban to a small extent.[68] Such an all-inclusive ban was seen as a violation of the individual lawyer's First Amendment Freedom of Speech. The ruling required the highest court in almost every state to reconsider their stance on the lawyer advertising question. This has not loosened the restrictions much, however. The current Oklahoma law has limited the ban to allow for generic advertisement in the public interest. This is the same form of instructive advertisement allowed by the American Bar Association to all legal aid programs. Approval of such activities was extended to telling why legal problems should be brought to a lawyer, and how a lawyer's services could be obtained at reasonable cost.[69]

Even though this form of advertisement has existed for quite some time in the legal services field, severe limitations have been found in its use. Noting that legal services get nowhere unless advertised, the ethics of the advertisement controversy has caused most publicity

to be handled very delicately.[70] One difficult problem has been referral of those who came to a legal aid society for help and who were not eligible.[71] To refer such a person has been seen as having a proactive, or access initiating, nature that is considered an improper solicitation by the bar.

Conclusions. Thus without advertising, the problem of developing a solo practice remains largely intact. As with any new business, if the public does not know it exists they don't come. The new lawyer cannot rely on past customers to send more clients until there are past customers. The new lawyer especially must rely on promotional techniques that include taking pro bono referrees, joining social and fraternal organizations, and running for political office in hope of making paying client contacts.[72] As long as the ban on advertising exists for all but limited purposes, lawyers wishing to build or maintain a practice will probably keep turning to pro bono services as one substitute for advertising. One writer on the justification for lowering procurement restrictions said,

> Real progress lies in group action to reorganize the getting of business and the doing of it in keeping with the age: in standardizing, spreading, and lowering the price of service. Once service is sure, the Bar can outpublicize any lay competitor . . .[73]

If the legal profession ever takes such steps, it will need to be ready to meet the need brought about by the new legal awareness. Until then, the reciprocity system described at the first of this chapter will most probably continue. This system, through the use of intermediaries has proven to be an effective and accepted way to find customers.

Social Role Expectations of Lawyers

Introduction. Another characteristic of the environment in which lawyers must work, is the development of role expectations by other members of the community. These roles arise from expectations concerning the lawyer's function and conduct as seen by at least three important groups--his clients, his legal colleagues, and his community.[74]

The major question in the area concerns the effect of social role expectations on lawyer's pro bono services. First the lawyer's attitude toward his or her indigent clients should be explained. The underlying attitude here seems to be that the poor person is essentially a welfare client who receives free service as a privilege, not as a right. Furthermore this "privilege" is granted solely at the discretion of the lawyer, and only if the poor person is found to be deserving.[75] By this reasoning, the performance of legal services should be evaluated in keeping with the social norms regarding philanthropy.

Philanthropic Expectations. The system of norms for the regulating and directing of philanthropic activities has been found by researchers to be very powerful. Indeed, they have found that this system of norms was so strong that departure from them might entail penalties severe enough to affect an individual's social ambitions or business career.[76] If pro bono work is seen as a charity donation given by the lawyer, inferrence suggests it too must be done under these norm restrictions.

One survey attempted to find who in the community was in charge of establishing priorities among the services and enforcing sanctions. The researchers found that a social elite, or "Inner Circle" of the

town's establishment prescribed the amount of time members of the community should donate. This prescription for service was seen as being based on occupation, relative importance in the business world, amount of free time to give, and the help that could be expected from one's office staff.[77] Powerful social sanctions were seen as inducing community members to participate. These negative sanctions were available for anyone who did not perform, or for those who donated time to unacceptable causes.[78] This can be expected to have affected the present pro bono reciprocity system. Since the policy positions of the Inner Circle were never seen to be stated directly, but only implied, lawyers may feel a strong social pressure to perform some pro bono services or lose the good graces of the community. This also accounts for the types of cases the private lawyer will and will not take on a pro bono basis. One-third of the lawyers interviewed in one rural survey conceded that they could not take on the cases of persons and groups unpopular in the community. The lawyers in this survey all avoided welfare and social security benefit claims, and also hesitated to deal with landlord-tenant disputes.[79]

Community Leadership Expectations. Another area of social expectations affecting lawyers is the community leadership role they may be expected to perform. This citizenship role was not always seen clearly but was defined as "those behavior expectations pertaining to the lawyer in relation to his community and society which are not those of every citizen and which are not part of the technical function as a lawyer."[80] It was found that especially in the smaller towns, lawyers were expected to make themselves available as a public servant.[81] Other

similar expectations involved being available for non-political leadership positions in philanthropic drives, and to performing law-related legal aid work.[82] This supports the previous research describing the Inner Circle of the top community elites and extends the idea of social pressure to conform to political role expectations.

Such inferred role expectations have been seen to be internalized by lawyers. These expectations mesh well with the lawyer's natural economic interest in community development, and his interest in building his practice by the use of pro bono activities.[83]

Direct political involvement has been seen to quite interestingly vary by the type of lawyer's practice. The solo practitioner in one survey was found to participate more often in the political than in the philanthropic activities, although he was more active in both areas than was the firm attorney. Fifty-six percent of the solo practitioners reported political activities, while only 40 percent reported philanthropic work. For the firm attorney, participation in nonpolitical philanthropic work was more common; 36 percent participating in some type of the activity.[84]

In partisan political activities, however, only 23 percent of the firm attorneys acknowledged their participation. This difference in choice of outlet for performance of social role expectations was hypothesized by the researchers to be caused by the solo practitioner's need for the career advancement and the name recognition that campaigning could give to him or her.[85] For an example of this role expectation bringing lawyers into public service, one need only turn to the previously cited southern Colorado study. Researchers here found that

all lawyers were solo practitioners, and that 38 out of 45, or 84 percent, had run for elective county position.[86]

Conclusions. Now that a better understanding of clients' problems and lawyers' needs has been attained, the only actor left to examine is the intermediary. Once this discussion is complete, the reader should have sufficient background to adequately understand the incentives for lawyers to perform pro bono legal services work. Once this understanding has been attained, the question of setting priorities between economic incentives and social expectation incentives may be further explored.

Characteristics of Intermediaries and How They Bring No Fee or Low Fee Clients in Contact With Lawyers

How the System Works

The need for further study of the intermediary relationship has been recognized by researchers as necessary to improve the utilization of legal services.[87] Despite this, little has been reported on the activities and characteristics of the group as it pertains to legal aid. Phillip Lochner has written the major contribution in this area. Basing his study on the two-step flow of communication developed by Elihu Katz and Paul Lazarsfeld,[88] Lochner found the use of an intermediary was called for because of two major reasons. First, lawyers are prevented from seeking out no fee and low fee clients proactively because of professional ethics demands and economic exigencies.[89] Because of their reliance on profit, more lucrative business would probably be the

prey of such a search, even if it was allowed. On the other hand, because of psychological and informational barriers, the poor do not actively seek out the services of a lawyer.[90] Thus an intermediary system is needed in order for the two actors to come together.

Intermediary Differences by Lawyer's Type of Practice

Solo Practitioners' Intermediaries. In his Buffalo, New York, survey, Lochner found the intermediaries of solo practitioners were more likely to be the business and social contacts of the lawyer. These people had the appropriate contacts with lawyers who did some pro bono services, they were in contact with the poor for reasons to be discussed momentarily, and they had resources in problem solving that the poor generally lacked.[91] The most common intermediaries recognized by the lawyers were listed as doctors, ministers, employers, union officers, city councilmen, neighbors and friends, a fellow Elk, and brothers-in-law.[92] The poorer clients often contacted these people hoping they would directly be able to solve their problems. It was then that the poor's problems were defined as legal, and that they were referred to a lawyer the intermediary thought would help.[93]

What motivated these solo practitioner intermediaries, as well as those for firm attorneys to perform such a role? Several answers were hypothesized here. The psychological and personal satisfaction of helping someone in trouble was one possible answer. Another solution was that the referral kept the intermediary from having to worry further with the poor person's problem. Finally, those in politics and business may have expected favors done for them at a later date in

return for the referral. Regardless of what the specific motives were, Lochner concluded that incentives probably needed not to be compelling, since little action was called for on the part of the intermediary.[94]

Firm Attorneys' Intermediaries. In contrast to the solo practitioner, the firm attorney more often sought out nonremunerative work by volunteering his services to civil liberties and other groups that helped the disadvantaged. They were, however, less likely than the solo practitioner to take referral low fee and no fee work as well as more likely to do none of this type of work at all.[95] This is in keeping with previous analysis that found the activities of firm lawyers tended to be more philanthropic than economic or politically oriented. The primary difference, as mentioned by lawyers, was a stronger primacy of attention for their paying clients. Many lawyers admitted just not having time to do such work because of the demands of their paying practice.[96] The economic differences between solo practitioners and firm lawyers is shown most distinctly here. Firm lawyers showed far less interest in, or need to build and maintain their practice. Social expectations did, however, seem to encourage taking on some pro bono activity.

Another major difference between the no fee and low fee services of solo practitioners and the firm attorneys, was the personal characteristics of the firm attorney's intermediaries. Whereas the solo practitioner's clients were more like him in socio-economic status, the firm attorney's intermediaries "did not tend to be the clear educational, financial, or occupational superior of their [poor] clients."[97] This would seem to eliminate any motive of gaining the intermediary as a client or of doing the type of service needed to keep him a satisfied

customer. Instead, this once again shows the firm attorney being more interested in satisfying social expectations, as opposed to the solo practitioner's concern with economic and political incentives.

Limits on an Intermediary Dependent System

Another concern of an intermediary based system deals with what limits there are in its ability to bring the poor in contact with the needed lawyers. Lochner noted first that there was a limit on the number of clients an intermediary would send. Primarily this seemed to be the case because the intermediaries did not contact too many people who would need such services. Second, he believed the intermediary would not want to put the lawyer in the position of performing such work too often. This, Lochner concluded, was based on a fear of wearing out the intermediary's welcome, and possibly straining his or her relationship with the lawyer.[98]

Another limit found inherent in the solo practitioners' form of intermediary relationships was that many groups were excluded from legal services. Since this type of lawyer did not often seek non-remumerative legal services on his own,[99] the system was dependent on contacts with a group who would act as an intermediary. Lochner found this group's contacts were seriously limited in several areas. One such limit was that most of those brought in by intermediaries to solo practitioners were members of the middle class who had fallen on hard times. This explains why the no fee and low fee clients were in touch with the similarly middle class intermediaries.[100]

Blacks were another group found underrepresented by the intermediary system. The survey found few Blacks were given no few or low fee help, primarily because they lacked the necessary contacts with intermediaries.[101] Lochner hypothesized the situation would better itself as minorities continued to move up the social class ladder, thus making the necessary contacts.[102]

Lochner also found that most no fee and low fee clients were in their twenties and thirties. He explained this as the lack of intermediary contacts by those young and/or older, who were often isolated from these social connections.[103]

The significance of groups being excluded from the intermediary networks of the solo practitioners lies in the degree to which this makes the system ineffective in dealing with the needs of all the poor. Because of the multiple incentives of building their practice, seeking political advantage, and fulfilling other role expectations, solo practitioners have been seen to be more willing to take on pro bono work. Lochner found that 27 percent of firm attorneys in his survey did not take any no fee or low fee work. This was compared to only 18 percent of the solo practitioners.[104] Since the solo practitioner does more of this type of work, those who are excluded from his services have less of a chance of getting any service at all.

An Example of a Southern Colorado Intermediary System

The Denver Law Journal also noted the existence of an intermediary system in their study. Researchers supported Lochner's description of the workings of the system by finding the poor first took their

undefined problems to intermediaries who then referred them on to a lawyer. They found, however, that even though most of the lawyers were solo practitioners, their intermediaries resembled those of the law firm attorney in Lochner's study. These intermediaries were most likely to be a friend or relative of the poor client.[105] This showed a much greater disparity between the intermediary and the solo practitioner's status than was the case in Lochner's study.

Analysis of this differing relationship probably indicates the rural southern Colorado lawyer's greater preoccupation with fulfilling social expectations. This is further backed by a finding mentioned previously about the high rate of rural southern Colorado lawyers' political participation. Thirty-eight out of forty-five, or 84 percent, acknowledged being active in elective politics. Their performance of legal aid probably went to further their political careers and to fulfill other expectations of the community.

Conclusion

The system of reciprocity found to motivate no fee and low fee work has dimensions beyond those of simple altruism. The analysis of characteristics peculiar to each actor hopefully has furthered the understanding of why and how the system comes about as it does. However, the major question that has arisen involves when the lawyer is inclined to favor economic reciprocity; and when the indirectly economic, social expectations of lawyers are stronger incentives. These questions, as well as others, will be developed in the following chapter along with a description of the methodology used to seek their answers.

FOOTNOTES

[1]In this chapter the term pro bono will be used to describe both the pro bono delivery system and the lawyer referral delivery. Both of these forms of unorganized legal services rely on the free services given by private lawyers. This giving of services, regardless of how the client was directed to the lawyer's office, is the common meaning of pro bono service.

[2]Gerald M. Singer, How to Go Directly Into Solo Law Practice (Without Missing a Meal) (Rochester, 1976), p. 195.

[3]Leon H. Mayhew and Albert J. Reis, Jr., "The Social Organization of Legal Contacts," American Sociological Review, XXXIV (1969), p. 313.

[4]Leon H. Mayhew, "Institutions of Representation, Civil Justice, and the Public," Law and Society Review, IX (1975), p. 413.

[5]Raymond F. Marks, Jr., The Legal Needs of the Poor: A Critical Analysis (Chicago, 1971), p. 2.

[6]Phillip R. Lochner, Jr., "The No Fee and Low Fee Legal Practice of Private Attorneys," Law and Society Review, IX (1975), pp. 456-458.

[7]Ibid., p. 458.

[8]Wayne Theophilus, "The Small Wage Earner in Legal Trouble," Annals of the American Academy of Political and Social Science, CCV (1939), pp. 73-79.

[9]Jerome E. Carlin and Jan Howard, "Legal Representation and Class Justice," U.C.L.A. Law Review, XII (1965), p. 428.

[10]Barlow F. Christensen, Professionalism, Justice, and Availability of Legal Services, Research Contribs. of the Amer. Bar Fndn., No. 5 (Chicago, 1971), p. 1.

[11]Albert P. Blaustein and Charles O. Porter with Charles T. Duncan, The American Lawyer: A Summary of the Survey of the Legal Profession (Chicago, 1954), p. 72.

[12]Lochner, p. 444.

[13]Ibid.

[14]Stephen Gillers, I'd Rather Do It Myself: How to Set Up Your Own Law Firm (New York, 1977), p. 59.

[15]Lochner, p. 445.

[16]Ibid.

[17]Ibid., p. 445.

[18]Ibid., p. 440. Seventy-six percent of the solo practitioners described their intermediaries as socio-economic superiors of their no fee and low fee clients. Only 24 percent of these attorneys described their intermediaries as the socio-economic equals of their no fee or low fee clients. The findings were reversed for the firm attorney, however, with 32 percent of their intermediaries described as superior in SES, and 69 percent describing them as equal in SES.

[19]Ibid., p. 446.

[20]Ibid., p. 448.

[21]Sharon Tisher, Lynne Barnabei, and Mark Green, "The Sad State of Pro Bono Activity," Trial, XIII (October, 1977), p. 44.

[22]Dorothy Maddi and Frederic Merrill, The Private Practicing Bar and Legal Services for Low-Income People (Chicago, 1971), pp. 13-18.

[23]Lochner, p. 463.

[24]Heinz Eulau and John D. Sprague, Lawyers In Politics--A Study in Professional Convergence (Indianapolis, 1964), p. 74.

[25]Ibid., p. 132.

[26]Ibid., pp. 39-50. Although the authors found that some in their sample acknowledged going into politics for the express purpose of building their practice, they concluded that this was not the major cause for entering politics. This is in keeping with this paper's analysis, in that politics is here seen as a possibility, not a necessity for building or maintaining a legal practice.

[27]"The Legal Problems of the Rural Poor," Duke Law Journal, MCMLVIX (1969), p. 581.

[28]Lochner, p. 433.

[29]Ronald M. Pipkin, "Legal Aid and Elitism in the American Legal Profession," in John H. Bonsignore, Ethan Katsh, Peter d'Errico, Ronald M. Pipkin, and Stephen Arons, Before the Law: An Introduction to the Legal Process (Boston, 1974), pp. 158-160.

[30]Tisher, Barnabei, and Green, p. 46.

[31]George F. Cole and Howard L. Greenberger, "Legal Services for Welfare Recipients," Social Work, XIX (1974), p. 83.

[32]Mayhew, "Institutions of Representation, Civil Justice, and the Public," pp. 411-412.

[33]Barlow F. Christensen, Lawyers for People of Moderate Means (Chicago, 1970), p. 128. See also Lochner, p. 435; and Carlin and Howard, p. 424.

[34]John S. Bradway, Forms of Legal Aid Organizations in Middle Sized Cities and Smaller Communities (Durham, 1940), p. 40; Felice J. Levine and Elizabeth Preston, "Community Resource Orientation Among Low Income Groups," Wisconsin Law Review, MCMLXX (1970), passim; and Marks, p. 13.

[35]Mayhew, "Institutions of Representation, Civil Justice, and the Public," p. 414.

[36]Marks, p. 7.

[37]Mayhew and Reis, "The Social Organization of Legal Contacts," p. 315. See also Mayhew, "Institutions of Representation, Civil Justice, and the Public, p. 411.

[38]Barbara Curran, The Legal Needs of the Public (Chicago, 1977), pp. 154-157.

[39]"Rural Poverty and the Law in Southern Colorado," Denver Law Journal, XLVII (1970), p. 115; and "The Legal Problems of the Rural Poor, pp. 516, 519-521.

[40]Emery Brownell, Legal Aid in the United States (Rochester, 1951), p. 55.

[41]Carlin and Howard, p. 425.

[42]Ibid.

[43]Mayhew, "Institutions of Representation, Civil Justice, and the Public," p. 425.

[44]"Rural Poverty and the Law in Southern Colorado," pp. 116-125; "The Legal Problems of the Rural Poor," p. 525; Carlin and Howard, p. 427; and Brownell, p. 54.

[45]Carlin and Howard, p. 427.

[46]Brownell, pp. 77-78.

[47]Levine and Preston, passim.

[48]"Rural Poverty and the Law in Southern Colorado," pp. 137-148.

[49]Ibid., p. 135.

[50]Ibid., pp. 145-151.

[51]Ibid., pp. 151-159.

[52]Ibid., p. 586.

[53]Ibid., p. 560.

[54]Carlin and Howard, p. 426.

[55]Charles A. Reich, "The New Property," The Yale Law Journal, LXXIII (1964), pp. 762-763.

[56]Harry Brill, "The Uses and Abuses of Legal Assistance," The Public Interest, XXXI (1971), pp. 31-55.

[57]Carlin and Howard, p. 424.

[58]Ibid., p. 425.

[59]Jonathan Weiss, "The Law and the Poor," Journal of Social Issues, XXVI (Summer, 1970), p. 67.

[60]Cole, p. 83.

[61]Ibid.

[62]George C. Gallantz, "Lawyer Referral: A Brief History," Journal of the American Judicature Society, XLV (1962), p. 307.

[63]Christensen, Lawyers for People of Moderate Means, p. 175.

[64]Oklahoma Bar Association Journal, XLIX (1978), p. 130.

[65]Christensen, Lawyers for People of Moderate Means, pp. 135-136.

[66]Oklahoma Bar Association Journal, XLIX (1978), p. 130; and 5 Okla. Stat. Ch. 1, app. 3 (Cumulative Supp., 1978).

[67]Christensen, Lawyers for People of Moderate Means, pp. 135-136.

[68]Lawrence K. Hellman, "The Oklahoma Supreme Court's New Rule on Lawyer Advertising: Some Practical, Legal, and Policy Questions," Oklahoma Law Review, XXXI (1978), passim.

[69]Gallantz, p. 308. An example of a 1950s pamphlet approach to generic advertising to a general audience, see Kathryn Close, Do You Need A Lawyer?, Public Affairs Pamphlet Series, No. 205 (New York, 1954), passim.

[70]Blaustein, p. 94.

[71]Ibid., p. 93.

[72]Lochner, p. 434.

[73]Karl N. Llewellyn, "The Bar's Troubles, Poultices--and Cures?," Contemporary Problems, V (1938), p. 134.

[74]Eulau and Sprague, p. 87.

[75]Carlin and Howard, p. 415.

[76]Alleen D. Ross, "The Social Control of Philanthropy," The American Journal of Sociology, LVIII (1953), p. 451.

[77]Ibid., p. 452.

[78]Ibid., p. 460.

[79]"The Legal Problems of the Rural Poor," pp. 588-590.

[80]Walter I. Wardwell and Arthur L. Wood, "The Extra-Professional Role of the Lawyer," The American Journal of Sociology, LXI (1956), p. 304.

[81]Ibid., pp. 305-306.

[82]Ibid.

[83]Ibid., p. 306.

[84]Ibid.

[85]Ibid., p. 307.

[86]"Rural Poverty and the Law in Southern Colorado," pp. 125-132.

[87]Richard O. Lempert, "Conference on Determining a Research Agenda for Improving the Delivery of Legal Services to Middle Class Americans," Law and Society Review, VII (1976), p. 390.

[88]Elihu Katz and Paul F. Lazarsfeld, Personal Influence: The Part Played by People in the Flow of Mass Communications (Glencoe, 1955), pp. 309-320.

[89]Lochner, pp. 435-436.

[90]Ibid.

[91]Ibid.

[92]Ibid.

[93]Ibid., pp. 434-437.

[94]Ibid., pp. 437-438.

[95]Ibid., p. 439.

[96]Ibid., pp. 439-440.

[97]Ibid., p. 440.

[98]Ibid., p. 438.

[99]Ibid., p. 439.

[100]Ibid., pp. 448-449.

[101]Ibid.

[102]Ibid., pp. 465-466.

[103]Ibid., p. 449.

[104]Ibid., p. 439.

[105]"Rural Poverty and the Law in Southern Colorado," pp. 132-133.

CHAPTER IV

HYPOTHESES, METHODOLOGY, AND DEMOGRAPHICS

Introduction and Hypotheses

In Chapter III a system of economic reciprocity was discussed as a method by which lawyers can maximize their returns from pro bono activities. Building a practice was seen as one incentive for less-established lawyers to perform legal services. In this situation the clients either paid some small amount then, or eventually became paying clients.[1] Maintaining a practice was also noted as having profit-oriented incentives for performing the pro bono services. Oftentimes better established lawyers were willing to perform no fee or low fee services for a client as a way to please an intermediary by whom they had been sent. This served as a public relations measure between the lawyer and the intermediary who often was a paying client.[2] Finally, it was found that performance of political and philanthropic role expectations could also be advantageous to a lawyer's practice as they fulfilled social expectations derived from the considered role of the lawyer in the community.[3] These pro bono activities served as promotional techniques by increasing the lawyer's name recognition and by fulfilling his expected duties within the community. Choice of these economic incentives tended to vary according to the lawyer's type of legal practice,[4] as well as between locales.[5]

The rural and urban based studies all revealed systems of reciprocity which served as an incentive for lawyers to provide pro bono services to the poor. They did not always agree, however, on what type returns would be sought by each type of lawyer. In the urban studies, solo practitioners were found to have more incentives to take on no fee or low fee clients to build or maintain a practice. The solo practitioner also tended to run for political office more often because of the promotional effect it could have on business. On the other hand, urban firm attorneys did not seem to feel the direct economic squeeze as strongly as their solo practitioner brethern. They tended to perform more no fee service and do more philanthropic work, which more indirectly supported their practice by fulfilling social role expectations. These were indirectly economic motives because of the possibility of profit-related sanctions that existed if such role expectations were not fulfilled.

The rural surveys pointed to some differences from those of the urban area. Rural lawyers, most commonly solo practitioners, were found to perform more social role-oriented services than their urban counterparts. This manifested itself primarily in increased political activity. With a ratio of lawyers to population as high as the one found by the Duke Law Journal survey (1:3,667), few lawyers needed to build a practice.[6]

These case studies, and the differences in economic situations found between lawyers in urban versus rural settings, led to the questions addressed by this paper concerning small town pro bono services. Several earlier authors have made assumptions about legal services in small towns. In the 1920s one writer concluded there were inherent

differences between the small city poor and the metropolitan poor in their degree of need for legal aid services. She said:

> In small cities the amount of legal aid work is not great. A legal aid society would not be justified. The voluntary service of attorneys, however, takes care of the problem adequately, but it should be done in an organized way to give the best service with the least amount of imposition and needless effort.[7]

An early authority on legal aid services, John S. Bradway, also noted a similar assumption when in his discussion of developing legal aid in the smaller community he said:

> Again, one inclines to the thought, not in criticism of the metropolitan areas, that the client himself may count for more in the country. His problem stands out, not merely as another statistic lost in the crowd, but as the catastrophe of a neighbor.[8]

Another early author wrote about the differences of the small town of around 25,000, or in some cases as much as 50,000 population, from the city. He concluded optimistically that in the small town:

> All the lawyers are known, and people who have legal work to do are moderately aware of it; and they have little difficulty in finding a lawyer of whose character, abilities, experience, yes, and fees, they can get some fair inkling of ahead of time.[9]

Similar assumptions were forwarded more recently in a 1970 treatise by another renowned legal aid writer, Barlow F. Christensen. He hypothesized that the only places where a traditional, non-advertising legal aid system could work would be the small town. He based this on the assumptions that small towns of about 25,000, but no more than 50,000, were made of a more homogeneous people than the big cities. This enables everyone in the town to know everyone else. Within such a small town he explained that a highly efficient informal communication system could exist, through which a reputation could be established. As a consequence to these assumptions, he felt that even the least

sophisticated member of the community was able to recognize his legal problems and know where to turn for a lawyer's service.[10] Christensen went on to contend that the major cause for inadequacy of the traditional model was urbanization. He noted first that urban life was increasingly complex because of the need to exist in crowded areas. Also increased contact with non-governmental groups such as unions, insurance companies, and credit companies, in addition to the expansion of governmental regulation of individual activities further complicated urban life. He concluded that as complexity increased, recognition of problems as being legal decreased. Finally he noted the communication within the urban area was not as effective as it was in the small town. This was a major reason for which advertising would be needed in the city while in the small town it might not be necessary.[11]

During the 1950s two writers did not hold these same assumptions about the small town. One author noted that a poor person in a small town may have made the acquaintance of a lawyer, for example, when they were in high school. He found, however, that there was no evidence to show that proportionately more people had their own lawyers in the small town, nor was there any reason to believe that the small town poor had fewer legal problems.[12] In a similar study, another pair of authors noted the general view that the smaller towns were more friendly, and the inhabitants showed more interest in neighbor's affairs and were more apt to know each other. Yet they also pointed out that a lawyer's neighborliness might be overemphasized because of the economic pressures he or she shared with the city lawyer. Like the city lawyer, he or she must take each part of his practice into account economically. The study found that the lawyer in the small town had no more time, no

more compelling sense of duty, and no more public-spiritedness than his urban counterpart.[13]

From previous analysis in the earlier chapters, it is the hypothesis of this paper that pro bono services in small towns are not greatly different from those in large cities. Increased neighborliness cannot overcome the lack of institutionalization of poverty problems caused by lawyer specialization or the poor's non-recognition of their own problems as legal. The lawyer in the small town must be interested in making a profit like all other businessmen in both the small community and the big city. This profit motive leads to a desire to maximize returns off all services, including pro bono activities. When the economic need of the lawyer is great, as when the ratio of lawyers to population becomes relatively small, the small town lawyer should be found to use similar practice building and maintaining techniques as his or her urban cousins. These should include direct increases to the practice through pro bono services for only small fees, or as "loss leaders" to bring in paying work later. The incentives may also manifest themselves indirectly through political activities that find pro bono services helpful in gathering support.

If the above development holds true, a survey of the lawyers in a county centered around the functioning of a small town hypothetically should find that:

1a. Regular and pro bono practices should be found to deal with similar kinds of legal problems.

1b. In their regular and pro bono practices, lawyers should be found to spend similar amounts of time on similar types of legal problems.

1c. Pro bono cases handled for the poor will be resolved quickly, allowing the lawyers to return to their paying practices.

2. The use of practice building and maintain promotional techniques, as well as legal advertising advocacy should vary by the lawyer's economic situation.

3a. Differences in amounts of pro bono activity performed by lawyers should be found to depend on their economic situation.

3b. Differences in types of clients served by lawyers should vary by the lawyer's economic situation.

3c. Differences in types of intermediaries that refer clients to lawyers should vary by the lawyer's economic situation.

Each of these hypotheses will be examined in turn in the following chapter. Explanatory data will be drawn from a survey of lawyers in a small-town-centered county. Before analysis of this data may begin, the reader should be familiar with the research design of the survey, the questionnaire used to gather responses, and the demographics of the target county and responding lawyers.

Methodology

Research Design

No suggestion of random choice may be made about the county chosen for this survey. Pittsburg County, Oklahoma, was chosen for two reasons. First, it fits the specifications of a small-town-based county. McAlester is the largest town within the county, with a 1970 population of 18,802. The next largest town ranks a distant second with only 2,121 people in 1970.[14] Second, in Pittsburg County lay the greatest possibility of access to information and researcher credibility. The author was raised in McAlester, and was acquainted with the lawyers through previous church, work, and social activities. For the others, coverletters were attached to the survey explaining the researcher's

community relationship. Support for a local's project ran very high, as most county lawyers showed a willingness to cooperate with the survey.

Presumption of a tendency for locals to trust and support a fellow local was not solely relied upon, however. To further establish credibility, contact with the current Pittsburg County Association President, Mr. Charles D. "Buddy" Neal, was made. Mr. Neal generously answered questions and supported the survey. His greatest help came from his announcement of the survey at the Pittsburg County Bar Association monthly meeting. While conducting the survey, several lawyers mentioned that they had heard the announcement at the last Bar meeting, and had been waiting to be contacted. Finally, contact with former Speaker of the U. S. House of Representatives, Mr. Carl Albert, was made. Mr. Albert agreed to vouch for the credibility of the researcher if any questions were raised. At each survey drop, the lawyer or his receptionist was told that if any questions arose, the lawyer could contact the researcher at the home phone number provided on the cover letter, or he could contact Mr. Albert or Mr. Neal for information concerning the survey and researcher's credibility.

Such extreme measures to ensure credibility were undertaken in an effort to receive the highest possible response rate. The total number of lawyers in private practice was only 37 for all of Pittsburg County. These names were determined from a March, 1979, telephone yellow-pages listing, the Oklahoma Lawyers Manual (or the Blue Book), and by verbal contact. Due to this small number, a census was performed instead of a sample. This provided the greatest number possible and helped in analysis by ensuring larger cross-tabulation cell sizes.

The survey was conducted on April 10 and April 13, 1979. On April 10 each survey was personally delivered to each Pittsburg County lawyer's office. Either the attorney, or his receptionist was informed that the survey would be used for aggregate data anlysis only, and that the purpose was to collect data for a Master's thesis in Political Science at Oklahoma State University. The importance of a high return rate and the previously mentioned credibility references were also described. Many lawyers and receptionists showed considerable interest in such an undertaking, and immediately gave an assurance of their willingness to comply with the request. Combined with the cover letter that reiterated the survey purpose, assured individual respondent privacy and cited credibility sources, a copy of the survey was then left at each office. Three exceptions to this general pattern occurred, however. One more elderly gentleman complained of failing eye-sight and requested the researcher to ask him the questions orally and take down his responses. Two other lawyers asked if they might fill out the survey then while the researcher was still present. Questions asked by these two lawyers were answered in such a manner as to clarify the question, but not to influence the response. Only one direct refusal to participate was encountered.

When the survey was dropped at the lawyer's office, the researcher informed the lawyer or his receptionist that a return visit would be made that Friday, April 13, to gather the lawyer's responses. Knowing that such a return visit was to be made, it was hoped that the lawyer would be more likely to complete the form more quickly. On this day, eighteen of the lawyers had completed their surveys and had them ready for collection. Two surveys were then returned with the receptionist

explaining that the lawyers did not wish to participate. For all others, stamped envelopes addressed to the researcher were dispensed. The researcher then stressed the importance of a high return rate, and assured the office contact that even if the survey was mailed late, it still could be used. This last measure was an attempt to gain those surveys that might be pushed aside for several weeks. Six returns were received from the mailback request. This finalized the response rate at 65%, with 24 out of 37 lawyers responding. This compares favorably with the Lochner study return rate of 77 percent, and the Denver response rate of 49 percent. The Duke study had a 100 percent response rate, but they interviewed few lawyers--only three in the entire rural target area.[15]

Questionnaire Design

The questionnaire was designed to answer six areas of inquiry. These areas included characteristics of the lawyer's pro bono services, characteristics of intermediaries bringing clients, his experience with no fee or low fee clients returning as paying clients, his attitude toward legal advertising, relative characteristics of small town practices, and demographics.[16] For examination of specific questions in these areas, refer to Appendix A.

Many questions were designed with set responses to help keep cell size as large as possible. However, on most of these questions, an "other" category was provided to prevent forced answers. These open-ended responses were coded as additional response categories for data analysis. Questions seeking information on types of cases performed for the poor, the method of their resolution, and the areas of law most

dominant in the lawyer's practice were all set up to elicit an estimated percentage response. This was necessary, especially in the first two instances, as few lawyers keep records of pro bono service, and were prone to be answering from memory. Percentages here were thought to have more credibility as an estimate than number of cases. It also was thought to be more comparable for analysis between groups of lawyers. The most difficult question in terms of inappropriate lawyer response called for a ranking, in order of perceived frequency of use, of five actions that the Pittsburg County poor might undertake to solve their problems. Many questionnaires only contained one action marked. For coding purposes, these were defined as the lawyer's first choice, with all four other possible responses coded as missing data. The remaining questions were of the open-ended type. These were coded in as few categories as responses justified, once again to hold categories' numbers small and improve cell size.

The questionnaire length was also taken into consideration. With further hope of increasing the response rate, the questionnaire was kept to the front and back of one legal-sized sheet of paper. This was done to add a psychological advantage of brevity that would induce lawyers to do the survey during a short break instead of procrastinating. The use of legal-sized paper allowed a maximum number of questions while still retaining the psychological advantage of being "just a one-page questionnaire."

Demographics

Characteristics of Pittsburg County

Pittsburg County is located in southeastern Oklahoma. A four-lane

turnpike, two U. S. highways, and four state highways cross the county with most of them going through or near the county seat of McAlester. The distribution of occupations and earnings for the county shows workers to be most commonly craftsmen, clerical workers, service workers, or operators of machinery other than for transportation purposes (see Table I). The census data showed a lower percentage of technical workers and professionals, with only 10.66 percent of the county's labor force in such occupations. Much of the economic activity in the county centered around McAlester. One-half of the county's workers in all areas except transportation operators, farm-related workers, and craftsmen/foremen were found to live in McAlester.[17] Part of those who were not listed as a part of the McAlester work force may actually have worked there, however. Many part-time farmers and ranchers commute to and from McAlester jobs from widely-dispersed rural areas. The county's 1970 median income for families was $6,690, considerably lower than the county's mean income for families which was reported as $7,615. Of all households in the county, 27.6 percent had annual incomes below poverty levels.[18] Except for McAlester, all other towns in Pittsburg County are small. Only Hartshorne, Quinton, and Krebs have populations over 1,000.[19]

McAlester's six major employers are The Army Ammunition Plant with 932 employees, Charles Komar and Sons (lingerie) with 450 employees, the Polson Rubber Company with 152 employees, Rockwell International with 150 employees, Henson-Kickernick (lingerie) with 128 employees, and Elsing Manufacturing Company (sportswear) with 126 employees.[20] This accounts, in part, for the large percentage of craftsmen/foremen and service workers reported in Table I.

TABLE I

OCCUPATION AND EARNINGS, TOTAL EMPLOYED
16 YEARS AND OVER, IN PERCENTAGE

Occupation	Pittsburg County %	McAlester %	McAlester as a % of county
Professional, Technical & Kindred Workers	10.66	11.59	57.15
Managers & Administrators (except farm)	9.39	10.53	58.98
Sales Workers	6.23	7.42	62.65
Clerical & Kindred Workers	15.71	18.15	60.73
Craftsmen, Foremen & Kindred Workers	18.31	16.10	46.20
Operatives (except Transportation)	12.84	13.13	53.74
Transportation Equipment Operatives	4.88	3.22	34.72
Laborers (except farm	4.11	3.22	41.19
Farmers and Farm Managers	1.94	.66	17.83
Farm Laborers & Farm Foreman	.75	.26	17.98
Service (except Private Households)	13.53	13.74	53.36
Private Household Workers	1.66	1.99	62.94
TOTAL*	100.01	100.01	-0-

*Totals add to more than 100% due to rounding

Source: U. S. Bureau of the Census, Characteristics of the Population, Vol. 1, Part 38, pp. 278, 337.

McAlester amenities also tend to make it the focus of county dwellers. It has the only hospital in the area, having a 190-bed capacity. Three miles from the McAlester city limits is the county's only airport. The town also sports a vocational-technical school, bringing in commuting students from the surrounding area.[21] Family income for the area varied sharply by type of work. For all families, the mean wage or salary was $7,650 per year. For those with non-farm related self-employed businesses, this was considerably higher with mean income at $8,487 per year. At the opposite end of the scale, the mean income for self-employed farmers was found to be only $3,723 per year. The mean public assistance or public welfare income for McAlester was reported as $1,247 per year. All workers not in the above categories were listed as "other" and had a reported mean yearly income of $3,473 per year. From the McAlester area, 24.4 percent of all households were reported as having incomes less than the estimated poverty level.[22] Unemployment for the area fluctuated throughout the year with a yearly average of 9.62 percent (see table II).

In Hartshorne, the second largest town in the area, only two major manufacturers operate--Oklahoma Aerotronics, an electronics firm, employing 316 area people and the Dolese Brothers Co., a crushed limestome business with only 20 employees.[23] No income statistics similar to those available for McAlester could be obtained for Hartshorne, due to its size.

Pittsburg County Lawyer Demographics

All lawyers in Pittsburg County, with only one exception, practiced in McAlester. The one exception had a small office in Hartshorne.

TABLE II

UNEMPLOYMENT RATES FOR PITTSBURG COUNTY
BY MONTH FOR 1978*

Month	Unemployment Rate	Month	Unemployment Rate
January	10.4	July	10.4
February	12.3	August	8.5
March	11.4	September	6.6
April	10.8	October	6.3
May	12.4	November	7.2
June	11.4	December	7.7

*Revised figures

Source: Oklahoma Employment Service, McAlester Labor Market Review, March, 1978, through February, 1979.

Also, legal practice in Pittsburg County was found to be male dominated --no women lawyers were currently practicing.

Of those responding to the survey, the following personal characteristics were found. First, 91 percent of the respondents reported affiliation with the Democratic party, while only 8 percent reported Republic affiliation.[24] Forty-eight percent of the respondents reported that they had been raised in a small urban environment, followed most closely by 39 percent who came from rural hometowns. Only nine percent reported a suburban rearing, and only four percent reported a large urban background. Forty-two percent of the respondents were under 40 years of age, and 46 percent were from 40 to 59. Only thirteen

percent of the sample reported being over 60 years old. This may have been caused by either death or retirement of such attorneys.

Another demographic area examined was law school background and length of service in the county. Seventy-nine percent of the respondents said they attended an in-state law school, which left only 21 percent receiving their education from out-of-state schools. Sixty-seven percent of the responding lawyers graduated from law school after 1960, 25 percent from 1940-1959, and only eight percent before 1940. There was some lag time seen in the middle age category between graduating from law school and setting up a practice in Pittsburg County, however. Seventy-one percent of the respondents set up practice after 1960, leaving only 21 percent from 1940-1959, and the same eight percent before 1940.

The final area of lawyer demographics involved the lawyer's position within the legal field. Concerning type of practice, 48 percent, or eleven, reported working in a partnership; 39 percent, or nine, in a solo practice; and 13 percent, or 3, in a law firm. The high incidence of partnerships may be an economizing measure allowing two or more solo practitioners to cut down on overhead by sharing office space and secretarial costs.[25] Legal specializations were widely dispersed, with the largest category being probate and estates. The results are presented in Table III. Incomes of the surveyed lawyers proved to be as dispersed as their areas of specialization. Results are displayed in Table IV. Such high incomes account in part for the McAlester mean family income for the non-farm, self-employed being so much higher than any of the other income means.

TABLE III

RESPONDENT'S FIELD OF LEGAL SPECIALIZATION*

Area of Specialization	Percent of Survey	n
None	5.0	1
Real Estate	15.0	3
Probate/Estates	20.0	4
Personal Injury	15.0	3
Civil	15.0	3
Criminal	5.0	1
Litigation	15.0	3
Corporate/Commercial	10.0	2
TOTAL	100.0	20

*Adjusted frequencies, missing data equals four cases

Source: Pittsburg County Lawyers Survey, 1979

TABLE IV

RESPONDENT'S ANNUAL INCOME*

Income Level	Percent of Survey	n
$15,000 to $25,000	23.8	5
$25,001 to $35,000	33.3	7
$35,001 to $45,000	28.6	6
$45,001 and over	14.3	3
TOTAL	100.0	21

*Adjusted frequencies, missing data equals three cases

Source: Pittsburg County Lawyers Survey, 1979

The Pittsburg County Bar Association Lawyer Referral Service

The Pittsburg County Bar Association has established a Lawyer Referral Service in McAlester. The referral service has no permanent office, and is always performed out of the current Pittsburg County Bar Association President's private law office. No advertisement of the service is undertaken. Any person asking for referral from the service first must establish indigency by filling out a form describing his or her assets and liabilities. Once it has been seen that the eligibility requirements have been met, the person is referred to a private attorney who is then contacted and informed that the client meets the Lawyer Referral poverty requirements. From this point on, the decision to charge a low fee or to charge no fee is made solely by the lawyer. Mr. Neal, the Bar Association President, said that most of the people who come to the office asking for a referral were sent there from the various social services agencies.[26] This may be caused by a lack of awareness on the part of the rest of the community that the service exists.

Conclusion

Everything has now been discussed that was considered necessary for examining the Pittsburg County Lawyers Survey results in regard to the three hypotheses and many subhypotheses developed in this chapter. By this point, the reader should have attained competency in the background theory and demographics necessary to make an analysis of the following data meaningful.

FOOTNOTES

[1]Phillip R. Lochner, Jr., "The No Fee and Low Fee Legal Practice of Private Attorneys," Law and Society Review, IX (1975), p. 445.

[2]Ibid., pp. 440-446.

[3]Ibid., p. 463.

[4]Ibid., pp. 434-440.

[5]Ibid., p. 307; "The Legal Problems of the Rural Poor," Duke Law Journal, MCMLXIX (1969), p. 581; "Rural Poverty and the Law in Southern Colorado," Denver Law Journal, XLVII (1970), p. 126.

[6]"The Legal Problems of the Rural Poor," p. 497.

[7]M. Alice Hill, "Legal Aid in the Smaller Cities," Annals of the American Academy of Political and Social Science, CXXIV (1926), p. 62.

[8]John S. Bradway, "Developments in Legal Aid: Extension of Legal Aid Into Smaller Communities," Tennessee Law Review, XXII (1952), p. 491.

[9]Karl N. Llewellyn, "The Bar's Troubles, Poultices--and Cures?," Law and Contemporary Problems, V (1938), p. 115.

[10]Barlow F. Christensen, Lawyers for People of Moderate Means (Chicago, 1470), p. 129.

[11]Ibid., pp. 131-135.

[12]T. Voorhees, "The Lawyer Referral Service: The Medium Sized and Smaller Communities," American Bar Association Journal, XL (1954), p. 633.

[13]Bertram F. Willcox and Edward J. Bloustein, "Account of a Field Study in a Rural Area of the Representation of Indigents Accused of Crime," Columbia Law Review, LIX (1959), p. 567.

[14]U. S. Bureau of the Census, Characteristics of the Population, Vol. 1, Part 38, p. 23.

[15]Phillip R. Lochner, pp. 466-467; "Rural Poverty and the Law in Southern Colorado," p. 86; "The Legal Problems of the Rural Poor," p. 497.

[16]Several questions were adapted from the Lochner, and Maddi and Merrill questionnaires. Those adapted from Lochner included 1a, 1e, 1f, 1h, 2b, 2d, 4a, and 6j. Those adapted from Maddi and Merrill included questions 5c, 5d, and 6k.

[17]U. S. Bureau of the Census, p. 337.

[18]Ibid., pp. 351, 23.

[19]Ibid., p. 23.

[20]McAlester Chamber of Commerce, McAlester, Pittsburg County, Oklahoma, p. 2.

[21]Ibid., pp. 4-5.

[22]U. S. Bureau of the Census, p. 284.

[23]Hartshorne Chamber of Commerce, Oklahoma Community Data: Hartshorne, Pittsburg County, p. 2.

[24]Statistics used within the body of the paper that have been taken from the Pittsburg County Lawyers Survey, 1979, have all been rounded to the nearest whole number. If totals do not add to 100%, it is because of rounding. The percentages adjusted frequencies of those who answered the questions, removing the category of missing data.

[25]Lochner, p. 434.

[26]Personal interview with Mr. Charles D. "Buddy" Neal, Pittsburg County Bar Association President, March 12, 1979.

CHAPTER V

ANALYSIS OF THE PITTSBURG COUNTY LAWYERS SURVEY

Introduction

In the previous chapter, a set of hypotheses was developed to describe the expected nature of pro bono services in the small-town-based county. Studies of pro bono activities in both urban and rural areas were used to develop these hypothesis. From these earlier studies a system of maximization of returns was seen to develop, because of the legal profession's dependence on profit. This dependence was also seen to lead to specialization in the more lucrative fields of legal practice, and eventually, to institutionalization of these fields. Background into the characteristics and needs of each of the actors in these situations was provided to help explain how these developments might take place.

With this background, an analysis of the data derived from the Pittsburg County Lawyers Survey will now be undertaken. Each hypothesis or subhypothesis will be examined in turn to determine whether the data will support or refute its contention. When this is finished, conclusions will be drawn concerning the implications for future organized and unorganized legal aid effort coordination.

The Economic Base

Institutionalization and Pro Bono Cases

For a thorough study of an economically based system, it was first necessary to determine if the dependence on profit had in fact led to the expected specialization and institutionalization of lawyers' legal practices. This was the question addressed in subhypothesis 1a. It predicted that because of the economic dependence on the private bar:

> 1a. Regular and pro bono practices should be found to deal with similar kinds of legal problems.

From the available data, this cannot be seen to be the case. Table V shows the mean percentages of time spent in various categories of pro bono work by the Pittsburg County lawyers. Of these mean percentages, the categories of domestic relations with 69.32 percent, and property related with 17.01 percent show the strongest responses. These are types of practices that did compare to types found in the lawyers' regular practice. The mean percentages of service reported were quite different between the pro bono and regular practices, however. This difference will be discussed more thoroughly under subhypothesis 1b. Another similarity between the two tables was seen in the civil liberties categories of both the pro bono and regular practices. In both instances lawyers reported no mean percentage of their practice spent on any civil liberties problems. Not quite as strong as the civil liberties absence in both pro bono and regular practices was the similarly low mean percentages of personal injury cases performed by the lawyers in each of the practices.

TABLE V

MEAN PERCENTAGE OF TIME DEVOTED TO VARIOUS TYPES OF LEGAL SERVICES PROVIDED PRO BONO CLIENTS

Consumer and Employment Related	Administrative	Housing	Civil Liberties	Domestic Relations	Property Related	Personal Injury	Other	Total
6.14%	2.05%	2.96%	0.0%	69.32%	17.01%	1.14%	1.36%	99.98%*

*Table totals to less than 100% due to rounding error

Source: Pittsburg County Lawyers Survey, 1979 n = 22

Regardless of the comparisons that did exist, the differences between the pro bono and regular practices were most notable (see Table VI). The lawyers did in fact report serving pro bono clients in consumer and employment related areas a mean of 6.14 percent. No comparable category of the lawyers' regular practice explained this. Also, administrative and housing problems were dealt with in the lawyers' pro bono practices, although there were no similar categories in their regular practices. Because of these differences found between the pro bono and regular practices of the lawyers it must be concluded that they were doing non-institutionalized services for the poor. The extent to which these services were being done was indeterminable from the data, however. The importance here lies in the difference from what was expected in previous studies. Two possible explanations for this phenomena were the lack of other organized sources of legal services available to the poor, and the closer social contacts found in the smaller town than in the city. Both the Mayhew and the Lochner study took place in cities that had some form of organized legal aid available to the poor. Lawyers there may have simply deferred such services to these agencies. Furthermore, the increased closeness in the small town community may have fostered a willingness among the lawyers to go beyond their regular practices and serve the poor in some cases that were not commonly performed by them for paying customers.

Similarity Between Time Spent in Lawyers' Pro Bono and Regular Practices

Another area of analysis concerning the pro bono and regular

TABLE VI

MEAN PERCENTAGE OF TIME DEVOTED TO VARIOUS TYPES OF LEGAL SERVICES PERFORMED IN THE LAWYERS' TOTAL PRACTICE

Business	Domestic Relations	Civil Liberties	Criminal	No Fee/ Low Fee	Property Related	Tax	Personal Injury	Civil Practice	Other	Total
22.67%	11.90%	0.0%	8.96%	4.69%	33.76%	1.25%	7.88%	2.71%	6.18%	100%

Source: Pittsburg County Lawyers Survey, 1979 n = 24

practices of lawyers in Pittsburg County concerned the degree of similarity between the amounts of the various types of services performed in each of the types of practices. It would be predicted, if in fact the lawyers' pro bono practices were dependent on the types of services provided for regular clients, that:

1. In their regular and pro bono practices, lawyers should be found to spend similar amounts of time on similar types of legal problems.

This was not evidenced by the data. The largest disperity was found in the domestic relations categories of both the pro bono and regular practices. In their regular practices, lawyers only performed a mean of 11.90 percent of their time in the domestic area. In contrast to their regular practice, the lawyers performed 69.32 mean percent of their pro bono practice in the domestic area. Similarly, large differences were seen between the property-related categories of the pro bono and regular practices. The lawyers' regular practices showed a mean of 33.76 percent, while their pro bono practices showed a mean of only 17.01 percent. It would seem obvious from these differences between the mean percentages of the two practice types that the lawyers were spending their time on different services for the poor than they were for their regular clients. However, it cannot be determined from the data whether these were the only types of services the lawyers were willing to perform for the clients, regardless of what problems the poor brought to the lawyers; or whether these were the only types of problems that the poor brought to the lawyer. The only conclusion that could be derived from the available data was that there was a difference of mean percentages between similar types of services performed by

lawyers in their pro bono and regular practices, thus disproving the hypothesized relationship.

Handling of Pro Bono Cases

The fact that lawyers did report spending some of their overall practice in performing no fee or low fee services leads to the third subhypothesis. It was to be expected that economic dependence on the private bar should result in:

> 1c. Pro bono cases handled for the poor will be resolved quickly, allowing the lawyer to return his paying clients.

It would be expected in a system with profit as one of the strongest incentives, that the lawyer like any other good businessman would tend to spend little time on free or below-regular fee services (see Table VII). As would be expected if this was indeed the case, advice, the least time-consuming of the categories, ranked the highest of all the categories, with lawyers reporting an average of 50.71 percent of their pro bono cases as having been handled in this manner. Since litigation was the most time-consuming of the alternatives, its high percentage of average time spent was an unexpected occurrence in an economically-based system. This finding was especially unexpected since Lochner in his Erie County study reported no litigation at all in pro bono work. Since organized legal services were available in Erie County, and there were none in Pittsburg County, this difference may have been accounted for in part by the pro bono lawyers having to spend time on the cases that would have ordinarily been fulfilled by organized legal aid.

When combining the results of the three subhypotheses of hypothesis number one, it was clear there was considerable difference in the

TABLE VII

AVERAGE PERCENTAGE OF PRO BONO CASES
RESOLVED BY VARIOUS METHODS

Method of Resolution	Average Percentage
Advice only	50.71
Negotiation	12.24
Litigation	21.43
Referral to social services	8.33
Referral to a specialized lawyer	2.52
Administrative headings	1.43
Other	3.33
TOTAL	99.99*

*Table totals to less than 100% due to rounding

Source: Pittsburg County Lawyers Survey, 1979 n = 21

pro bono practice of lawyers in Pittsburg County from that found by Lochner in the urban study. Lawyers performed some noninstitutionalized services for their pro bono clients that was not expected from the previous literature. Similarly, the resolution of such problems, although showing strongly on the less time-consuming category of advice only, did also include the most time-consuming category of litigation to an extent unpredicted from any previous study. Furthermore, in the services that were similar to their regular practice, the lawyers spent time in greatly dissimilar proportions than in their paying practices. These findings would tend to indicate that the lawyers of Pittsburg County were filling the needs of the poor beyond just performing regular practice services for them. The extent to which these needs of the poor beyond just performing regular practice services for them. The extent to which these needs were met could not be derived from this data, however. Nevertheless, the fact that there was seen to be so much difference between the urban and small town in the area of types of services provided would tend to give credence to the argument that there was more neighborliness and concern in the small town, probably deriving from the social closeness and increased communications available.

Promotional Techniques and Advertising

The second hypothesis concerned promotional techniques and advertising. Specifically, it said:

> 2. The use of practice building and maintaining promotional techniques, as well as legal advertising advocacy should vary by the lawyer's economic situation.

First, the previous description of the types of techniques a lawyer

used should have varied by type of practice, because of the differing needs of lawyers in different economic situations. Chapter III showed that solo practitioners or partners in the city tended to choose techniques which might help them make needed client contacts. This helped them build or maintain their practices. On the other hand, the firm lawyer generally was found to favor social role fulfillment to maintain his good graces in the eyes of the community. He or she did not have the building and maintaining drive found in the solo practitioner and law partner. The rural lawyer also tended to primarily fulfill social expectations in his choice of techniques. This was also presumed to be from a lack of need for new clients because of low lawyer-to-population ratios.

In Pittsburg County a trend different in some ways to the urban studies was evident (see Table VIII). Fifty-eight percent, or fourteen lawyers, acknowledged using one or more of the techniques. Of these solo practitioners were the most active in every type of promotional technique studied, except running for office, where there was a tie with partners in average percentage used. Partnership lawyers showed the next greatest propensity to use these techniques. This was similar to the urban findings. Firm attorneys participated in only two techniques. To further his practice, one firm attorney, or 50 percent of those responding, acknowledged having run for office, and one, again 50 percent, said he had joined a business organization. This was directly opposite to the urban findings. Such deviations from the urban studies may be caused by stronger small town social expectations to perform political roles, or from a desire to socialize with the local business interests. Similarly, firm attorneys also deviated from the urgan studies in

TABLE VIII

DIFFERENCES IN PROMOTIONS USED BY PRACTICE TYPE, IN PERCENTAGE OF LAWYERS WHO USED PROMOTIONAL TECHNIQUES

Technique	Used (n)	Didn't Use (n)	Total (n)
RAN FOR OFFICE			
Solo Practitioner	66.7 (4)	33.3 (2)	100.0 (6)
Partner	66.7 (4)	33.3 (2)	100.0 (6)
Firm	50.0 (1)	50.0 (1)	100.0 (2)
JOINED A BUSINESS ORGANIZATION			
Solo Practitioner	66.7 (4)	33.3 (2)	100.0 (6)
Partner	50.0 (3)	50.0 (3)	100.0 (6)
Firm	50.0 (1)	50.0 (1)	100.0 (2)
GAVE TIME TO A CHARITABLE ORGANIZATION			
Solo Practitioner	83.3 (5)	16.7 (1)	100.0 (6)
Partner	66.7 (4)	33.3 (2)	100.0 (6)
Firm	0.0 (0)	100.0 (2)	100.0 (2)
BECAME MORE ACTIVE IN THE CHURCH			
Solo Practitioner	66.7 (4)	33.3 (2)	100.0 (6)
Partner	33.3 (2)	66.7 (4)	100.0 (6)
Firm	0.0 (0)	100.0 (2)	100.0 (2)
MORE TIME TO FRATERNAL ORGANIZATIONS			
Solo Practitioner	100.0 (6)	0.0 (0)	100.0 (6)
Partner	50.0 (3)	50.0 (3)	100.0 (6)
Firm	0.0 (0)	100.0 (2)	100.0 (2)

Source: Pittsburg County Lawyers Survey, 1979 n = 14

preference for giving time to charitable organizations to promote their practice. Although charitable work was the most common promotional technique for the urban firm attorney, Pittsburg County firm attorneys did not cite it at all.

Another interesting point shown in the tables concerns the areas most likely to be favored by solo practitioners who used practice building techniques. Eighty-three percent acknowledged having given time to charitable organizations. This also was reversed from the practices reported by the solo practitioners in Lochner's study. Furthermore, all the solo practitioners who used promotional techniques reported that they gave time to fraternal organizations. This was in contrast to only 50 percent of the partners and none of the firm lawyers citing the technique. Apparently the fraternal organizations were seen by the solo practitioners as much more helpful to their practice, but no clues to why this was the case were provided by the data.

When examining the types of promotional techniques used by lawyers and to what extent they were used, little difference could be found between the two income levels. As can be seen in Table IX, similar patterns were found between the lower income and higher income lawyers in their use of promotional techniques. Both groups of lawyers who used any promotional techniques tended to report similarly high percentages in all categories.

As would be expected, however, the extent of promotional techniques usage among all lawyers did vary by type of practice. Solo practitioners were found to use consistently more types of techniques, further describing their need for promotion of their practices. Once again partnerships followed this lead, with no firm attorney using more than one

TABLE IX

DIFFERENCES IN PROMOTIONS USED BY LAWYERS' INCOME IN PERCENTAGE OF LAWYERS WHO USED PROMOTIONAL TECHNIQUES

Technique	Used (n)	Didn't Use (n)	Total (n)
RAN FOR OFFICE			
$35,000 or Less	71.4 (5)	28.6 (2)	100.0 (7)
Over $35,000	66.7 (4)	33.3 (2)	100.0 (6)
JOINED A BUSINESS ORGANIZATION			
$35,000 or Less	57.1 (4)	42.9 (3)	100.0 (7)
Over $35,000	66.7 (4)	33.3 (2)	100.0 (6)
GAVE TIME TO CHARITABLE ORGANIZATION			
$35,000 or Less	85.7 (6)	14.3 (1)	100.0 (7)
Over $35,000	66.7 (4)	33.3 (2)	100.0 (6)
BECAME MORE ACTIVE IN THE CHURCH			
$35,000 or Less	42.9 (3)	57.1 (4)	100.0 (7)
Over $35,000	50.0 (3)	50.0 (3)	100.0 (6)
GAVE TIME TO FRATERNAL ORGANIZATIONS			
$35,000 or Less	85.7 (6)	14.3 (1)	100.0 (7)
Over $35,000	66.7 (4)	33.3 (2)	100.0 (6)

Source: Pittsburg County Lawyers Survey, 1979 n = 13

of the available techniques. This furthers the assumption that firm attorneys felt some need to meet community role expectations by taking on at least one such activity. Their solo practitioner counterparts seemed to display much more need to bring in and retain clients (see Table X). Surprisingly, however, the percentages of those who used none of the techniques were almost exactly the same for each type of practice.

Even though most lawyers did use some type of promotional technique, there were several lawyers who said they did not need such techniques to attract a clientele. The most common response given, 60 percent, or 6 times, was that their reputation for quality service brought them clients. This was not explained by degree of establishment of a lawyer's practice, since lawyers were scattered between both new and established lawyers. Similarly, it did not mask answers of "joined a law firm," the second most frequent response. All who reported a reputation for quality were solo practitioners or partners. Some answer may be found in lawyers' perceived differences between city and rural law practice. Two answers pointed out an increased communication in the town. This was seen as the ability to know others in the legal profession better, including judges; and the ability to make a name for oneself faster. Combined, the two categories represent 27 percent of the total response. This would explain why the ability to build a reputation without promotional techniques could extend to both new and established lawyers.

The second answer to why a lawyer had no need to attract a clientele through promotional techniques involved joining a law firm. Four lawyers, or 40 percent of those who did not need promotion, gave this

TABLE X

EXTENT OF PROMOTIONAL TECHNIQUES USED
BY PRACTICE TYPE, IN PERCENTAGES

Type of Practice	Number of Techniques Used												Total*	
	None		One		Two		Three		Four		Five			
	%	(n)	%	(n)	%	(n)	%	(n)	%	(n)	%	(n)	%	(n)
Solo	33.3	(3)	0.0	(0)	11.1	(1)	22.2	(2)	0.0	(0)	33.3	(3)	99.9	(9)
Partnership	36.4	(4)	27.3	(3)	9.1	(1)	9.1	(1)	9.1	(1)	9.1	(1)	100.1	(11)
Firm	33.3	(1)	66.7	(2)	0.0	(0)	0.0	(0)	0.0	(0)	0.0	(0)	100.0	(3)

*Totals do not sum to 100% due to rounding

Source: Pittsburg County Lawyers Survey, 1979 n = 24

response. One lawyer indicated another firm member's reputation gained as a politician brought them enough business. Others noted the general prestige and sufficient clientele of the firm precluded any such need.

The expected support for legal advertising by lower income and non-firm lawyers was not found. Almost all of the lawyers were skeptical about its ability to help, or felt it would directly harm the legal profession. The only trend found by type of practice was that partnership lawyers seemed somewhat more negative. Unexpectedly, the only lawyer who gave a positive answer ("hope it helps") was of the upper income and firm categories. Forty percent of the lower income lawyers thought it might be of minimal effect, or 4, while only 20 percent, or one, of the higher income lawyers responded this way. One explanation for these negative results is probably the common belief that legal advertising would lead to abuse, misrepresentation, and loss of professionalism. Such a belief may be socialized into the lawyer's perceptions of professionalism by both law schools and more established community lawyers. Another possibility is that few of the lawyers expect advertising to happen in McAlester, regardless of the reduction in the ban. With the amount of adverse feeling evident in this study, community lawyers would probably not willingly accept as a colleague someone who broke the tradition and advertised. Regardless of why the lawyers were so negative, it seems that legal advertising will not be regarded as a possible method for increasing a private practice in Pittsburg County in the foreseeable future.

In conclusion, hypothesis number two was in some ways supported, and in other ways, refuted by the data. Striking differences were expressed in types and amounts and in promotional techniques used by the

lawyers depending on their type of legal practice. This was not the case, however, when lawyers' income was examined. Both income levels varied in much the same way for all the techniques examined. For those lawyers who used no promotional techniques, similar percentages were reported within each of the categories. The most common reason the lawyers gave for this lack of need was that their reputation was enough to bring them clients. This ability to be well-known enough to establish such a reputation without promotional techniques was attributed to increased communication within the small town. The second most common reason for not needing to use promotional techniques was because the attorney joined a law firm. This is consistent with the previous analysis since law firm members used less promotional techniques in every area. Because of the findings just mentioned, the hypothesis may only be accepted in the more limited sense of economic differences by practice, not by income. The economic difference between attitudes on advertising were directly refuted by the data. Lawyers in Pittsburg County tended to all be skeptical of the use of advertising as a promotional technique.

The System of Economic Reciprocity For Pro Bono Service

Differences in Amount of Pro Bono Services

The first area of consideration in hypothesis three is the amount of pro bono services that lawyers do. Since the system of reciprocity used to maximize returns on pro bono services should be found to exist

in the small town it could be hypothesized that:

3a. Differences in amounts of pro bono activity performed by lawyers should be found to depend on their economic situation.

To determine if such a difference existed, an examination of the number of no fee and low fee clients reported and the lawyers' policies of who to accept on such a basis will be considered.

The amount-of-service variables for both the no fee and low fee cases had a very low response rate. This, once again, probably is derived from lawyers not keeping records on this type of service. However, for those who did respond, there does not appear to be a notable trend. For no fee work, both income levels of lawyers tended to perform about the same number of cases per year. Low fee cases did show some slight difference by lawyers' income, however. Surprisingly there was a tendency for higher income lawyers to do slightly more at all levels, except for one lower income lawyer who reported doing sixty-eight or more such cases per year. This was more low fee service than any other lawyer performed. This is not the expected pattern since lower income lawyers would seem to be more likely to expect some fee if possible to supplement their more meager income. One probable explanation is that higher income lawyers did more favors for their poorer clients, with the hope that these favors would act as "loss leaders" to bring in more service later when the clients were back on their feet. Another possibility is that much of the service was performed to please intermediaries who sent the client to the higher income lawyer. These possibilities will be examined shortly.

Neither income nor type of practice satisfactorily supported the hypothesized relationship. One possible explanation might be expected

to be found in the age of the lawyer performing the pro bono service. It would be expected in an economically-based model that younger, less established lawyers would perform less no fee work and more low fee work than older, more established lawyers. This was not evidenced in the data, however (see Table XI). Very little difference could be seen between younger and middle-aged lawyers. The only major difference shown by age concerned the oldest category of lawyers. These lawyers were seen to perform no or very little of either type of service. The probable explanation for their not providing such service was that they were working in a less active, retirement practice.

Another indicator of amount of pro bono service performed was the lawyers' policy on who they will take on such a basis. The lawyers' income showed some difference in their policy, with low income lawyers more likely to take only clients sent by the Bar Association Referral Service, and higher income lawyers taking more sent by intermediaries they knew. This may have shown a stronger incentive on the part of the newer, lower income lawyer to fulfill professional expectations of other bar members who would expect them to have more time or maybe more need for such cases. Type of practice, however, showed little in the way of explaining differences in acceptance policy.

An interesting trend in the data helped shed more light on pro bono policy differences. Policy responses varied within each category by length of establishment of practice in Pittsburg County (see Table XII). Lawyers who had established their practices after 1960 were more discriminating than any other group about who they took as pro bono clients. Fifty percent, or eight, reported only accepting a case if sent by the Bar Referral Service. This was the largest percentage of

TABLE XI

AMOUNT OF NO FEE AND LOW FEE SERVICE,
BY AGE OF LAWYER

Amount of Service Performed In Cases Per Year	Lawyer's Age 20 - 39 % (n)	40 - 59 % (n)	60 - 89 % (n)
No Fee Service			
None	0.0 (0)	14.3 (1)	50.0 (1)
1 to 33	57.1 (4)	42.9 (3)	50.0 (1)
34 to 67	42.9 (3)	28.6 (2)	0.0 (0)
More than 68	0.0 (0)	14.3 (1)	0.0 (0)
TOTAL*	100.0 (7)	100.1 (7)	100.0 (2)
Low Fee Service			
None	0.0 (0)	0.0 (0)	100.0 (2)
1 to 33	42.9 (3)	57.1 (4)	0.0 (0)
34 to 67	42.9 (3)	42.9 (3)	0.0 (0)
More than 68	14.3 (1)	0.0 (0)	0.0 (0)
TOTAL*	100.1 (7)	100.0 (7)	100.0 (2)

*Totals do not sum to 100% due to rounding

Source: Pittsburg County Lawyers Survey, 1979 n = 16

TABLE XII

POLICY ON PRO BONO SERVICES, BY ESTABLISHMENT OF THE LAWYER'S PRACTICE

Policy on Pro Bono Service	Year Began Practice in County 1920–1939 % (n)	1940–1959 % (n)	1960–1979 % (n)
All Who Come	100.0 (1)	40.0 (2)	6.3 (1)
Only When Know Intermediary (includes Bar Referral Service)	0.0 (0)	40.0 (2)	43.8 (7)
Only When Sent By Bar Referral Service	0.0 (0)	20.0 (1)	50.0 (8)
TOTAL	100.0 (1)	100.0 (5)	100.0 (16)

Source: Pittsburg County Lawyers Survey, 1979 n = 22

any period of establishment that was so exclusive. As was mentioned when discussing income, this further backed the premise that younger lawyers may have been trying to prove their professionalism to other bar members who may have expected them to take a disproportionate share of these cases. Another important tendency was for the better established to be more inclusive in their acceptance of pro bono cases. This probably showed increasingly more independence from economic needs and a trend toward more socially expected philanthropic work. The only lawyer who reported doing no pro bono work was a solo practitioner in the lower income level who said he must deal with only paying clients to make ends meet in a retirement practice. This was the response of another older lawyer who did not do the survey, but offered the response in conversation.

In conclusion, the hypothesis contending that amount of pro bono service would be determined by the economic situation of the lawyer was not strongly supported by the data. One possible explanation for this may have been because the question measuring estimated amount of service provided in no fee and low fee areas was poorly responded to by the lawyers. In the analysis of those who did answer, almost no relationship was seen by either lawyers' type of practice, income or age. The most distinct difference in variation among the lawyers on the issue was in the area of policy for taking pro bono clients, compared to the lawyers' lengths of practice in Pittsburg County (see Table XII). Those who had been in the county the longest were far more lenient in their policy on accepting the pro bono case. Conversely, those who had practiced in the county for less than twenty years were far more intent on knowing who had sent the client. This backs the hypothesis by

suggesting the lawyers newest to Pittsburg County were interested in the intermediary relationship in order to develop such contacts, possibly with future paying relationships in mind; or by feeling the need to fulfill professional expectations if the intermediary was sent by the Bar Referral Service.

Differences in Types of Clients Served

It would be expected that different economically-situated groups of lawyers would take different types of pro bono clients because of their different incentives for doing the work. The system of reciprocity used to maximize returns on pro bono services should be found to exist in the small town. This should manifest itself in:

> 3b. Differences in types of clients served by lawyers should vary by the lawyer's economic situation.

This was seen to be evidenced by the data. Lower income lawyers were more likely to perceive their pro bono clients as indigent or chronically poor. Sixty-four percent, or seven, of those citing this answer were of the lower income category, and it composed 70 percent, or seven, of all lower income lawyers' responses. The second most prevalent answer for this question was that the pro bono client had merely fallen on hard times. Answers here were similar for both income levels with the lower level having a slight lead at 30 percent, or three, and the higher close behind with 22 percent, or two. Two higher income lawyers reported the pro bono client as just being lazy; and another high income lawyer mentioned they were either young or old and having trouble making ends meet. Almost no difference was seen in the economic

description of the pro bono clients by type of lawyers' practice, with at least 50 percent of all types describing the pro bono clients as chronically poor or indigent.

Concerning the pro bono clients' work status, some expected variation was seen by income of the lawyers responding. Fifty percent of the lawyers in the lower income level reported their pro bono clients were unemployed. This answer was quite similar to the answers of higher income lawyers, 43 percent of whom responded that their pro bono clients were also unemployed. However, the lower income lawyers were split in their answers with 30 percent, or three, reporting their clients were employed or temporarily unemployed. This compared to only 14 percent, or one, of the upper income lawyers who fell into either of these categories. This was the expected response. If lawyers were as selective in type of client as was previously seen for the lower income lawyers, and if they had economic interests in building a practice by attracting clients through pro bono services, their pro bono clients would be expected to be more often employed at a low wage or temporarily unemployed. In contrast, the higher income lawyers reported their pro bono clients were almost always unemployed, or job jumpers. None said such clients were ever employed when they came seeking help. It should be noted that although lower income lawyers did have a tendency to have more employed or temporarily unemployed pro bono clients than the higher income level lawyer, half of them still found their clients to be unemployed. It would seem that the lower income lawyer was dealing with more of the true poverty cases, both employed and unemployed. Many of these were probably the cases referred to them by the Lawyer Referral Service.

Another area of investigation was whether the clients ever returned as paying clients. If indeed the lower income lawyers were trying to build their practice by serving the poor, it would be assured that some would eventually be expected to come back with paying work. Higher income lawyers who would be expected to do more service to only fulfill social expectations would not be expected to watch for those returning to pay. Also, their intermediary framework of communication might only have included contacts with a less-likely-to-pay group of low fee clients. The above expectations were evident in the Pittsburg County replies. Although no lawyers were optimistic about pro bono clients becoming paying clients, 91 percent, or ten, of the lower income lawyers reported this did happen on rare occations. Only 67 percent, or six, of the upper income lawyers would make such a claim. On the other hand, only 9 percent, or one, of the lower income lawyers said pro bono clients never came back as paying clients, while 33 percent, or three, of the higher income lawyers made this claim.

Hypothesis 3b was generally supported by the data. Far more of the lower income lawyers found their clients to be either indigent or chronically poor than did the upper income lawyers. Similarly, both lawyers' income level groups found their pro bono clients to be usually unemployed, although the lower income lawyer had a very slight tendency to report more employed clients. This would be the expected case if the lawyer was hoping to get some fee, or eventually to bring in a paying client. Finally, the lower income lawyers also showed more of a tendency to have pro bono clients come back as paying clients than did the higher income lawyers. This would be the expected case, especially if the lower income lawyers were more interested in building a practice,

while the higher income lawyers were working more to please intermediaries.

Differences in Intermediary Relationships

Finally, the third subhypothesis dealt with the intermediary relationship of the system. The system of reciprocity used to maximize returns on pro bono services should be found to exist in the small town. This should manifest itself in:

> 3c. Differences in types of intermediaries that refer clients to lawyers should vary by the lawyer's economic situation.

Surprisingly, higher income lawyers were considerably more likely to report that 50 to 100 percent of their clients were sent by intermediaries (see Table XIII). Lower income lawyers far more regularly reported only half or less. This indicated that higher income lawyers may have had a more extensive community network informing the poor of pro bono services. This could have arisen from a lay community's social expectations that because of the lawyers' higher income, they should be the ones burdened more regularly with no fee and low fee clients. This was opposite to the findings that the Bar Referral Service sent more pro bono cases to the lower income, less established lawyers. Some indication of differing expectations between the lay community and the legal profession members was evident here.

Another area of analysis described who the various lawyers found to be serving as an intermediary (see Table XIV). Although widely dispersed among the four categories, there did seem to be a general trend among the responses. Firm attorneys only reported personal contacts of

TABLE XIII

PERCENTAGE OF CLIENTS SENT BY INTERMEDIARIES,
BY LAWYERS' INCOME

Income	% of Clients Sent by Intermediaries				Total
	None	1 - 50	50-100	Don't Day	
	% (n)	% (n)	% (n)	% (n)	% (n)
$35,000 or Less	9.1 (1)	63.6 (7)	9.1 (1)	18.2 (2)	100.0 (11)
More Than $35,000	0.0 (0)	12.5 (1)	50.0 (4)	37.5 (3)	100.0 (8)

Source: Pittsburg County Lawyers Survey, 1979 n = 19

TABLE XIV

WHO SERVED AS INTERMEDIARIES, BY TYPE OF PRACTICE
IN PERCENTAGE

Type of Practice	Who Served As Intermediaries: Lawyers' Personal Contacts % (n)	The Poor's Personal Contacts % (n)	Paying Clients % (n)	Institutional Sources % (n)	Total* % (n)
Solo Practitioner	14.3 (1)	14.3 (1)	57.1 (4)	14.3 (1)	100.0 (7)
Partnership	33.3 (3)	11.1 (1)	22.2 (2)	33.3 (3)	99.9 (9)
Firm	33.3 (1)	0.0 (0)	0.0 (0)	66.7 (2)	100.0 (3)

*Totals do not sum to 100% due to rounding

Source: Pittsburg County Lawyers Survey, 1979 n = 19

theirs, or community institutions as sending them no fee or low fee clients. Both of the two firm lawyers reporting institutional contacts cited social workers as having sent them their clients, as opposed to the Lawyer Referral Service. This was in keeping with the earlier finding that the Lawyer Referral Service tended to send the referrals to younger, less-established lawyers. Partners showed more intermediaries that were personally connected with themselves than did the solo practitioner. For solo practitioners the most common intermediary relationship was with their paying clients. In contrast to the solo practitioner, the most common response for the lower income lawyer was the poor's personal contacts. Other income responses were too greatly scattered to be useful for analysis.

In agreement with the response by lower income lawyers that the poor's personal contacts served as intermediaries, 70 percent, or seven, of the lower income lawyers saw their intermediaries as being more like the poor in socio-economic status. Only 20 percent of these lawyers found them to be similar to themselves in status. Higher income levels saw intermediaries as being more like the poor 50 percent of the time, while 33 percent, or two, saw them as being in-between. This may have indicated that higher income lawyers were performing services for fairly established businessmen, though not of as high an economic status as their own. Because of the likelihood that a large percentage of upper income lawyers' pro bono clients would be sent to them by intermediaries, this may have been a partial explanation of the differences in the intermediaries' status.

In summary, hypothesis 3c tended to be generally supported. The lawyers' income level did show marked difference in the frequency of

intermediary contacts reported. The higher income lawyers reported a considerably higher percentage of their pro bono clients being sent to them by intermediaries. This was in keeping with the findings concerning hypothesis 3b. There it was found that the upper income lawyers were more skeptical than the lower income lawyers about the pro bono client returning as a paying client. It was concluded the upper income lawyers may have been more interested in taking the type cases that would please an intermediary rather than those who might one day become a paying client. The hypothesis was also supported by the types of intermediaries that sent pro bono clients to the lawyers as compared to the lawyers' type of practice. The solo practitioner seemed to be far more likely to receive pro bono clients from paying clients than by any other means. These may have been the clients that the solo practitioner lawyers developed through the promotional techniques they undertook in the community. The partnership lawyers varied considerably between the various types of intermediaries, reporting that they received some pro bono clients from all sources of intermediaries. Firm attorneys, however, only received pro bono clients from social workers or personal contacts. This may have shown a fulfillment of social expectations that the firm lawyers performed when they took such cases.

Conclusion

Analysis has shown that some of the hypotheses were supported by the data while others were rejected. The hypothesized institutionalization of legal services to the extent that the divergent problems of the poor were ignored was not found in Pittsburg County. The lawyers

here reported spending time on pro bono cases in different ways than they did in their regular practices, as well as performing some services for the poor in quite disproportionate mean percentages to the amounts performed in their regular practices. Lawyers also were found to not simply provide the quickest services to the pro bono cases in order to return to their paying clients more quickly. In some situations the lawyers were willing to go into litigation for the pro bono client. This was quite different than the urban findings by Lochner. In no instance did any urban lawyer surveyed litigate a pro bono case.

Second, the lawyers in Pittsburg County were found to have some hypothesized variation by economic situation in their choice of promotional techniques, as was predicted by hypothesis two. The lawyers did show a marked difference in types of promotional techniques used as well as to the extent to which they were used, by the lawyers' type of practice. Despite this difference in practice type, lawyers' income level quite surprisingly showed almost no differences between the types of services or amounts used by the lower and upper income lawyers. Another unexpected finding was that all lawyers were found to be generally skeptical about the practice of legal advertising. Almost no difference was found in this skepticism, even among the lower income lawyers who would be most expected to benefit from its use.

Finally, in hypothesis three, amount of pro bono services performed, characteristics of pro bono clients, and characteristics of the intermediaries were also hypothesized to vary by economic situation. No support could be found for economic variation in the amount of service given pro bono clients except as was explained by the number of years the lawyer had practiced in Pittsburg County compared to his

policy on accepting pro bono clients. Here the more established lawyers were seen to be increasingly more lenient in whom they would accept as pro bono clients, probably in keeping with their no longer needing to build a practice, so much as maintain one by fulfilling social expectations. The characteristics of the pro bono clients were, however, seen to vary by the economic situation of the lawyer. Lower income lawyers were more likely to have mentioned that some of their pro bono clients were either employed or only temporarily unemployed than did the higher income lawyers. The lower income lawyers also acknowledged a greater possibility that their pro bono clients might sometimes come back as paying clients than did the higher income lawyer. This was explained as the tendency for the higher income lawyer to be more interested in pleasing intermediaries than in building their practices. Finally, the intermediaries of the groups were seen to vary by the economic situation of the lawyers. Higher income lawyers were seen to have reported more intermediary-sent pro bono clients than did the lower income lawyers. Types of intermediaries also varied between the lawyers in different types of practices. The solo practitioner was found to generally have more paying clients functioning as their intermediaries than any other of the categories. Firm attorneys reported different findings. They reported social workers or personal contacts as their most common categories of intermediaries. Partnership lawyers acknowledged some intermediaries from all the categories.

After establishing the existence of an economically-bases system in the small town, and having described its general characteristics and differences as compared to the urban studies, conclusions may now

be drawn concerning the pro bono system's ability to be incorporated with organized legal aid programs. This is the purpose of the final chapter.

CHAPTER VI

THE IMPLICATIONS FOR COORDINATION OF PRO BONO SERVICES WITH ORGANIZED LEGAL AID

Many unexpected differences were found between the small town and the urban studies. It was expected from the urban studies that the cases performed for the pro bono clients would only be quicker versions of services common to the lawyers' regular practice, but the small town lawyers performed dissimilar services in much less expedient manners for their pro bono clients. It was also expected from the urban studies' findings that more no fee services would be performed by higher income lawyers; but there was no important difference in amounts of no fee and low fee services found by the lawyers' income level in the small town study. Furthermore, the type of client taken by the urban lawyer was found to vary by type of practice, while in the small town there was almost no difference found here. Finally, the expected intermediary relationships found in the urban studies were completely reversed in the small town study.

The most important similarity between the urban study and the small town study, however, was that the economic incentive for providing pro bono services was apparent in past studies. Promotional techniques, although very different in types used, were found to be important to the lawyers in both studies. The only difference seen here was in the type of techniques the different groups of lawyers chose to use.

Furthermore, the expected intermediary relationship was apparent in the small town, although it was, as mentioned above, completely reversed in the findings of who acted as intermediaries, and to what extent for the various types of lawyers' practices.

The question raised now is, "So what?" The proposed combining of pro bono services with organized legal aid was the most important reason for exploring these relationships. From the findings of this report, can the two be compatably combined? This answer can only come from a final reexamination of both the institutionalized frameworks of the unorganized and organized legal services delivery systems, and the incentive to maximize profits found among lawyers.

Institutional differences between the two types of legal delivery systems could most probably be overcome the easiest. The major differences were the institutionalization of economic problems on the one hand and of poverty-related problems on the other. In a combined system, the private lawyer still could not be expected to immediately institutionalize poverty cases to become a more competent pro bono lawyer. From the studies in the urban area in contrast to the small town study presented in this paper, it seemed apparent that if organized legal aid was available, the private lawyer would defer to them the services not common to their regular practices. When such services were not available, as in the small town study in Pittsburg County, the lawyers may have had more incentives to at least attempt to provide some of the non-institutionalized services themselves. The extent to which they are able to provide these services that are not common to their practice, is still in question however. Even if organized legal aid opened up the use of its research institute and backup centers to urban lawyers,

little change would be expected without the proper incentives. As it has been found to be throughout this paper, this incentive would probably be money. This would defeat the purpose of combining pro bono and organized legal aid.

Another alternative might be to maximize lawyer use as it is. This would necessitate Legal Services Corporation programs incorporating pro bono services into their programs to do what they do naturally. This would mean having pro bono lawyers handle the more common legal problems such as divorce and simple property matters. Legal aid might then concentrate its efforts more on the poverty-type issues it does best. A plan might be worked out to include those of moderate means in such a system. Legal Services Corporation might act similarly to the pro bono private lawyer and charge a graduated fee based on what the client could pay, as in low fee work. Since they would be dealing with types of cases that private lawyers do not normally handle anyway, this might be a method to defer some of the expense of the programs and allow for more services and advertising. In return for referrals from the Legal Services Corporation program offices on commonly institutional issues, the participating lawyers might also be required to adhere to a fee based on ability of the client to pay. This would help to provide legal assistance to those of moderate means, and should also be a boon to the younger solo practitioner who would then be free to take such a person as a regular client if the situation ever arose.

With an increase in generic advertising making more poor aware of their unrecognized legal problems, more total clients should be served than under any variation of the current hit-or-miss type intermediary system now in effect. It would also get around the problem of the

private lawyer advertising.

The problems with such a system are in acceptance and enforcement. As was previously shown, lawyers have feared the rise of socialized law for many years. There is little indication that they would stop now. One point in favor of the plan, however, is its voluntary nature. No lawyer would be coerced into joining, and it would favor some lower income practice building lawyers considerably. Another fear to overcome, however, would be to allow legal services programs to take fee generating cases, even in poverty-related areas. This would probably cause the loudest cry of socialism from the conservative legal ranks.

Enforcement of the fee schedules would also present a problem. How could an organized legal services program be sure the participating lawyer was actually abiding by the pre-arranged fee based on income? Two alternatives exist. One would be to randomly sample clients after they were referred. If he or she was overcharged, it could be grounds for ending the arrangement with the lawyer, fines, or for more constant scrutiny. The other alternative would be even less desirable. It would entail checking private lawyers' records or sending undercover legal aid officials pretending to be eligible clients. Neither of these would probably be acceptable to strongly independent private lawyers.

Still another problem the combination of organized legal aid and pro bono activity would have to face would be the disturbance of the intermediary system. It was evident from the findings that lawyers do maximize returns from pro bono services. When the poor become more aware of previously unrecognized problems and the ability to have them solved by lawyers at no or reduced fees, the relationship might change from that of a privilege to that of a right of the poor. If such did

occur, the less-established lawyers would be favored by increasing small-fee business and by practice building when and if the poor could come back as paying clients. For the established firm attorney, however, the change might not be so fortuitous. They were seen in both the urban studies, rural studies, and the small town study to use legal services to please intermediaries and fulfill societal expectations. If the service to the client sent by the intermediaries was no longer seen as a favor, this relationship would be destroyed. The service would then be more likely to be channeled through a more neutral referral office, and seen as an obligation not as a self-imposed duty stirred by ties of friendship of favor. This would possibly force the more established firm attorneys into performing other types of promotional techniques to maintain their practice and fulfill social obligations.

The key seems to lie in advertising. This is the only thing that could overcome institutionalization, and its pursuant problems for the poor. It would end nonrecognition of poverty problems. It would allow the poor to protect themselves in a way little seen before. It would also change power orientations within the community. As was found in the community action programs of the 1960s, this would probably meet with strong establishment opposition.

What then are the alternatives? A system of aid to only the poor should be feasible under such a plan, but even it is likely to be careful in its advertising to avoid changing relationships between lawyers and intermediaries. This might be a workable system for a small town, however. Either as a regularly staffed or as a satellite office, the organized legal aid person could be called upon to serve poverty-issue

problems for the indigent. For institutionalized problems, if all the matter required was advice, he or she might be able to handle this also. Then, for the institutionalized cases that required small amounts of time, a referral could be made to participating lawyers who would agree before hand to treat the eligible legal aid client on a no fee basis. Incentives for private lawyers to join such a program would first include contacts that might act to build their practice some day if no restrictions were made on later fee-based cases. Second, this could be a way for lawyers to fulfill social expectations. If a rotation list within each area of specialization was used as a basis for referral, the private lawyer could be called upon to perform cases in his or her area of specialization. An upward list of 5 to 15 cases per year could be pledged beforehand ensuring no over-whelming burdens. Finally, if the case dealt only with indigents, the provision of low fee services to those of moderate means could also continue to be based on an intermediary system. This would maintain this relationship and its advantages for all lawyers--urban, small town, and rural--who wish to please friends, business associates, or paying clients.

Another advantage of such a system would be in its ability to spread the services of organized legal aid lawyers farther. No longer would legal aid lawyers be forced to spread their services so thinly. This would leave more free time for organized legal aid to deal with poverty areas and even the more complex cases in institutionalized law. Cases that required expensive, lengthy appeals might be worked on jointly between organized and pro bono lawyers. Because of increased activity in poverty-law areas, the recognition by the poor of such areas as legal should improve. This also has an advantage over massive

publicity and information campaigns because it would give the system time to adjust slowly, instead of being deluged with litigation all at once.

This is the hope that can be foreseen in organized legal services combining with unorganized pro bono delivery systems. If it is to be effective or even possible, it must take into consideration underlying incentives for lawyers to do pro bono services. If a system was structured in such a way as to compliment these incentives, to not bring on the fear of the private legal business not being overrun by the government, and to not destroy a valuable intermediary relationship for the lawyers, cooperation could be forthcoming. This compromise system seems to be the best system for getting maximum services to the poor at minimum costs. And, as opposed to more idealistic systems, it should have a chance to work.

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APPENDIXES

APPENDIX A

SAMPLE OF QUESTIONNAIRE

Pittsburg County Lawyers Survey, 1979

The questions asked to Pittsburg County lawyers are reproduced here directly as they were asked to the lawyer. The major difference is that the lawyers each received one legal-sized sheet with the questions on both the front and back.

1a). Some lawyers in towns like those in Pittsburg County say they do some no fee or low fee (NF/LF) work in civil cases for those in the community who cannot afford to pay their normal fee, other lawyers say they do not do this type of service for various reasons. Which of the following would you say best describes your policy on such NF/LF work for the poor?

1) I actively seek out such clients.
2) I am willing to help anyone who comes to me for such help.
3) I am willing to help someone who has been sent to me by the Bar Association Referral Service.
4) I am willing to help someone who has been sent to me by a person or a group I know, including the Bar Association Referral Service.
5) I am not able to do such work.

1b). Answer only if answer above was "5". All others go to 1c. Which of the following answers best explains why you are unable to do NF/LF work?

1) Have never been asked to.
2) Firm won't allow it.
3) Must deal with paying customers to make ends meet.
4) A matter of principle.
5) Other (specify) _____.

1c). Answer only if response to 1a was 1 through 4. If answered 5 on 1a proceed to 4a.
To the best of your records or memory, what percentage of the NF/LF clients' problems you dealt with last year fell into each of the following categories?

1) Consumer and employment related _____
2) Administrative problems _____
3) Housing problems _____
4) Civil Liberties issues _____
5) Family/marital problems _____
6) Property related _____
7) Personal injury _____
8) Other (specify) _____.

1d). What percent were: 1) Male _____ 2) Female _____

1e). Would you describe the typical NF/LF clients you served as:

1) Chronically poor; indigent _____
2) Someone who has fallen on hard times _____
3) Other (Specify) _____.

1f). Would you describe the typical NF/LF client as:

1) Employed _____
2) Temporarily employed _____
3) Frequent job jumbers _____
4) Unemployed _____
5) Other (Specify) _____.

1g). Of these NF/LF clients, what type of legal effort did it take on your part to dispense with their problems? What % of the cases involved:

1) Advice only _____
2) Negotiation _____
3) Litigation _____
4) Referral to a social services agency _____
5) Referral to another lawyer specialized in that area _____
6) Administrative hearings _____
7) Other (Specify) _____.

1h). What is the major distinction you make between free service and low fee service clients?

2a). Sometimes the poor come to the lawyer on their own. Other times someone else has defined their problems as legal and suggested they see you personally, or the Lawyer Referral Service for NF/LF help. What % of the NF/LF clients you have served had such an intermediary guide them to legal help as a solution of their problem?

1) None _____
2) 1 to 25% _____
3) 25 to 50% _____
4) 50 to 75% _____
5) 75 to 100% _____
6) My clients do not tell me.

2b). How would you best describe these people who refer NF/LF clients?

1) Friends/social acquaintances of yours _____
2) Members of a social group to which you belong _____
3) Paying clients of yours _____
4) Friends or relatives of the poor client _____
5) Workers in social welfare agencies (which ones) _____
6) Other (Specify) _____.

2c). Typically, what is the nature of the relationship between the client and the person who referred him/her to you or the referral service?

2d). Would you consider the relative socio-economic status of the average person who, as an intermediary, refers NF/LF clients to a lawyer as being?

1) More like your own _____
2) More like the NF/LF client _____
3) Other (Specify) _____.

3a). Based on your experience, do NF/LF clients ever become regular paying clients?

1) Always _____
2) Frequently _____
3) Seldom _____
4) Rarely _____
5) Never _____
6) Not sure _____

4a). Some people have argued that the past ban on legal advertisement and procurement has led lawyers who wish to build a practice into such activities as joining social organizations and/or running for public office in order to become well known within the community. Have you ever felt it would be to the advantage of your practice to engage in any of the following activities? (Recognizing many could be performed with both charitable and economic motives.) Please circle one or one's application.

1) Ran for elective office
2) Joined a businessmen's organization
3) Gave time to charitable organizations
4) Became more active in the church
5) Gave time to fraternal organizations
6) Other (Specify) _____
7) No

4b). If you answered "no" on 4a, why did your circumstances allow you to attract a clientele without such activities?

4c). What effect do you think the changes in the ban on legal advertising will have on the development of practices by new lawyers in this community? (anything else?)

5a). What would you consider the major differences are in practicing law in a smaller city/rural setting, as opposed to the large or very-large urban setting. Please be specific. If you need more room please attach extra sheets.

5b). Do you feel the needs of the poor for NF/LF legal service are different in the smaller urban/rural setting? Are they more likely or less likely to be met?

5c). In Pittsburg County, the needs of the poor for NF/LF service in civil cases are:

1) Met Completely _____
2) Met for the most part _____
3) Met only in the most serious matters _____
4) Unmet -- need organized legal aid _____
5) Other (Specify) _____.

5d). Please rank the way you feel most of the poor deal with their problems in Pittsburg County.

1) Do nothing _____
2) Self-help _____
3) Through Lawyer Referral for help _____
4) Through private lawyer for help _____
5) Nonlegal methods _____

5e). What nonlegal methods are used by the poor to solve legal problems?

6a). Your age is _____

6b). Law school attended _____

6c). Year graduated from law school _____

6d). Type of environment "you grew up in":

1) Large urban _____ 3) Suburban _____
2) Small urban _____ 4) Rural

6e). Year began practice in Pittsburg County _____

6f). Political Affiliation: (1) Democrat 2) Independent 3) Republican 4) Other _____

6g). Sex: _____

6h). Area of professional specialization _____

6i). Annual income:

1) $0 -- $15,000 _____
2) $15,001 -- $25,000 _____
3) $25,001 -- $45,000 _____
4) $45,001 -- $55,000 _____
5) $55,001 and over _____

6j). Would you consider your practice to be:

1) Solo _____
2) Partnership _____
3) Firm _____

6k). What % of your overall practice would you say deals with:

1) Business _____
2) Domestic Relations _____
3) Constitutional Rights _____
4) Criminal _____
5) No Fee/Low Fee _____
6) Real Estate _____
7) Tax _____
8) Patent _____
9) Other (Specify) _____

6l). Approximate number of clients served per year as No Fee _____
As Low Fee _____

APPENDIX B

SAMPLE OF COVER LETTER

April 9, 1979

Dear Pittsburg County Lawyer:

As a part of my Master's degree program here at Oklahoma State, I am writing a thesis exploring the nature of no fee and low fee Pro Bono activity in the smaller urban area. Much has been written about the larger cities' Pro Bono and legal aid activities. Pro Bono researchers also have examined the rural environment's affect on such activity. At present, however, the most serious void in the literature is the lack of information about the smaller city, not served by a legal aid office. Therefore, my interest centers around this area's characteristics.

Pittsburg County was selected because it fits the above description and because of my interest in the area I grew up in. Results of the survey will be presented to the President of the Pittsburg County Bar Association, Mr. "Buddy" Neal."

The time you take in filling out this one-page questionnaire will be greatly appreciated. The survey design attempts to take as little of your time as possible. Also, if you will leave the answered questions with your receptionist, I can collect it without inconveniencing you.

Your participation in this survey is much appreciated. If you have any questions, please contact me at the address below, or through the Political Science Department.

Sincerely,

Laura Manning
318 South Duncan, Apt. 2
Stillwater, OK 74074
(405) 377-0872

VITA[2]

Laura Lou Manning

Candidate for the Degree of

Master of Arts

Thesis: AN ANALYSIS OF INCENTIVES FOR PROVIDING PRO BONO LEGAL SERVICES AND IMPLICATIONS FOR FUTURE LEGAL SERVICES CORPORATION POLICIES

Major Field: Political Science

Biographical:

Personal Data: Born in McAlester, Oklahoma, December 21, 1954, the daughter of Capt. and Mrs. R. T. Manning.

Education: Graduated from McAlester High School, McAlester, Oklahoma, in May, 1974; received Bachelor of Science degree in Public Affairs, Department of Political Science, from Oklahoma State University in 1977; completed requirements for the Master of Arts degree at Oklahoma State University in July, 1979.

Professional Experience: Graduate teaching assistant, Oklahoma State University, Department of Political Science, 1977-1979; Independent and Correspondence Instructor for Political Science, Oklahoma State University, 1978-1979; clinical instructor, Pre-Service Teacher Education Program, Oklahoma State University, Department of Education, 1978-1979.

Professional Organizations: Pi Kappa Delta National Debate Honor Fraternity, 1975-1979; Pi Sigma Alpha National Political Science Honor Fraternity, 1977-1979, vice president from 1977-1978.