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ORGANIZATIONS AND LEGAL RIGHTS ACTIVITIES

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ABSTRACT

Among American lawyers, concern with obligations to the unrepresented and under-represented has increased greatly in recent years, largely in response to the social movements of the 1960s. Such concerns have been expressed in the creation of new organizations, both in the private and public sectors of the bar, as well as in the strengthening of traditional bar organizations serving under-represented groups and individuals. The overall range of activity, often called the Legal Rights Movement, has stemmed from four basic sources: (1) the traditional obligation of lawyers to help deserving, needy individuals, (2) the existence of weak private legal aid societies, (3) public service tours of duty by elite lawyers, and (4) development of social reform organizations emphasizing appellate litigation and class action suits. As the legal rights organizations developed, tensions occurred between two expectations: (1) that help to the unrepresented would be cast in traditional service terms and (2) that this help would be in terms of law reform litigation. Increasingly, publicly supported organizations (principally OEO Legal Services) are being constrained from reform activities, but the private sector organizations are engaging in a mixture of law reform/litigation work with individual service work.

Organizations and Legal Rights Activities

I. Introduction

The years since 1960, and particularly the last half-dozen years, have been a period in which an unprecedented amount of legal rights activity emerged.

For the most part, organizations have been the principal mechanisms for the recruitment and training of lawyers in legal rights activities. In the process of formation and through their continual effort to mobilize resources organizations develop ideology that attracts lawyers. As formal structures with ideologies and programs, organizations provide the focus for legal rights activities work. Organizations largely define what clients are to receive what kinds of legal services. Organizations ease the problems that lawyers have in coming in contact with clients of different social classes. Legal rights activities organizations have a high turnover of lawyers, but the experience that lawyers gain while working in the organizations enables them to continue legal rights activities when they leave for other law jobs. In addition, the success of organizations in winning cases, obtaining publicity, attracting public support, and recruiting legal talent generates new organizations and other efforts to offer similar kinds of opportunities in the two major sectors of the legal profession--private practice and government.

Organizations devoted to legal rights activities flourished in response to the political and social events of the last decade and a half. They also reflected the earlier forms and traditions in the legal profession itself.

II. Legal Rights Activities and Organizations Prior to 1960

Four reasonably distinct strands that had an important influence on legal rights organizations had developed by 1960. They were (1) the individualized nature of work by lawyers on behalf of the poor, (2) the emergence of weak, underbudgeted legal aid societies and defender programs stressing services to individuals rather than reform, (3) a tradition of public service tours of duty by elite lawyers, and (4) the development of social reform organizations emphasizing appellate litigation and class action suits.

In the legal profession in the United States, reduced fee work by lawyers, either for individuals or for groups, historically depended on the willingness of individual lawyers. They made their own arrangements, and their responsibilities were poorly specified, if at all. With the organization of the American Bar Association and similar activities at the state level in the late nineteenth century, canons of behavior were defined. The canons mandated defense of indigent prisoners, but said nothing about civil cases.¹ With few exceptions, the provision of legal services to the poor continued to depend on individual lawyers.

After World War I, some lawyers and bar associations turned their attention to the establishment of legal aid societies as an alternative or supplement to individual obligation of lawyers. The first legal aid society began in the United States in 1876 in New York City as an outgrowth of an organization that attempted to ease the transition for German immigrants in the U.S. Within a few years, legal aid was extended to other immigrants and indigents. The usual pattern that emerged was that each legal aid office had only a few lawyers associated with it. The lawyers did legal aid work only part time, and often handled the cases at their own offices. The

service was supported mostly by private subscriptions, although some offices had modest municipal subsidies, and some also took cases on a contingency basis.²

The rhetoric and reasoning of this period were not entirely solicitous of the poor. Legal aid for the indigent, it was argued, would blunt the rage the poor might feel about the injustices of society and would thus help contain threats of revolution or unrest. A man who had his wage claim handled by a lawyer would surely be less likely to turn to radical activity. Leaders of the legal profession were also concerned about the unfavorable public image of the lawyer, and believed that if they took on the responsibility of representing those who otherwise could not obtain access to the legal system, their image might improve.

In 1916, Reginald Heber Smith, formerly of the Boston Legal Aid Society, was commissioned by the Carnegie Foundation to survey legal aid needs in the United States. Approximately 40 organizations existed in 37 cities. Some were free-standing; others were housed within private charitable agencies, or were parts of public bureaus, or affiliated with law schools.³ Some programs undertook criminal work for the indigent, although this was not common. Shortly after the publication of Smith's Justice and the Poor, the American Bar Association established a Standing Committee on Legal Aid, headed by Smith.

During the first half of the twentieth century, the legal aid model spread, though slowly. In smaller cities two different types of organizations, with roughly the same consequences, emerged. One was a lawyer referral program, with a part-time secretary who put needy clients in touch with lawyers who were willing to be listed. The other was a lawyer who undertook the work himself, or was responsible for a younger member of his firm who did the work. Either way, the lawyer in charge of a legal aid

committee or a lawyer's referral committee often held his position at the behest of the city or county bar association. Costs were low for both arrangements and usually borne by bar organizations.

In any event, in both the large and small cities, most programs were small in terms of professional staff and available time. Most had slender financial resources; many were dependent on volunteer lawyers. By 1947, when Emery Brownell surveyed Legal Aid for the American Bar Association, he found only 70 facilities operating. Thereafter, with more vigorous bar support, proliferation became more rapid. By 1963, there were 249 legal aid offices.⁴ However, despite the large number of offices, legal aid was severely constrained by lack of funds: in 1964, the entire bill for legal aid was only a little more than \$4 million, an average of approximately \$16,666 per program. Community funds provided more than half the total funding, lawyers and bar organizations another 17 percent.

Partly to limit work load, but also for moralistic reasons, legal aid offices established guidelines concerning the types of cases they would accept. Family cases usually made up a large percentage of the service load, though divorces were handled only very reluctantly.⁵ Adoption, bankruptcy, civil mental commitment hearings, juvenile proceedings, and administrative hearings were also often refused.⁶ The second most common category of cases was landlord-tenant, especially in major metropolitan areas. Consumer problems were numerous; they included installment purchases, repossession of merchandise, or fraudulent sales.

Legal aid emphasized service to individuals exclusively; there was no law reform or class action litigation. Emphasis on individual services stemmed from the assumption that the law was just, that for poor people the problem lay not in the nature of the law, but in obtaining access to the law.

Logically, the more lawyers who made time available to the poor (on an individual, one-to-one basis) the more likely it was that the legal system would operate fairly. However, offices were usually so poorly funded that they had to set very strict eligibility standards in order to keep down the case-load limit. They avoided community education or publicity so that their work schedules would remain tolerable. Studies have shown that for most legal aid clients, access to the legal system consisted of only one interview with a legal aid lawyer.

In large metropolitan offices, the low pay, the type of legal work, and the crushing caseload discouraged ambitious lawyers from entering legal aid. Legal aid positions were often accepted only until something better became available. For lawyers who were not willing to try their fortunes in private practice, legal aid positions had the advantage of steady employment, however modest. Female lawyers, who frequently found it difficult to obtain desirable positions in firms, entered legal aid in disproportionate numbers; they were also likely to remain longer than their male colleagues.

Despite the obvious shortcomings of legal aid, it was much respected and honored by the organized bar. Quite often prestigious members of the legal profession lent their names and some of their time to legal aid, or to high level panels concerned with it. Even if most lawyers had no time for legal aid, it won a definite niche for itself in the legal profession.

Legal aid to criminally accused indigents has also depended on individual service, on a more or less volunteer basis. Since other studies have addressed in depth the origins of the assigned counsel system and its variations, here it should suffice to indicate that to date the assigned counsel system has been the dominant mode of providing services throughout the twentieth century. Assigned counsel systems have varied in terms of the

crimes that were included, the point in the proceedings when the assignment was made, and the method of selecting the lawyers. Most assignments were without compensation. Generally speaking, young lawyers welcomed assignments. If they were in small firms or on their own, it gave them experience and visibility. If they were in large firms, it provided variation from a business practice. More experienced lawyers, on the other hand, usually tried to avoid assignments and, it was claimed, tended to give these clients a minimum amount of service. Needless to say, the quality of the assigned counsel system varied enormously.

Despite the shortcomings of the assigned counsel system, viable alternatives have been slow to emerge. The first public defender office for the criminally accused was established in Los Angeles County in 1910. Until 1960 the increase in defender programs was very slow, even in comparison with the growth of legal aid societies. In 1917 there were five defender programs; in 1947 there were only 29 (including four legal aid societies doing substantial criminal work), and of these 29, 13 were in two states.⁷ By 1960, 90 such programs existed and three basic organizational patterns had emerged: public defenders as defined by statute and paid by public funds, public-private programs with some funds from the private sector, and private programs with all financing from private sources (usually bar association). The dominant pattern, however, was public--more than 75 percent of defender funding came from tax sources, as opposed to the 7 percent that legal aid organizations received from public sources.

Why did the defender movement languish behind the legal aid movement? Whereas legal aid was handled privately, defender programs involved public authorities and thus were considerably more difficult to initiate. Perhaps the criminally accused indigents were perceived as less worthy of legal aid

than those wanting civil aid, who were also screened in terms of worthiness. The decentralized nature of the political system and the system of justice meant that dozens if not hundreds of political decision-making bodies had to alter their ways if defender programs were instituted. In addition, no prestigious nationwide organization of professionals advocated defender programs nor was there a specialized organization for promoting defender programs until 1960 when the National Legal Aid Association reformed itself into the National Legal Aid and Defenders Association (NLADA). Concerns with protecting the indigent criminally accused were instead expressed in the elaboration and extension of the assigned counsel system. Although under serious attack during the 1960s, the assigned counsel system showed no signs of withering away.

Two other influences affected the character of Legal Rights organizations: government service obligations and litigation-oriented social reform groups.

In the early history of the United States, the lawyer was viewed as a particularly skilled and responsible person in the handling of community and governmental problems. Alexis de Tocqueville wrote of the important role of lawyers in community dialogue and decision-making. But during the nineteenth century, with the rise of industrialism, lawyers devoted more of their time to the demands of corporate and business clients. The small town lawyer did not disappear; but by the end of the nineteenth century, such lawyers appeared more quaint than typical.

With the emergence of bar associations in the late nineteenth century and more concern with standards of professionalism, some systematic attention began to be paid to the public obligations of lawyers. The formal statements of the organized bar stressed the responsibility of the bar to

the public, but given the late nineteenth century assumptions about social Darwinism and the high regard in which the barons of industry were held, it is not surprising that serving the public interest was identified with serving business corporations and leaders. For most lawyers, serving clients to the best of one's professional ability was considered equivalent to serving the public interest and fulfillment of the highest obligation of the profession.

Although this conception of the public interest of the profession was not without its critics, the first real challenge to this professional image occurred during the New Deal period when bright, young lawyers flocked to Washington to aid in the fight of the people against "Big Business."⁸ Lawyers, such as Tommy Corcoran, Ben Cohen, and James Landis, wrote legislation, drafted agency guidelines, and regulated the economy through the alphabet agencies. They were private lawyers who in time of national crisis put aside their usually lucrative private practice to go to Washington. There were doing their public service at the highest level, not for whole careers, but for some years. They exemplified the belief that lawyers were uncommonly well qualified to shape the United States economy and social fabric in the 1930s and that it was the appropriate behavior for outstanding lawyers to perform these functions. Society, or high governmental position, did not beckon everyone; the chosen few with their sense of New Deal mandate were but a token number, but they established an important model.

This type of public service occurred again during World War II when hundreds of private lawyers and law faculty members put aside their regular concerns and moved to Washington to undertake temporary government service.⁹ The shuttling between the government and the elite law schools and the most prestigious law firms was not without its effects on ideology. Lawyers and

law students came to appreciate stints of government service not only as a professional obligation but also as a calling to which they were particularly fitted. Yet the limits of this kind of public service were clear: prominent and distinguished lawyers would be available for important work but not for routine follow-through or administration. When the problems of bureaucracy began to emerge and the complex mechanism of social change slowed the pace of achievement, they would return to their previous milieu.¹⁰ An organization, or campaign, dependent on their enthusiasm and effort had to look elsewhere if it were to survive.

The final influence on the legal rights movement to be described is perhaps the most important--litigation by social reform groups--often appellate level class action cases. Most influential was civil rights work, particularly the litigation activities of the National Association for the Advancement of Colored People. The NAACP, founded in 1909, relied heavily from the very beginning on the use of the legal system, particularly test case litigation--and with great success. As a result of NAACP cases, the United States Supreme Court invalidated antiblack voting restrictions (1915), housing segregation ordinances (1917), and the exclusion of blacks from juries in criminal cases (1923). These cases attracted a great deal of support, both white and black, to the organization. The membership of the NAACP expanded rapidly (there were 30,000 members in the 1920s). However, in spite of this growth and the continuing stream of legal activity, the legal staff remained small.¹¹

In 1939 the NAACP established the Legal Defense and Educational Fund, Inc. (popularly known as the "Inc. Fund") not only to handle its own legal work but also to work with other civil rights groups on civil rights cases. The Inc. Fund, with its small staff (three lawyers in the middle 1940s and

nine by 1963) brought test case after test case in a wide range of areas (education, voting rights, housing and restrictive covenants, transportation and public accommodations), and continued to win. By 1952, the Inc. Fund had won thirty-four of thirty-eight cases argued before the U.S. Supreme Court. The regular staff was assisted by volunteer attorneys throughout the country, though it bore most of the load itself, especially prior to 1960.¹²

Inc. Fund achieved its greatest fame in Brown v. Board of Education, which was followed by successes in cases involving segregation in buses, golf courses, bathhouses, courtrooms, voting, marriage, public accommodations, housing, as well as other state activities. In this era of the Warren Court, it seemed as though every year following the Brown decision, reformers could count on not one, but several Supreme Court decisions on behalf of the disenfranchised of American society. A great many of these cases were class actions, a model of social reform that was openly encouraged by the Court itself. As the Court saw it, "...[U]nder the conditions of modern government, litigation may be the sole practicable avenue open to a minority to petition for redress of grievances."

It would be difficult to overestimate the influence of the Inc. Fund class action litigation strategy on the subsequent development of legal rights activities. United States Supreme Court victories had an enormous appeal. At the stroke of the judicial pen, so it seemed, legal rights and legitimacy were given to disadvantaged groups. The executive and legislative branches of government, sometimes thought to be hostile and indifferent to the claims of blacks and other minorities, appeared to be circumvented. The style and location of the litigation were very important in influencing lawyer recruits. Young, elite, socially motivated lawyers would work with

the leaders of the organization, and their legal work would be in the prestigious Federal courts, often at the appellate level. The legal training of young lawyers and the law school conception of the role of law and lawyers in social reform concentrated on appellate court litigation. The Warren Court and the NAACP litigation seemed to be the perfect example of what law, lawyers, and legal education were all about.

As we shall see, this model of class action law reform strategy became the single most important influence in the development of OEO Legal Services, consumer and environmental law, and public interest law. It became the popular standard for measuring the quality and effectiveness of other legal rights activities. In time, it also became the focus of political attacks on legal rights activities.

The other principal civil rights and civil liberties organization was the American Civil Liberties Union. The ACLU (originally the National Civil Liberties Board) was formed to deal with civil liberties problems accompanying the United States involvement in World War I. During the twenties, the organization was led by people active in the labor movement, including the radical labor movement, and often focused on problems related to labor unions and labor organizing. Gradually, branches of the ACLU were created in the nation's largest cities, loosely coordinated through a national office that had slender resources.¹³ Few branches retained attorneys; most of the work was done by volunteer attorneys (both members and outsiders).

During this period, the ACLU was weakened by an internal controversy over the desirability of identifying with radical labor activities. Nevertheless, the ACLU continued to grow, only to be confronted by a much more intense controversy in the 1940s over the question of allowing admitted communists to hold positions of leadership. Internal dissension plagued the organization for the next two decades.¹⁴

Because of a lack of funds and of a strong organizational base, the work of the ACLU prior to 1960 consisted mainly of filing amicus briefs rather than direct litigation. Nevertheless, the ACLU did considerable civil liberties work in times that were generally not sympathetic. Important ACLU cases were well-known to law students and young lawyers interested in civil liberties. While the ACLU's work never achieved the great fame of the NAACP, it did represent a steady tradition of appellate court law reform work.

Another organization influencing the recruitment of young lawyers to the legal rights movement was the National Lawyers Guild. The Guild was formed in 1937 as a nationwide professional organization that, in contrast to the American Bar Association, would be an effective social force, especially concerned with human rights. In its initial period, the Guild was led by people highly supportive of the New Deal, many of whom worked in government. However, the successes of the 1930s were terminated by the war. Then, after 1946, attacks on the Guild for supposed communist sympathies and activities signaled the decline toward its nadir. Membership shrank drastically in the 1950s as the Guild fought Attorney General Herbert Brownell's demand that it be placed on the Attorney General's list of subversive organizations (a threat not finally defeated until 1958). Groups that had previously turned to the Guild shunned any ties to the organization, and many areas that had been central to Guild research and effort became closed. For example, local civil rights groups in the South, sensitive to the charge of communism, hesitated to accept Guild help, though they badly needed legal talent. Thus, for a variety of reasons, including the need for self-protection the Guild was driven into emphasis on civil liberties cases, and in the 1950s it concentrated on cases involving

freedom of thought and right of association. But during this period, and even in more recent times, the Guild had none of the lustre of its earlier years.

III. The Climate of the 1960s

The New Frontier of the Kennedy Administration encouraged the idea that law could be used on behalf of the unrepresented. There was the basic assumption of the Administration that the institutions of American society could be activated and re-ordered to achieve social justice. Government agencies could and should serve as protectors and advocates of the down-trodden (the Civil Rights Division of the Justice Department, the Peace Corps, for example); private groups of various types could save the cities, change the power structure of the South, and end nuclear testing, to mention only a few objectives. The individual citizen, working in social reform organizations, could affect the machinery of government and the future of society. The thrust of these beliefs was two-fold: that government agencies could spearhead reform and that citizen action should be taken against parts of government that were reluctant to change society.

The spirit of activism, though subject to many defeats, disappointments, and delays, continued during the 1960s, though in an appreciably different form after the assassination of President Kennedy and the continuation and escalation of the Vietnam War. After 1968, the liberalism of the early 1960s was found first ineffective and then inapplicable. Much of the literature concerned with the ideological shifts of the 1960s has focused on events on university campuses. Although campus events were only a partial reflection of the times, they serve quite well to illustrate the optimistic belief that the legal system, when pressured, could assure equality for all, the hopefulness of ending poverty at home and abroad, and finally, the disillusion

with government and the creation of new anti-government and anti-establishment organizations. The first large scale activist involvement of students and liberals was triggered by the southern black student sit-ins in the beginning of 1960. The example of courage and dignity of young black students taking direct action in defiance of both the southern and black establishment had an enormous appeal to northern white liberals. The sit-ins spread rapidly throughout black colleges in the South, while northern students supported these efforts by organizing picketing and boycotts of the northern branches of the chain stores where the sit-ins took place. Out of the sit-ins and the activities of Martin Luther King, Jr., the techniques of nonviolent direct action were developed and later used for protests against a variety of foreign policy issues.

The student movements in the early 1960s envisaged reform, rather than radical change of society. For the most part, student tactics at this time were either the use of regular channels or picketing, petitions, and public meetings. Civil disobedience and direct action were rarely used, and then, as a means of stimulating the use of regular channels. This period of dissent and protest was, on the whole, committed to nonviolent tactics and optimistic about the responsiveness of universities and government. Students were mobilized to organize the poor, to engage in civil rights work, to work on voter registration, and to work in the South, Appalachia, and the northern urban ghettos. President Johnson announced the War on Poverty. Nearly one thousand volunteers went to Mississippi to work for the Mississippi Freedom Democratic Party.

Various disillusionments and new pressures put an end on campus to the faith in social reform--the murder of three students working for civil rights in Mississippi, the rebuff of the Mississippi Freedom Democratic

Party at the 1964 Democratic National Convention, the increasing desire of black groups to set their own course, events in Vietnam, the failure of the War on Poverty, the credibility gap with the Administration, the disillusionment with university responses to student protests.

Jerome Skolnick has drawn a rough dividing line at 1965, distinguishing a social reform phase from a more radical phase on campus, as follows:

In phase one, the student movement embodied concern, dissent, and protest about various social issues, but it generally accepted the legitimacy of the American political community.... In those years, many students believed that the legitimacy of the existing political structure was comprised by the undue influence of corporate interests and the military. They made far-reaching criticisms of the university and other social institutions, but their criticisms were usually directed at the failure of the American institutions to live up to officially proclaimed values. Thus, despite their commitment to reform and to support for civil disobedience and direct action, the student activists in the first half of this decade generally accepted the basic values and norms of the American political community.... In phase two...a considerable number of young people, particularly the activist core, experienced a progressive deterioration in their acceptance of national and university authority.¹⁵

The events following 1965, especially through 1970, were more anguished in tone: bloody urban riots; mounting protest against the War in Vietnam often involving massive arrests; police encounters; a national administration perceived by many as hostile and guilty of endless duplicity; the defeat of the McCarthy forces at the 1968 Chicago National Democratic Convention. For many, both students and others, these events and others led to the conclusion that existing social reform rhetoric was useless, that a more radical set of objectives and life styles, openly challenging government, offered the only acceptable way of changing the status quo in the United States.

Clearly, a radical choice was possible only for a limited number of the people--students and others--who had been caught up with the social

reform hopes of the early 1960s. Some withdrew. A small number became actively hostile to the forces with which they had once identified. For most, a different kind of commitment to social reform work probably resulted, a more circumscribed and less ambitious one. Rather than talking of the abolition of poverty or the other grandiose goals of the Great Society, later-day liberals turned to reform of local politics, to consumer leagues, to environmental preservation, to local organizations concerned with equal opportunities and delivery of better educational and medical services in communities. The incremental view of social change, though little articulated, prevailed.

These changes in ideology were reflected in changing efforts to use the law for the unrepresented. During the 1960s there was an initial period of optimism about change through law reform, then a period of radicalism and disillusion, and finally, at the end of the decade, the acceptance of goals of middle range change through incrementalism.

IV. The Legal Rights Movement: Organizations and Strategies

A. Civil Rights and Law Reform

When the spirit of the early 1960s swept the reform-oriented young lawyers, there was actually only one historical model that would capture their idealism. Traditional legal aid was never seriously considered as a viable method by which society could be restructured, at least according to the timetable of the Kennedy Era. Government service had also fallen into disfavor as a result of the Eisenhower years and the reluctance of government to respond to the most burning social issue of the day--civil rights for blacks.¹⁶ Test case litigation of the ACLU type continued to attract its small group of adherents, but this kind of social reform work was either too traditional or too professionally antiseptic to capture the emotionalism of

this decade. Appellate civil liberties and criminal litigation often could attract lawyers who otherwise were not responsive to particular issues and clients. Quite often, it was the fact of winning an appeal that was attractive more often than the nature of the case. A large percentage of the lawyers presenting cases to the Supreme Court during the decade were assigned counsel for criminal defendants. About half were younger men in firms who were willing to do the work partly because it would enhance their records. They had no particular interest in the kind of case, the clients, or criminal work.¹⁷ This type of disinterested, highly professional appellate work was not the stuff of which social movements were made.

The early part of the 1960s belonged to civil rights for blacks. The model was the NAACP and the Inc. Fund. Eventually, a number of strands were bound together in the 1960s--civil rights, civil liberties, poverty law, environmental protection, consumerism. But clearly, for at least the first half of the decade, the civil rights movement was the most conspicuous area of activity for reform-oriented lawyers. Moreover, civil rights activity set a tone for other legal rights activities organizations, and established the most influential pattern.

During the years of desegregation campaigns, voter registration drives, and sit-ins, civil rights groups faced an acute shortage of legal help. Few lawyers in the South would represent blacks in these kinds of matters; and those who did so suffered severe reprisals.¹⁸ The NAACP had only limited funds and personnel. This shortage of legal manpower meant that a movement or campaign could be effectively controlled or slowed if its leaders could be jailed or otherwise halted through the legal system. The fact that the civil rights leader would ultimately win in the courts was irrelevant if legal help was unavailable. In response to this urgent need

for legal help, three organizations of lawyers and law students were created between 1963-65: the Law Students Civil Rights Research Council (LSCRRC), the Lawyers Committee for Civil Rights Under Law (LCCRUL), and the Lawyers Constitutional Defense Committee (LCDC). The National Lawyers Guild also provided staff in Mississippi.

After a 1963 summer experience in the South assisting civil rights lawyers, ten northern law students established the Law Students Civil Rights Research Council. The purpose of the organization was to make available for civil rights work large numbers of law students. During 1964, chapters were founded at many law schools; members worked both in the South and in their school communities in a variety of capacities. It is difficult to estimate how many law students were "interns," as they were often called, during the early and middle 1960s, but they helped popularize student activism in the law schools they attended. By 1972 chapters of the LSCRRC were operating on 110 law school campuses doing a wide variety of activities.¹⁹

The Lawyers Committee for Civil Rights Under Law was in response to a plea in June, 1963, by President John Kennedy and Attorney General Robert Kennedy, who asked responsible leaders of the legal profession to create an organ to address itself to social upheaval and other problems connected with the enforcement of civil rights. There was no difficulty in recruiting more than 200 prestigious lawyers for committee membership. The first act of the program was to send volunteer lawyers into the South for two to three week periods; in 1964 about a dozen and a half lawyers participated.²⁰ By 1965, the aim of LCCRUL had broadened to include the staffing of a permanent office in Jackson, Mississippi, as well as working with other civil rights attorneys already on the scene.

The lawyers who participated in LCCRUL as volunteers were usually from quite prestigious firms and for some the experiences in the South marked a turn toward much greater social involvement. Not surprisingly, many volunteers found their time in the South too limited for much achievement. Eventually, like the Law Student Civil Rights Research Council, LCCRUL changed its organizational priorities and emphases to suit the times. Sizeable chapters were created throughout the country, usually with priority test case litigation as the most effective use of legal manpower. From rather narrowly defined activities, the organization moved to much broader involvement although LCCRUL continued to be a recruiting and training organization for young lawyers interested in civil rights work.²¹ As with other civil rights organizations, the success of LCCRUL varied according to the particular staff involved, the degree of activism of the local black community, and other sources of local support.

Less prestigious, and less enduring, was the Lawyers Constitutional Defense Committee, created in 1964 by Carl Rachlin of the Congress of Racial Equality (CORE), with the aid of the ACLU, the NAACP, the Inc. Fund, the American Jewish Committee, the American Jewish Congress, and the National Council of Churches.²² LCDC, staffed with volunteer lawyers, operated offices in six southern cities in 1964 and 1965, sending 125 lawyers to the South in 1964 and 70 in 1965. Though the LCDC appeared on the southern scene earlier than LCCRUL, it was always hampered by financial and organizational difficulties. As recently as 1968, though, it was still working in the South, making its lawyers available to assist local counsel.

During the early 1960s, then, the effort was primarily through voluntary organizations; the subject matter was civil rights for blacks; and the basic

strategy was law reform litigation, following the lead of the NAACP, Inc. Fund.

B. OEO Legal Services and Its Antecedents

Just at the time that a CORE leader could say his organization at last had adequate legal assistance, a displacement of enthusiasm occurred. The War on Poverty drew the nation's attention away from the civil rights movement. By 1965, a program for lawyers had been added to the War on Poverty, and for many lawyers, the issue became not the equality of southern blacks, but the poor. Although for a few years in the mid-1960s the two movements of civil rights and the poor seemed to dovetail, by 1967 it was clear that whereas civil rights law had previously been "in," poverty law had replaced it.²³

Poverty law, as expressed in OEO Legal Services, had its structural roots in the Ford Foundation's Grey Areas programs, in the President's Committee on Juvenile Delinquency, and most important, in Mobilization for Youth (MFY) in New York City. All of these programs were efforts to reach high risk groups and, by offering them new or different resources or tools, make more likely their participation in the mainstream of American life.

The Ford Foundation's Grey Areas program was broadly gauged to confront and change the whole texture of life in decaying or blighted urban areas. Briefly, the Foundation made grants for very broadly designed demonstration projects "to experiment with new ways of improving the social conditions of the central city and of opening new opportunities to those now living in these urban 'grey areas.'"²⁴ Six Grey Areas Grants were given, starting in 1961 with Oakland, California. New Haven, Boston, and Philadelphia received

grants in 1962, the state of North Carolina in 1963, and Washington, D.C. in 1964. Though any of the five city grants might be said to foreshadow OEO Legal Services, it was New Haven that provided the most appropriate model.²⁵ From the outset, New Haven's antipoverty program, Community Progress Incorporated (CPI), included a legal assistant program. Conflicts immediately developed between the lawyers who maintained that litigation was an essential part of their professional role in helping the clients of the program and the executive director who thought that by not suing other governmental institutions the organization could function best.²⁶ What survived the early tense days was a modified legal program, independent of CPI: New Haven Legal Assistance Association. The lessons of the New Haven experience were two-fold: legal services should be supported as part of any antipoverty efforts, but housing them in community action programs might prove untenable.²⁷

Roughly contemporaneous with the Grey Areas program was the President's Committee on Juvenile Delinquency and Youth Crime, which also worked through demonstration projects emphasizing integration of urban institutions. Like the Grey Areas plan, the President's Committee emphasized educational, vocational training, and employment services for young people, and community service centers. To a considerable extent the programs funded by the President's Committee overlapped with the Grey Areas list.

The most famous program funded by both the Ford Foundation and the President's Committee was Mobilization for Youth. Service projects involving a staff of 300 workers²⁸ began in 1962 in four major divisions: Educational Services, Employment Services, Services to Individuals and Families, and Community Development (including Services to Groups). Legal Services was added as a fifth division in 1964, with three aims: (1) direct

service to and referral of clients; (2) legal orientation for MFY staff, clients, and community leaders; and (3) use of law as an instrument of social change.²⁹ It was the goal that was the most important.

To implement its commitment toward social change, MFY assumed that the legal test case was to be the primary vehicle for creating new law as well as establishing the rule of law in the administrative processes of welfare programs. The most important legal needs of the poor were seen as those that concerned their relations with public services programs such as welfare and housing. Also of concern were certain aspects of criminal law (pretrial representation of youth, especially), consumer problems, and developing coordination between social workers and lawyers.³⁰ Though MFY initially had only four attorneys and a downtown location, it rapidly established ties in neighborhoods and built a very large caseload.

Edward Sparer's energetic direction of MFY, Jean and Edgar Cahn's 1964 article proposing how neighborhood law firms might be structured to respond to the needs of the poor, and the 1964 Conference on Law and Poverty, all contributed to the development of a general consensus by late 1964 that the federal government should make a sizeable investment in adding a legal services component to the War on Poverty programs. During the first half of 1965, various issues of format, direction, control, responsibility, and personnel were confronted and, if not solved, at least decided.

The major compromises that were necessary to win the support of the American Bar Association (ABA) and the National Legal Aid and Defenders Association, concerned the role of legal aid societies in the new program and the role of the bar. While these two questions are analytically separable, they were closely related, both at the time they were initially

decided and in the history of Legal Services. Both the ABA and NLADA were hostile to the massive funding of new legal organizations if carefully shepherded legal aid societies were to be passed over. Their argument was a simple one: more than 200 legal aid societies (or committees or similar organizations) already existed, and surely there was no reason not to build on their strength by allowing them to apply for new funding as Legal Services programs. Critics of legal aid³¹ pointed out the faults of legal aid societies and warned that no program associated with them could accomplish the general objectives stated for Legal Services. Legal aid societies were too cautious, too service-oriented, too supportive of the establishment and the status quo, too inexperienced in dealing with the kinds of cases that really mattered, too accepting of the structure of the law and its injustices, and too tied to local influentials.³² The compromise was that legal aid societies could apply to be Legal Services units but would not be considered automatically entitled to Legal Services grants. At the same time, other lawyers could apply for funding in a local area. Their application would be considered alongside that of the legal aid society; one might be funded, or both. NLADA immediately undertook a campaign to instruct legal aid societies how they might obtain the federal money, and applications began to flow.³³

The other compromise related to the role of the bar and the extent to which the dominant local bar association had to approve a program before it would be funded. Understanding on this point differed, but clearly many lawyers and commentators believed a veto existed. Critics doubted that the goals of the War on Poverty could ever be realized if the bar retained this degree of control in the area of Legal Services.³⁴ Although the ultimate

question of whether a local bar association had a veto was never fully resolved, it was generally agreed that some kind of bar endorsement was necessary for federal support. Another manifestation of bar influence was the belief that roughly half the governing board for a Legal Services program had to be lawyers. According to Philip J. Hannon, in the early days of OEO about half the grants went to existing legal aid societies and most of the first Legal Services budget was allotted to local bar associations or bar-sponsored groups of lawyers.³⁵

Partially in return for these concessions, and as the culmination of a half-century of support for the idea of aid for the indigent, the American Bar Association in February of 1965 passed a statement of approval and support for the new Legal Services program. The sanction, and continuing support, of the ABA was invaluable to Legal Services, particularly as it acted to influence otherwise doubtful bar associations. It was generally acknowledged that most local bar associations were at least somewhat hostile to the idea of Legal Services. And the more the Legal Services unit departed from the legal aid model, the greater the likelihood of hostility. The ABA's role in defending Legal Services--both from bar association attacks and from political attacks--became very important.³⁶ No doubt, part of the reason for ABA support of Legal Services stemmed from the desire of the profession to protect itself from interference by outsiders, but as the years passed the ABA became more generally supportive of the content and achievement of Legal Services.³⁷

Understandably, in the early days of Legal Services, the stress was more on getting programs funded and underway than on agreement of purpose and method, evaluation, or tight control. By the end of 1965, about

twenty-seven projects were in operation³⁸ and seven regions had been established. Two years later, approximately 2000 lawyers were working on approximately 250 different projects, with some 850 offices. There are no accurate data on either the attorneys employed or projects funded for the early years. Programs that were funded did not always open, much less continue. And while program grants were calculated on the basis of the number of attorneys to be employed, slots were often unfilled.

Approximate figures for programs, offices, lawyers, and federal funding for fiscal years 1966-74 are presented below. Even as approximations, the figures portray a rather clear picture of very rapid growth in the first three years of the program, followed by a leveling off in number of programs and lawyers, but not in funding.

Many organizational changes occurred in the early Legal Services years. As the number of programs increased, ten regional offices replaced the seven of the first years. Back-up centers were established that engaged in research and appellate litigation in specific problem areas such as health, housing, and juvenile delinquency, although in a few instances they were created to support programs in a given geographical area or state rather than in a policy area. There were continual efforts to rationalize the field officers. In the early days of Legal Services, when there had been great urgency to establish programs, some very small programs--one-attorney offices in many cases--were funded. In subsequent years, many smaller offices and branch offices were curtailed or merged. As much as possible in metropolitan and highly urbanized areas, programs were encouraged to combine so as to meet more effectively the range of urban problems (thus, five programs in the Detroit area were merged into one).

TABLE 1

Federal Funding for Legal Services

FY 66	\$27 million
FY 67	30 million
FY 68	36 million (excludes research & development)
FY 69	42 million
FY 70	54 million (excludes research & development)
FY 71	61 million (excludes research & development)
FY 72	61 million
FY 73	71.5 "
FY 74	70 million

TABLE 2

Legal Services Programs

<u>Number</u>	<u>Date</u>
147	FY 67
250	4-67
250	9-67
250	4-68
267	FY 68
222	9-68
260	8-69
265	12-69
265	4-71
280	10-73

Note: Figures exclude projects in research & development.

TABLE 3

Legal Services Lawyers

<u>Number</u>	<u>Date</u>
1357	9-66
1700	4-67
1800	9-67
1800	4-68
1591	FY-68
1850	8-69
1800	12-69
2000	2-72

TABLE 4

Legal Services Offices

<u>Number</u>	<u>Date</u>
551	9-66
600	7-67
850	4-68
950	8-69
850	4-71

TABLE 5

Legal Services Directors

<u>Name</u>	<u>Previous Position</u>	<u>1974 Position</u>	<u>Appointed</u>	<u>Resigned</u>
E. Clinton Bamberger	Piper & Marbury, Baltimore	Dean of Law, Catholic Univ.	1965	1966
Earl Johnson, Jr.	Neighborhood Legal Services, Washington, D.C.	School of Law, U. of S. Calif.	1966	1968
Burt Griffin	Cleveland Legal Services	Cleveland Legal Services	1968	1969
Christopher Clancy (Acting)	OEO Legal Services	Texas Southern Univ.	1969	1969
Terry Lenzner	Special Asst. to John Doar, Pres. of Bd. of Educ. of New York City	Senate Select Comm. on Campaign Practices	1969	1970
Fred Speaker	Attorney General of Pa.	Hamilton & Schultz, Harrisburg, Pa.	1971	1972
Theodore R. Tetzlaff (Acting)	OEO Legal Services	Jenner & Block, Chicago, Illinois	1972	1973

The amount of program turnover, unfortunately, cannot be measured--some programs that were terminated had never, in fact, opened; others were merged; others restructured under new names.

In later studies by the authors, there will be extensive analysis of the work and training of the lawyers who made up Legal Services programs and back-up centers in different years. Although impressions about personnel abound, there is very little hard data. Legal Services offices, in most cases, had the benefit not only of the lawyers directly employed by them but also of the assignment of VISTA lawyers and lawyers who were holders of Reginald Heber Smith ("Reggie") fellowships. The Reggie program, begun in 1967, grew from an entering class of 50 to 250 a year. Almost all Reggies were assigned to neighborhood Legal Services offices, usually for a one-year period, but later for a second or third year if the Reggie so wished. Not surprisingly, many Reggies remained in programs as staff attorneys when their fellowships ended. Since Reggie fellowships were prestigious and paid a salary higher than most regular Legal Services jobs, they were usually a source of recruitment of special talent. For the director of a neighborhood program, Reggies were a source of free labor. After 1970, the Reggie program became increasingly concerned with recruitment of minorities, which carried implications for minority representation in neighborhood programs as well. In much smaller numbers and with much less pay, VISTA lawyers also supplemented the staffs of Legal Services programs.

In addition to the lack of agreement in the bar on Legal Services organization and administration, there was also a lack of agreement on its content or method. The early statements of the director, E. Clinton Bamberger,

and his deputy, Earl Johnson, Jr., stressed the law-reform mission of Legal Services and downplayed services.

. . . we cannot be content with the creation of systems of rendering free assistance to all the people who need but cannot afford a lawyer's advice. This program must contribute to the success of the War on Poverty. Our responsibility is to marshall the forces of law and the strength of lawyers to combat the causes and effects of poverty. Lawyers must uncover the legal causes of poverty, remodel the systems which generate the cycle of poverty and design new social, legal and political tools and vehicles to move poor people from deprivation, depression, and despair to opportunity, hope and ambition. . . .³⁹

Along similar lines, in 1965, Earl Johnson, Jr., said:

[T]he primary goal of the Legal Services Program in the near future should be law reform: bringing about changes in the structures of the world in which poor people live in order to provide, on the largest scale possible consistent with our limited resources--a legal system in which the poor enjoy the same legal opportunities as the rich.⁴⁰

In statements published in the 1966 Guidelines for Legal Services, there seemed to be less concern with law reform. The 1966 Guidelines stated that the aims of Legal Services were (1) to make funds available for lawyers to provide advice and advocacy for the poor, (2) to find the best method to bring the aid of law and the assistance of lawyers to the economically disadvantaged, (3) to sponsor education and research in areas of procedural and substantive law affecting causes and problems of poverty, (4) to acquaint the bar with its role in combating poverty and aiding lawyers in the War on Poverty, and (5) to finance programs to teach the poor and those who work with them to recognize problems best resolved by the law and lawyers.

The extent to which law reform should be emphasized, as stated by Bamberger and Johnson, quickly became the single most important question in the development of Legal Services. Divisions over the wisdom of a law

reform strategy were not necessarily along the liberal versus conservative lines; there was also the question of practicality. Vigorous law reform might be too much for local bar associations and the local establishment to swallow and thus necessary support on the local level might be withdrawn. There was also the problem of allocation of scarce resources, in that a law reform office would have to turn away service cases. There were disagreements about which approach would serve the needs of the poor best and about the types of problems each approach was best suited for.

Ironically, while the political fight was going on over the future of law reform in Legal Services, doubts were being raised by Legal Services lawyers and others concerning the efficacy of law reform. The argument was made that law reform, almost by definition, is inappropriate and unattainable within the Legal Services program framework: that no matter how aspiring and energetic the lawyers, they usually failed in their law reform work. What did it really matter if agency or state rules about welfare dependency were overturned by a test case? The state or agency had enormous administrative discretionary authority and could in effect outmaneuver the Legal Services clients and attorneys, so that the overall practices remained the same.

After some early hesitation, by the spring of 1967 law reform emerged as the dominant official ideology of OEO Legal Services and became a specific aspect of program evaluation. The national office of Legal Services and the regional offices lent their efforts towards increasing the amount of law reform work. The importance of law reform in the minds of the directors can be seen in the comment of Burt Griffin at the Harvard Conference on Law and Poverty, in 1967: "To me, questioning the relevance of law reform is like asking 'Is the Pope Catholic?'"

In the first two or three years of the Legal Services program, law reform work was more a subject of rhetoric from the national office than performance at the local level. Most programs were legal aid societies that continued to do service work as before but on an expanded basis. When law reform work did become more extensive, the political repercussions were enormous. The Reagan-Murphy attacks on Legal Services in 1969 were prompted by the suits against various state agencies and programs filed by the California Rural Legal Assistance program. Though the immediate threat to Legal Services posed at that time was blunted, the political attempts to curb the law reform activities continued thereafter. There were at least three efforts to regionalize and weaken the program, stemming from two sources. Initially, Legal Services had been created as a semi-autonomous program within the Community Action Program (CAP) of OEO. The arrangement was imperfect and, on occasion, unworkable when CAP promoted decentralization of the Legal Services programs and administration by the laity. Reasoning along the same lines, various state governors and agency heads thought that more state or local control of programs would effectively control law reform suits against public authorities. Though these two groups had little in common, they did agree on the desirability of regionalization of Legal Services. The political troubles intensified when Donald Rumsfeld became head of OEO and pushed hard on the regionalization plan. This move was thwarted, but one of the casualties was Terry Lenzner, the National Director of Legal Services, who was very popular with the law reform elements in the program. Morale in Legal Services reportedly sank and the political warfare continued. Eventually, the shape and composition of a national corporation to run Legal Services and what sort of restrictions should be put on the law reform and other political activities of Legal Services offices emerged as the main issues.⁴²

Another criticism was that law reform had jaundiced the prospects of Legal Services by affecting recruitment patterns. Law reform, as an ideology, appeared to be very important in recruitment in Legal Services. The possibility of doing law reform and appeals work added to the glamour of a Legal Services position. This, too, resulted in criticism of law reform. It has been argued that the graduates of elite schools were drawn into Legal Services solely because of the prospect of doing law reform and appellate work, and that their participation had a number of drawbacks: (1) law reform became too much a subject of emphasis, (2) lawyers from non-elite law schools were discouraged from doing law reform work, (3) graduates from elite schools left after short times, posing serious problems for programs that hoped to carry on some continuity of law reform work. The argument here is much like that applied to participation of law elites in civil rights work. They left very large gaps when they returned to their normal settings, and organizations suffered greatly. A more realistic, and more satisfying, work plan should de-emphasize law reform work and seek better kinds of service work.

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By 1969, community education, economic development, and group representation were also areas of stress. Earl Johnson's 1967 address to the University of Kentucky Law Alumni Day Program revealed his sensitivity to the resentment that each of these efforts might cause, but indicated no lack of willingness on his part to pursue them.

We must leave our offices and go out among the least fortunate of our citizens. . . . We must help them form unions, co-operatives, condominiums, neighborhood associations, and community development corporations for their own betterment. 44

All of these areas of activity proved extremely difficult to foster. It was one thing to tell programs that they would be evaluated in terms of their efforts to achieve particular goals; it was quite another to implement the findings of the evaluation.

In July, 1974, the various conflicting forces at the national level were able to compromise their differences over Legal Services and produce a new governing statute called the Legal Services Corporation Act. As the title of the Act implies, Legal Services are to be run by an eleven-person board of directors appointed by the President with the advice and consent of the Senate. A majority of the board have to be lawyers admitted to practice. The statute contains a number of attempts at restricting the more controversial aspects of Legal Services. There is an attempt to cut down on law-reform, test-case litigation. The back-up centers are eliminated. The corporation itself can undertake research, training, and clearinghouse activities, but cannot contract out any of these functions and cannot engage in litigation on behalf of clients. The intention, thus, is to keep research under the direct control of the board and prevent any activism. Another restriction on the corporation forbids contracting with "any private law firms which expend 50 percent or more of their resources and time litigating issues in the broad interests of a majority of the public"; this phraseology means public interest law firms.

The Legal Services Corporation is directed to issue rules and regulations governing the activities of its employees and its recipients (i.e., Legal Services lawyers). Some of these restrictions include prohibitions against public demonstrations or picketing; civil disturbances;

violations of court injunctions; "any political activity"; any voter registration activity; transportation of voters or prospective voters; the incitement of litigation; training programs "for the purpose of advocating particular public policies or encouraging political activities"; legal assistance for desegregation of schools, or to procure nontherapeutic abortions, or to challenge violations of the selective services or armed forces laws. In addition, local offices are required to solicit the local bar associations for staff positions and to give preference in hiring to local qualified persons.

It is uncertain how this new statute will be administered and what effects it will have on the future of Legal Services. Some of the restrictive provisions will be challenged in court on constitutional grounds. The membership and direction of the board is, at the present time, totally unknown. Then, there will be very difficult problems of administration. Legal Services consists of more than two hundred offices containing more than two thousand lawyers spread throughout the country. Professionals are notoriously difficult to control and manage. These offices are used to running things their own way, and many have local political alliances. If our knowledge of other bureaucracies is any guide, the Legal Services Corporation will have a difficult time learning what is going on, let alone controlling field level operations. What we do know, though, is that Legal Services will continue. Our guess is that there will be a continuing decline in law reform activity, but beyond this, further directions are not clear.

C. Public Defenders

At the same time that the federal government was undertaking a sizeable investment in lawyers for the civil problems of the indigent, defender programs were beginning to grow both in number and in office staff. By and large defender programs were built on the base established prior to 1960,

although there was more concern with appellate work and more acceptance of defender programs in preference to appointed counsel to handle criminal cases for the indigent. Only to a very modest extent were the problems of service versus reform raised among defenders, but then there was no centralized administration for defender programs advocating reform activity.

Defender programs began to improve after the 1963 Ford Foundation grant for the National Defender Project (NDP). The Project was an effort to increase the number of programs, to improve operations, and to win greater acceptance of defender programs as the best method for defending the indigent criminally accused. The National Defender Project included the funding of 73 projects in a variety of circumstances--small counties, large metropolitan centers, statewide, and some federal--as well as different working arrangements: with law schools, through legal aid societies, and through private defender organizations.⁴⁵ Though the project was not designed as a scientific experiment, grants were structured so as to bear upon the problems that defender programs in a variety of communities and structures might have.

In 1961, defender programs existed in only 3 percent of the counties of the nation and served only about one-quarter of the population; by 1973, 650 defender programs were providing services in 28 percent of all United States counties, but in these counties two-thirds of the population lived. Sixteen states have organized and funded defender services at the state level.⁴⁶ The National Defender project plus the Supreme Court decisions mandating the provision of lawyers in the criminal justice system served to focus attention on defender programs. In large, urban programs, in particular, changes have included increased staff; more use of volunteers, students, paralegals, and investigators; better funding; more appeals work;

more office specialization; more training; and improved procedures for working with clients. Although the number of programs and size of some have increased, it is noteworthy that a recent NLADA Defender Survey revealed that only one-half of the existing 650 systems are really offices with staff attorneys or other staff. The other systems have only one lawyer, unassisted. Approximately five thousand lawyers are providing defense services in state courts throughout the United States; of these lawyers, half are part-time.⁴⁷

The traditional image of defender work has been that it is low-paying, with little prestige and poor working conditions. Lawyers have been thought to move out of it rather quickly. Career defender work, unless federal, was unlikely and atypical. The 1973 Defender Survey reported that 39.2 percent view their defender employment as a career position.⁴⁸ Metropolitan defenders are more likely to look upon their positions as career ones than rural defenders. Nearly half the chief defenders have held their positions two years or less. Fifty-seven percent of the defenders were under 30 years of age, and 63 percent of the staff attorneys reported salaries lower than those paid the prosecutor's staff attorneys.⁴⁹ Anthony Platt has stressed the burn-out effect that defenders feel, comparable to what many Legal Services lawyers have reported.⁵⁰ Such findings raise questions about the ability of a defender system, as presently constituted, to handle the increased work that would result from the implementation of the Supreme Court decisions. On the other hand, there has been an increasing willingness by public authorities to provide legal representation for indigents, and programs in the defender field may proliferate.

There have been some developments in the defender programs that in some ways parallel the development of Legal Services and, in other ways, are a reaction to Legal Services. A small number of defender offices in the

country became high prestige law reform offices that attracted a great deal of publicity and recruits from social-reform-oriented elite young lawyers. Positions in these offices were considered, for a time, to be as desirable as positions in the best Legal Services offices. The other attraction for defender positions had to do with the growing disenchantment and radicalization of some young lawyers that occurred in the late 1960s. As the Vietnam War and the counterculture increased, some young lawyers began to work more and more in draft, drug, and political cases. For increasing numbers of lawyers, criminal law practice became more attractive. But it was not the traditional criminal law practice--either defending organized crime or acting as assigned counsel. It was criminal practice that had political and social reform overtones. Many reform-oriented young lawyers seeking training would not go into the prosecutor's office, which had been the traditional training ground for the usual career in criminal law. Instead, these lawyers sought jobs with the public defender.

D. The Voluntary Sector: Consumers and Environmentalists

1. Nader Organizations

Legal rights activities in the voluntary sector branched out of civil rights with the emergence of Ralph Nader and the creation of numerous research and investigation units associated with his name. Nader's study of the Corvair, Unsafe at Any Speed (1965), and General Motor's hiring of private detectives, thrust Nader into public consciousness as the consumers' representative, campaigning against sinister harassment by giant corporations. General Motor's out-of-court settlement of more than \$400,000 provided the funds for numerous Nader organizations.

The premise of Nader was that previously unrepresented consumers could defend themselves if more information were made available to them and if they organized to determine and implement their collective will. Investigation and exposé were the key ingredients for the dissemination of information. Goals were enforcement of neglected legislation, passage of new legislation, or alteration of practices by public or private authorities. The presumption underlying this mix of activities was that a better balanced, more tolerable, system could be created without radical adjustment of the economic or social structure. As Nader has put it:

It is abundantly clear that our institutions, public and private, are not performing their proper functions but are wasting resources, concentrating power, and serving special interest groups at the expense of voiceless citizens and consumers. . . . A primary goal of our work is to build countervailing forces on behalf of citizens that do not become jaded, bureaucratized, or co-opted. . . . Must not a just legal system accord victims the power to help themselves, and deter those forces which victimize them?⁵¹

Nader had great appeal for young lawyers. He was a lawyer himself and, although he called on other professionals for particular kinds of expertise, he felt that the aggressive lawyer as a problem-solving generalist was best suited for his crusade. There was also a substantive attraction. The civil rights movement was waning, at least for whites. Young lawyers were also seeking alternatives to OEO Legal Services or were anti-government. Nader was anti-Big Government and anti-Big Business. He was for the little person, the consumer, the victim of giant public and private bureaucracies. Nader's movement represented a facet of participatory democracy: Little people could get together and with a skilled, sympathetic lawyer make their voices heard. Working for Ralph Nader combined missionary zeal and camaraderies, self-sacrifice, independence from government or business or

private law practice, a vision of a new, democratic society, and, for most, an exciting professional life in Washington, D.C. By the late 1960s, the appeal of Nader organizations to law graduates rivaled the drawing power of Legal Services. To many, Nader organizations seemed much more reform oriented than Legal Services with no case-by-case service activity. Nader organizations usually offered a certain visibility on the Washington scene and sometimes a role in the legislative process. There was the attraction of working exclusively with like-minded people with a great deal of organizational autonomy and no outside political interference. Another attraction was that since organizations were small the workers were also the principals. On the other hand, salaries were extremely low.

Nader organizations have been well-known for their use of research teams whose findings have been published in numerous volumes. They focus for the most part, though not exclusively, on the failings of federal regulatory agencies. No organizational chart can adequately capture the complex of activities and groups usually associated with Nader. In addition to organizations more or less directly under his control, some organizations in which Nader has a strong interest are financially independent, and several former Nader lawyers have started their own organizations, which function with varying degrees of autonomy. Most of Nader's organizations have operated on very modest amounts of money from the General Motors settlement, Nader's fees for appearances and speeches, from small foundation grants--the Stern, Field, Midas, Norman, and Wallace-Eljabar Foundations, among others--and from donations to Public Citizen, Inc.

As of 1974, among the Nader or Nader-type organizations are these:

1. Center for Study of Responsive Law--Established in 1969, it administers the intern, or Raider, program and is responsible for several dozen reports.
2. Public Interest Research Group (PIRG)--This law firm was established in 1970 and includes about one-dozen lawyers working in public interest law areas chosen by staff members.
3. Center for Auto Safety--This group was founded by Consumers Union and Nader.
4. Center for Concerned Engineers.
5. Professionals for Auto Safety.
6. Aviation Consumer Project.
7. Project for Corporate Responsibility--This group, which was founded in 1970, sponsored Campaign GM.
8. Clearinghouse for Professional Responsibility.
9. Health Research Group: This group is staffed by doctors working on occupational health and safety problems and other areas related to Federal Drug Administration functions.
10. Corporate Accountability Research Group (CARG).
11. Fishermen's Clean Water Action Project.
12. Consumer Action for Improved Foods.
13. Center for Science in the Public Interest--The Center staff consists of scientists and lawyers.
14. Retired Professional Action Group.
15. Public Citizen, Inc.--Public Citizen has its own research project, raises money for other Nader organizations, and has its own litigation unit.
16. Citizen Action Group--This group works with independent Public Interest Research Group organizations in various states.
17. Tax Reform Research Group.
18. Congress Watch.
19. Institute for Women's Policy Studies.

There is a large amount of transition in Nader organizations. The staffs are small and often are supported by only small amounts of money from Public Citizen or some other group.⁵² Despite the small size of the professional staff, most groups involve at least one lawyer. Volunteers and students are an important part of the larger projects. As Nader organizations have developed, and the list reflects this, they have recruited and mobilized representatives of many groups: Among these are doctors, scientists, students, engineers. With the formation of independent public interest groups in many states, often relying on student workers, the Nader thrust is quite decentralized. On the other hand, the creation of Public Citizen in 1971 has tied together, however loosely, several of the existing organizations as part of an effort to establish an independent financial base.

The focus of each group may change somewhat with the preferences of staff members; in several instances parent groups have spawned satellite organizations as departing personnel have created new groups. The formal appurtenances of organization have never been of great interest to Nader and his coworkers. What they have been concerned about is the institutionalization of advocacy for consumers--whether that advocacy is expressed in private study/research groups, or by sub-units in bureaucracies charged with consumer responsibilities in response to an aroused public.

2. The Public Interest Law Firm

By the late 1960s, it began to become clear that the lack of representation that had been demonstrated to apply to blacks and to consumers applied more generally throughout American society. In particular, it was

felt that the government regulatory agencies that were supposed to represent the public interest, often failed to do so, and they they were captives of the special interests that they were supposed to regulate. The idea that there was a need to represent the unrepresented before government agencies received a strong sanction in a 1966 Court of Appeals decision involving a Federal Communications Commission license renewal proceeding. The United Church of Christ sought to represent groups of blacks as listeners. The Court granted the group the right to present their case on the grounds that the Commission no longer effectively represented listener interests. This ruling was applicable for many kinds of groups before many different government agencies, and public interest groups began to proliferate. The term "public interest" began to be used, in part for lack of a better term, but also to express the idea that the problem of unrepresentation applied through all sectors of society.

The proliferation of foundation-supported public interest law firms is a relatively recent phenomenon, having begun on a large scale in 1970 with the Ford Foundation's decision to become "a principal source of support for public interest law organizations."⁵³ The number of foundations that support such firms is not large. Ford is clearly the leader both in terms of amount of support and number of organizations supported, but other foundations--the Carnegie Corporation, the Field Foundation, the Stern Family Fund, the Edna McConnell Clark Foundation, and the Rockefeller Brothers Fund, to name a few--also contribute significant amounts of money to public interest law.

Analytically, there is no distinction between "public interest" law and poverty or civil rights law. Public interest law represents the unrepresented and, in practice, concentrates more on environmental and consumer issues than on poverty and minority issues. But several public interest law firms represent poor people and minorities. Public interest law is virtually entirely class-action, law reform, but this is also true of some traditional civil rights groups such as the NAACP, Inc. Fund. The distinction, rather, is historical and descriptive, and due primarily to the policies of the Internal Revenue Service.⁵⁴

Public interest law firms have undertaken a wide variety of cases and have used a variety of techniques--although their usual activity is litigation. Their main areas of concern are consumer and environmental protection. Some firms have maintained an exclusive focus on a particular problem; others have chosen to work on an array of subjects so long as they pertain to a particular geographical area. Although most of the firms are small in terms of permanent staff, several are augmented by law students or graduate fellows or, in a few cases, scientists.

Rather than attempting to describe several organizations, one by one, we will present here capsule descriptions of only a few organizations, chosen because of their different characteristics.

The Center for Law and Social Policy in Washington, D.C., formed in 1969, consists of approximately fifteen full-time attorneys and sixteen law students who work primarily in the areas of environmental law, consumer protection, and health problems, international law, and women's rights.⁵⁵ Funded by the Ford Foundation, the Center operates primarily in a federal context, with litigation its major thrust, but it also participates in

the rule-making and adjudicatory processes of federal administrative agencies.⁵⁶

Using different techniques and focusing on a single area to a much greater extent, the Center for National Policy Review at Catholic University seeks "strong enforcement and implementation of existing civil rights legislation solely through administrative lobbying." The Center provides legal research, social science resources, and technical assistance to civil rights and public interest groups, and generally functions as a clearinghouse for research on civil rights. However, the Center also takes action on its own behalf from time to time in the fields of housing, employment, and criminal justice.⁵⁷

In the area of environmental protection, the Sierra Club Legal Defense Fund provides a different model because of its one hundred cooperating attorneys throughout the country. Founded in 1971 as the legal arm of the Sierra Club, it is directly involved in litigation in California, but indirectly throughout the United States. The full-time staff attorneys also engage in litigation dealing with administrative practices and consumer protection in California.

Another type of public interest firm is the Appalachian Research and Defense Foundation, Inc. of West Virginia (APPALRED). Funded by the National Endowment for the Arts and the Office of Economic Opportunity, it has four offices with fifteen staff attorneys concentrating on problems of poverty and environmental damage in the Appalachian region. APPALRED gives direct legal assistance to disabled coal miners who cannot establish their eligibility for various state or federal assistance programs, to sick persons who are denied admission to hospitals because they cannot pay

required deposits, to consumers victimized by private utility companies, and to poor, rural communities threatened by environmental dangers caused by such things as dam construction or mining. In addition, APPALRED provides back-up assistance to other community legal services and programs in Appalachia, organizes schools for mountain children, and conducts folk and art festivals for residents of the area.⁵⁸

Some public interest law groups concern themselves solely with securing rights for various minorities. The Mexican-American Legal Defense and Educational Fund, Inc., attorneys work through litigation and publicity to secure the rights of Mexican-Americans primarily in the areas of employment, housing, and education. The recently founded (1972) Puerto Rican Legal Defense and Education Fund, Inc., works primarily in the areas of employment and education for Puerto Ricans. The Native American Rights Fund (NARF), which originated as a special project of California Indian Legal Services, is a Legal Service back-up center, emphasizing the protection of Indian natural resources, treaty rights, tribal sovereignty, education, and Indian culture and religion.⁵⁹ NARF illustrates a characteristic common in the public interest firm area: mixed auspices; its funding is from foundations, from federal government sources, from general memberships, and/or from universities.

Finally, organizations previously concerned with investigation and dissemination of information have undertaken litigation or associated themselves with it. Both the League of Women Voters and the United Church of Christ have been involved on a small scale in a more active use of law. Since late 1970, Common Cause has engaged in litigation, primarily in the areas of voting rights, financial disclosure, conflicts of interest, and

campaign finance reform. Consumers Union also has a litigating unit consisting of five attorneys.

Although the total number of public interest lawyers and law firms is small, the number is growing and there is a great deal of variety. There are, for example, firms created by private law firms in Chicago (Business and Professional People for the Public Interest, Foundation for the New Business Ethic), firms exclusively concerned with representing the public before federal regulatory agencies (Citizens' Communication Center), firms involved in the "open suburbs" movement.

Public interest law, as an aspect of the legal rights movement, is obviously in a very early and unpredictable stage. Reliance on foundations for funding will probably be untenable in the long run. Financial support provided by member organizations, such as Common Cause, the League of Women Voters, Consumers Union, and minority organizations, is probably more durable. Furthermore, at the present time, the public interest law bar has not yet persuaded the Internal Revenue Service to allow the firms to receive court-awarded attorneys' fees, which could be another source of revenue. On the brighter side is the growing interest and sympathy of the leadership of the American Bar Association. At the present time, this support is confined to the top leadership and has not yet percolated to the general membership or the state bar associations. Still, this support is important and may within some years translate into tangible support for public interest law from the organized bar.

E. The Private Bar

The influence of legal rights activities began to manifest itself in the private bar during the end of the 1960s. When private lawyers did legal rights work, most of it consisted of service cases or public service. There did emerge, however, two kinds of legal rights activities organizations: self-proclaimed public interest law firms and law communes.

Some private law firms identified themselves as public interest law firms. A very few of these private public interest law firms support themselves solely from public interest law work--that is, they have sufficient "public interest" clients (like the Sierra Club) that pay fees or the firm obtains grants for specific projects. Most private public interest law firms have a mixture of regular clients and public interest clients. Lawyers in such a firm tailor their caseload so as to do a considerable amount of free or low-fee work for cases or clients that they define to be in the public interest. Their regular fee cases may or may not be complementary to their public interest work--usually not. Most often these firms are wholly dependent on regular client fees for income. The total number of these lawyers in these firms is small, perhaps only about 100.⁶⁰

Some of the private public interest firms attempt to specialize on particular kinds of public interest work. Others work on whatever cases or clients partners are interested in at the time. Within private public interest firms, often called "mixed" firms, one partner may do nothing but public interest work, whereas another has a rather traditional set of cases. Impressionistic evidence from recent years suggests that some young law graduates may be increasingly inclined toward a practice in which they work enough for paying clients to finance their devoting a substantial amount of time to groups or individuals on a reduced fee basis.

In a sense, the law commune is a radical version of the private public interest firm. Communes attempt to limit their work to kinds of cases or clients along radical, political, ideological lines, making charges for their work only if clients have funds. The overriding aim of the communes is political activism, rather than the traditional practice of law. The usual--and preferred--clients are criminal defendants, political activists, and radicals, and students and other youth in varying forms of alternative culture. Law communes have been notable chiefly for the defense of political minority groups and, in some instances, for activities in the National Lawyers Guild.⁶¹ Since such clients frequently have limited resources, communes also do some "straight" fee work, often minor matters for neighborhood people, to provide some support. On principle, they refuse any corporate work (if offered). Communes have varying work and financial arrangements but, in most, the lawyers (and often paralegals, students, and secretaries) decide jointly about case intake and work distribution.⁶² Usually salaries, or allowances, are very modest, and law commune members may share housing to minimize financial outlays and as an expression of their philosophical solidarity. The most famous communes--the ones that have given so much visibility to the term Movement Lawyers--are the now defunct Law Commune in New York City, the Bar Sinister in Los Angeles, and the communes in Newark, New Jersey, and Cambridge, Massachusetts.

At one time or another in the last three years, between two and three dozen communes have been identified. Not surprisingly, many communes have unstable situations: financial difficulties and very close working and living arrangements have led to considerable turnover; not only do individuals leave, but units dissolve. In some cases, communes have re-defined themselves as rather traditional law firms in order to stay in existence.

In recent years considerable public interest work has been undertaken by the more traditional law firms. The same concerns that resulted in increased foundation financial support for lawyers working on behalf of the poor, consumers, environmental groups, and minorities led, in the late 1960s, to a highly varied set of activities in the traditional private bar. For lack of any more adequate descriptive term, these activities are usually called pro bono work--from pro bono publico (for the public good).

Law firms and lawyers manifested an increased interest in pro bono work partially in response to desires of motivated young lawyers to work in civil rights, poverty, and public interest jobs. For example, around 1968 it was widely believed by many hiring law firms that the best law graduates were not interested in traditional firm jobs and that they would seek jobs in Legal Services (or like activities) unless traditional firms had attractive pro bono programs in which they might participate.⁶³

The Wall Street Journal on September 26, 1968, reported that

While most law students still do strive to get a lucrative job with a corporation or a firm or a traditional Government post, an increasing number are opting for low paying jobs that they consider more challenging and . . . "socially rewarding" . . . those that are choosing to stay away from Wall Street are often the brightest students.

In the same tone, as recently as May 29, 1972, a Wall Street Journal article reported:

The hiring partners in most firms agree that they get many more questions about opportunities for public service work from law school seniors interviewed today than in the past. Young lawyers themselves say such opportunities play an important role in their decisions to join a given firm.

Although the actual deflection of talent away from private law firms was probably small, it is clear that some Legal Services programs were successful in attracting very able people. Law firms concerned with hiring the best thus had an incentive to create an in-house program for pro bono work.

Pro bono work is, for purposes of convenience, divided very roughly into two categories: work done by traditional firms (or solo practitioners) and work done by groups of lawyers and bar associations.

Since such a large percentage of lawyers are in private firms, the amount and type of pro bono work they do is potentially important. In traditional firms, there are four basic patterns for handling pro bono work: (1) A pro bono or public interest department or section as a permanent part of the firm. Usually a full-time partner, doing only pro bono work, heads the department, and he may be assisted by one or more associates. (2) Public interest co-ordinator programs, with a partner or committee keeping track of work done by individual firm members. Sometimes new cases are handled through the co-ordinator. The extent of supervision varies greatly from firm to firm with some public interest partners only bookkeeping and others working with cases, problems, or personnel. (3) Branch offices maintained by the firm, with personnel assigned either on a rotating or semi-permanent basis according to the wishes of the lawyer. (4) Firm participation in a Legal Services program, in a law school program, defender office, or like facility. Usually many members of a firm are participants in such a program. ⁶⁴ To date, the public interest co-ordinator (or partner or committee or supervised

released time) and the public interest department have been most prevalent forms. For each of these models, no specific amount or percent of time is specified, although in most cases guidelines in the firm have been developed.

Of course, some large firms provide very generous support for pro bono cases without any explicit public interest departments. In a 1973 study of attorneys in Erie County, New York, Philip R. Lochner makes the point that for some lawyers in new or modest practices, a great deal of low-fee work may be done, not so much from choice as from lack of choice: Low fee work for poor people may be all that a lawyer can attract.⁶⁵

Impressionistic evidence suggests that there are signs that the pro bono interest in traditional firms is on the wane. Perhaps there was no real commitment on the part of traditional law firms, and once the competition from OEO Legal Services declined, their interest in offering nontraditional alternatives to new associates slackened. It is also reported on an impressionistic basis, that applicants for jobs in traditional firms are no longer inquiring about pro bono opportunities. If true, this change in professional orientation may be the result of a softening job market for lawyers, or may reflect a more general decline in interest in social reform.⁶⁶

G. Organized Lawyers

Lawyers in groups and bar associations have played an increasingly active role in legal rights activities. As described earlier, bar associations have had a long-standing interest in legal aid work, and many took on new roles in the provision of Legal Services. In addition, new organizations of lawyers have been created, usually in response to specific conditions or events. For example, the urban riots of the 1960s led to new

groups of lawyers to provide emergency legal defense, or to monitor demonstrations. Often new associations of lawyers have emerged in response to shortcomings of existing bar associations, although in some cities bar associations and new organizations of lawyers have worked together and come to conceive of their activities as complementary.⁶⁷

Within the American Bar Association, more systematic support of pro bono work began in 1971 with the Project to Assist Interested Law Firms in Pro Bono Publico Programs. The purpose of the 1971-73 Pro Bono project was "to collect, compile, and distribute information to the private sector of the bar about the newly emerging formalized efforts in private firms to handle pro bono work, as well as to consult with law firms who wished to develop similar programs."⁶⁸ The project evolved in 1973 into the Special Committee on Public Interest Practice, dedicated to "the challenge of enlarging the field of public interest law and the number of lawyers who practice it."⁶⁹ Initially, the Committee saw itself with two main problems in realizing its broader mandate. First, should they support the concept that each attorney, regardless of the nature of employment, had a responsibility to provide legal services in the public interest? Second, how should one define the public interest obligation if it existed--what types of law, what amount of obligation each lawyer had, how the bar might enforce obligations, if at all.

Other ABA activities included publication by the Young Lawyers Section of the Prison Law Reporter and sponsorship of the Washington, D.C. Food Research office in conjunction with other agencies. The ABA has also funded Boston Lawyers for Housing as a pilot project. Throughout the country ABA chapters--or more often their Young Lawyers Committees--have undertaken public interest activities on a modest scale.

Another active bar group has been the Beverly Hills Bar Association, which has supported a public interest law firm. The Hennepin County Bar Association of Minnesota has been operating a Legal Rights Center and a Legal Advice Clinic. Perhaps a dozen more bar associations have undertaken more than tentative steps toward a larger public interest role. Activities undertaken in this context vary from a well-publicized and organized program making services available to the needy on a regular basis (with several hundred attorneys involved) to more modest efforts to work with public defender programs, to working with university clinical programs, to handling "borderline" financial cases refused by Legal Aid, to participating regularly in Legal Aid offices. The last of these--working with an established Legal Aid or Legal Services program--is the most common. Most bar associations, however, do not even do this much. If any work is undertaken at all, it is usually compiling directories of legal aid availability and studying the needs of the poor. Unfortunately, there is no adequate data to tap the public interest activities of the whole spectrum of bar groups. What is generally granted, however, is that the mobilization of bar groups into public interest work offers one of the major alternatives for increasing the personnel and financial base for public interest work.⁷⁰

Disillusioned with the lack of response of traditional bar groups, lawyers in four major cities founded counter-bar organizations, called Councils of Lawyers. The oldest of these groups, the Chicago Council of Lawyers, was founded in October of 1969, and grew to more than 1400 members. Working through both research and action committees, the organization has operated a lawyer referral service for police misconduct, evaluated judges (including

nominees), and taken positions on local, state, and national issues. The Chicago Council is by far the most active of all of this type of counter-bar association. It has been granted the status of an A.B.A. affiliate.

A less active role is played by the Council of New York Law Associates (founded in 1970), which acts primarily to disseminate information about pro bono activity and only secondarily as a service organization or in an investigative capacity. The Council of New York Law Associates, with about 1600 members, has become somewhat more action-oriented in the last two years, but it remains more of a clearinghouse than anything else. Councils were also formed in Washington and Los Angeles.

Other essentially "alternative" bar groups involved in the legal rights area are the Lawyers' Committee for Civil Rights Under Law (LCCRUL), the National Lawyers Guild, and the National Conference of Black Lawyers. In most of the dozen cities with LCCRUL organizations, manpower is recruited by approaches to firms, not individuals. The local organizations usually enjoy good relations with leaders of the bar and local bar associations. The case emphasis is usually on impact or law reform work.⁷¹ Raymond Marks has referred to LCCRUL as a brokering organization, brokering between lawyers and clients (as indeed is the case with Community Law Organization of New York and the Council of New York Law Associates), giving preference to big or exciting cases rather than service work. Some offices in the South are run directly from national headquarters and concerned almost exclusively with civil rights, but for the most part, local offices are autonomous and, according to funding and staff preferences, may establish projects of their own, solicit individual attorneys rather than firms, and act according to their preferences.

The early history of the National Lawyers Guild has been discussed. During the early and middle 1960s, the Guild had still not recovered from the McCarthy years. By 1959, the Guild's membership had declined from more than five thousand members a year after its founding, to 620.⁷²

It was not until the 1967 convention that the Guild began to emerge as a "movement bar association," largely due to the prodding of student activists who wanted the Guild to develop programs of specific interest to students. It was at this convention that the Guild began to convert itself into a "political association of the bar, with the projection of a more activist, movement-oriented image."⁷³ In pursuit of this goal, the Guild decided to first concentrate its efforts on the selective service law and the draft. In 1968, the Guild adopted a new constitution that proclaimed its commitment to radical social change. In addition, the Guild began intensive efforts to educate and counsel students on the draft and to "get public exposure as it had not done in almost two decades."⁷⁴ The Guild's resurgence, then, was part of the broader radical political movement of the late 1960s that was inspired by, and coalesced around, the antiwar movement, and that also saw the rise of SDS, Black Panthers, National Welfare Rights Organization, and National Organization for Women.⁷⁵

Most Guild members are not interested in test-case law reform kinds of activities particularly at the appellate level. Rather, they prefer to work at the community level with criminal defense of activists, actions by tenants against landlords, legal support for strikers, and so forth. Their goal is not merely the winning of a given case for a group or individuals, but more broadly, to radicalize, organize, and teach people so that they will be able to use law together with other tactics to achieve their ends. To a considerable extent, "radicals first, lawyers second"

could be used to describe many of the Guild leaders. The Guild has been most prominent in the political defense of activists--both with routine criminal cases and major political trials, in which public education is conceived of as an important dimension of the work of Guild lawyers. Aside from criminal work, the Guild also does extensive prisoner work, military rights work, and grand jury defense work.

The National Conference of Black Lawyers (NCBL), organized in 1968-69, is both a counter and an alternative bar organization. Its concern is radical social change, with particular concern for the invidious effects of the criminal justice system on blacks and the poor. The aims of the organization are stated in political terms, rather than in terms of law reform: its intention is to use the skills of the black bar in struggles against racism and for the liberation of black people. NCBL activities have included defense of politically unpopular people, affirmative suits on community issues, monitoring of governmental activity affecting the black community, and working on issues of lawyer referral, job placement, continuing legal education, and law school admissions and curriculum, as they relate to blacks. The activities of the NCBL can be grouped into seven classifications: political cases, prisons, military justice, harassment of black judges and attorneys, international issues, formal relationships with other groups, and service to the bar. With about five hundred members, regional offices, and ties to other organizations joined in statewide legal defense groups, NCBL has been quite active in local, state, and national activities.

Another type of organization has emerged in several cities. Lawyers have been organized by ghetto or foundation organizers to provide volunteer

legal services. Expenses for such organizations have been borne by a variety of methods, ranging from support by the lawyers themselves to support from large private law firms. Patterns of organization are quite varied. The most famous organizations are Community Legal Organizations (CLO) of New York City and Chicago Volunteer Legal Services. CLO, founded in 1968, uses volunteers and employs several staff lawyers on a full-time basis.⁷⁶ Chicago Volunteer Legal Services, which was founded in 1965, by 1973 involved 250 attorneys, which was more than the number participating in any other program. Several other communities have or have had rather similar programs, varying in size, in type of preferred clientele, and in kinds of cases usually done; but overall, their emphasis is on one-to-one case service and not on law reform work. In some instances, small subsidies have been obtained from bar associations to pay a coordinator and secretarial staff.

V. Conclusion

Though the segments of the Legal Rights movement described above--civil rights, Legal Services, public defender programs, the voluntary sector encompassing Nader organizations and public interest law firms, the private bar with "mixed" firms, law communes, pro bono programs in traditional firms, and groups of lawyers and bar associations--are neither conceptually crisp one from another nor definitive of the whole universe of activity, they are the main organizations in efforts to secure more entry to the legal system for the unrepresented. The four major strands of activity prior to 1960--one-to-one individual service cases, service organizations, government public service and law reform, appellate litigation--have emerged differently in these organizations. In Legal Services, issues of service and law reform and elitism have all been argued. Defender programs have been only mildly concerned with tensions between service and law reform, and not at

all with elitism. For the voluntary sector, assumptions of elitism and law reform have been accepted, in part because the public constituency to which such organizations respond is diffused, in part because reform and elitism are acceptable to direct funding sources, in part because the organizations are new and relatively free to define themselves without doing violence to the image of the legal profession. A rather different set of set of circumstances has prevailed in traditional law firms doing pro bono work and in lawyers' associations and groups. In these cases and the one-to-one individual service model and the service orientation have been much more influential than any issues of law reform.

Subsequently, empirical data will be presented on the public interest practice of lawyers, but here it is appropriate to observe that although the law reform strategy has more adherents--and more organizational support--than ever before, it remains a controversial strategy for legal rights organizations. For the most part, as the legal rights movement has unfolded, it has been clear that the profession would be highly supportive of institutions that were not radically different from the individual service and service organization models of the first half of the twentieth century. Law reform, especially when done with public funding, has been so controversial that to a certain extent its main thrust is currently borne by the voluntary sector. Whether mobilization of more lawyers into public interest work, as a part of their professional obligations, will result in more law reform work and more work for those with the least access to the legal system remains unclear.

NOTES

¹Canons of Professional Ethics, adopted by American Bar Association, 1908.

²Ronald M. Pipkin, "Legal Aid and Elitism in the American Legal Profession," in Reginald Heber Smith, Justice and the Poor (1919, reprinted ed., Montclair, N.J.: Patterson Smith, 1972).

³Emery Brownell, Legal Aid in the United States (Rochester, N.Y.: Lawyers Cooperative Publishing Co., 1951), pp. 10-11.

⁴Theodore Voorhees, "Legal Aid: Past, Present and Future," American Bar Association Journal 56 (August 1970): 765-768.

⁵Martin Mayer, "The Idea of Justice and the Poor," Public Interest, No. 8 (Summer 1967), 97.

⁶National Legal Aid and Defender Association, Annual Report of the President (September 1964).

⁷Brownell, Legal Aid in the United States, p. 35.

⁸Speaking in 1912, Louis Brandeis said:

It is true that at the present time the lawyer does not hold that position with the people that he held seventy-five or indeed fifty years ago; but the reason is not lack of opportunity. It is this: Instead of holding a position of independence between the wealthy and the people, prepared to curb the excesses of either, able lawyers have, to a large extent, allowed themselves to become adjuncts of great corporations and have neglected their obligation to use their powers for the protection of the people. We hear much of the "corporation lawyer," and far too little of the "people's lawyer." The great opportunity of the American Bar is and will be to stand again as it did in the past, ready to protect also the interests of the people. . . .

For nearly a generation the leaders of the bar with few exceptions have not only failed to take part in any constructive legislation designed to solve in the interest of the people our great social, economic and industrial problems, they have failed likewise to oppose legislation prompted by selfish interests. They have often gone further in disregard of public interest. They have at times advocated, as lawyers, measures which as citizens they could not approve. . . . They have

erroneously assumed that the rule of ethics to be applied to a lawyer's advocacy is the same where he acts for private interests against the public as it is in litigation between private individuals.

Louis Brandeis, "Business: A Profession," an address delivered at Brown University Commencement Day, 1912. Published in Louis Brandeis, System (Boston: Small, Maynard & Co., 1914).

⁹ Esther Lucille Brown, Lawyers, Law Schools and the Public Service (New York: Russell Sage Foundation, 1948), pp. 59ff.

¹⁰ On the character of elitism and its consequences, see F. Raymond Marks, The Lawyer, The Public and Professional Responsibility (Chicago: American Bar Foundation, 1972); Erwin O. Smigel, The Wall Street Lawyer (Glencoe, Ill.: Free Press, 1964); Richard C. Leone, "Public Interest Advocacy and the Regulatory Process," Annals of the American Academy of Political Science (March 1972): 46-58.

¹¹ August Meier and Elliott Rudwick, eds., Black Protest in the Sixties (Chicago: Quadrangle Books, 1970), pp. 3-4; Charles Flint Kellogg, NAACP: A History of the National Association for the Advancement of Colored People, vol. 1: 1909-1920 (Baltimore: Johns Hopkins Press, 1967), pp. 9-42.

¹² NAACP Legal Defense and Education Fund, Inc., The Quiet Revolution (May 1969), p. 6; Michelle Washington, "Constance Baker Motley: Black Women, Black Judge," Black Law Journal 1 (Summer 1971): 173.

¹³ Donald O. Johnson, The Challenge to American Freedoms: World War I and the Rise of the American Civil Liberties Union (Lexington, Ky.: University of Kentucky Press, 1963), p. 53.

¹⁴ Marlis E. James, The People's Lawyers (New York: Holt, Rinehart, and Winston, 1973), pp. 26-27.

¹⁵ Jerome H. Skolnick, The Politics of Protest (New York: Ballantine Books, 1969), pp. 99-100.

¹⁶ A conspicuous exception to the low regard in which social reform oriented lawyers held government work was the Civil Rights Division of the Justice Department, created in 1957. The Attorneys General of the 1960s (Robert Kennedy, Nicholas Katzenbach, Ramsey Clark) and the heads of the Civil Rights Division (Burke Marshall, John Doar, Stephan Pollak) were leaders who attracted many young, dedicated lawyers interested in civil rights. In 1965 there were 86 lawyers in the division; by 1970, there were 136. Most of the litigation brought by the Civil Rights Division was in education, but large numbers of cases were also filed in the areas of public accommodations, interference with civil rights, employment, and housing.

- ¹⁷Jonathan D. Casper in Lawyers Before the Warren Court: 1957-1966 (Urbana, Ill.: University of Illinois Press, 1972) points out that lawyers who were either "group advocates" or "civil libertarians" were sensitive to broad issues in the areas of reapportionment, loyalty-security, and civil rights, but that lawyers presenting criminal justice litigation were interested in winning, not in broad issues.
- ¹⁸Barbara Carter, "A Lawyer Leaves Mississippi," Reporter 28, No. 1 (May 9, 1963): 33; Daniel H. Pollitt, "Timid Lawyers and Neglected Clients," Harper's 229 (August 1964): 81-86; John Honnold, "The Bourgeois Bar and the Mississippi Movement," American Bar Association Journal 52 (March 1966): 226-232. The Congress for Racial Equality (CORE) had most of its legal work done free by the New Orleans black firm of Robert Collins, Nils Douglas, and Lolis Elie, although the amount of work was far greater than the firm could handle. August Meier and Elliott Rudwick, CORE: A Study in the Civil Rights Movement, 1942-1968 (New York: Oxford University Press, 1973), pp. 115, 151.
- ¹⁹Law Students Civil Rights Research Council, In the American Tradition (Fall 1972).
- ²⁰Vern Countryman and Ted Finman, The Lawyer in Modern Society (Boston: Little, Brown, and Co., 1966), pp. 576-577.
- ²¹Marks, Lawyer and Professional Responsibility, pp. 126-137.
- ²²Meier and Rudwick, CORE, pp. 271-273.
- ²³Leone, "Public Interest Advocacy and the Regulatory Process," pp. 46-58.
- ²⁴Paul N. Ylvisaker quoted in Daniel P. Moynihan, Maximum Feasible Misunderstanding (New York: Free Press, 1971), p. 36.
- ²⁵Russell D. Murphy, Political Entrepreneurs and Urban Poverty (Lexington, Mass.: D.C. Heath & Co., 1971), pp. 71-74.
- ²⁶Murphy writes that, "This tension between the professional dictates of the lawyers and the strategic concern of the agency's executive director was never fully resolved to the complete satisfaction of either." ibid., p. 116.
- ²⁷Edgar S. and Jean C. Cahn, "The War On Poverty: A Civilian Perspective," Yale Law Journal 73, No. 8 (July 1964): 1317-1352.

²⁸Henry Helfetz, "Introduction," in Harold H. Weissman, ed., Justice and the Law (New York: Association Press, 1969), p. 23.

²⁹Michael Appleby, "Overview of Legal Services," in Weissman, ibid., p. 36.

³⁰Charles Grosser, "The Need for a Neighborhood Legal Service and the New York Experience," Proceedings of the Conference on the Extension of Legal Services to the Poor, November 12-14, 1964 (Washington, D. C.: Government Printing Office, 1964), p. 74.

³¹See Jerome Carlin, Jan Howard, and Sheldon Messinger, "Civil Justice and the Poor," Law and Society Review 1, No. 1 (November 1966): 9-89.

³²A. Kenneth Pye, "The Role of Legal Services in the Antipoverty Program," Law and Contemporary Problems (1966), pp. 211-249.

³³Ibid., pp. 224-226.

³⁴Eric W. Wright, "Competition in Legal Services Under the War on Poverty," Stanford Law Review 19 (February 1967): 579-592.

³⁵Philip J. Hannon, "The Leadership Problem in the Legal Services Program," Law and Society Review 4, No. 2 (November 1969): 242; E. Clinton Bamberger, Jr., "The Legal Services Program of the Office of Economic Opportunity," Notre Dame Lawyer 41, No. 6 (1965-66): 847-852.

³⁶A. Kenneth Pye and Raymond F. Garraty, Jr., "The Involvement of the Bar in the War Against Poverty," Notre Dame Lawyer 41, No. 6 (1965-66): 860-897.

³⁷"What Price Professionalism?" American Bar Association Journal 56 (December 1970); "A Cloudy Legal Services Picture," ibid., 57 (March 1971); "Toward Better Legal Services," ibid., (September 1971).

³⁸Pye, "Role of Legal Services in the Antipoverty Program," p. 230.

³⁹Address by E. Clinton Bamberger, Jr., to the National Conference of Bar Presidents, 19 February 1966, in Harry P. Stumpf, "Law and Poverty: A Political Perspective," Wisconsin Law Review, No. 3 (1968): 711.

⁴⁰Address by Earl Johnson, Jr., Director of the Legal Services Program, to the Harvard Conference on Law and Poverty, Harvard Law School, 17 March 1965, in ibid.

⁴¹ Harry P. Stumpf, "The Failure of Legal Services; Or, Let Them Clean Out Cellars," unpublished paper delivered to the Conference on the Delivery and Distribution of Legal Services, State University of New York at Buffalo Law School, 11-12 October 1973, p. 4; Samuel Krislov, "The OEO Lawyers Fail to Constitutionalize a Right to Welfare: A Study in the Uses and Limits of the Judicial Process," Minnesota Law Review 58 (1973): 211-245. For a different view, see Lawrence A. Sullivan, "Law Reform and the Legal Services Crisis," California Law Review 59 (1971): 1-28.

⁴² Richard Pious, "Congress, the Organized Bar, and the Legal Services Program," Wisconsin Law Review, No. 2 (1972): 418-446; Walter Karabian "Legal Services for the Poor: Some Political Observations," Univ. of San Francisco Law Review 6 (April 1972): 253-265.

⁴³ Burt W. Griffin in Harvard Law School, Proceedings of the Harvard Conference on Law and Poverty, March 17, 18, and 19, 1967 (Cambridge, Mass., 1967), pp. 31-33.

⁴⁴ Burt W. Griffin, CEB Legal Services Gazette 2 (July 1968): 302-304, cited in Hannon, "Leadership Problem in the Legal Services Program," p. 249.

⁴⁵ Legal Aid Briefcase 26, No. 2 (February 1968): 97-144.

⁴⁶ National Legal Aid and Defender Association, The Other Face of Justice: A Report of the National Defender Survey (1973), p. 13

⁴⁷ Ibid., pp. 14-15.

⁴⁸ Of the 233 public defenders who participated in the Survey, 115 were full-time, 108 part-time.

⁴⁹ Ibid., p. 17.

⁵⁰ Anthony Platt and Randi Pollock, "Channeling Lawyers: The Careers of Public Defenders," Issues in Criminology 9, No. 1 (Spring 1974): 1-31.

⁵¹ Robert F. Buckhorn, Nader: The People's Lawyer (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1972), pp. 154-155.

⁵² Luther P. Gerlach, "Movements of Revolutionary Change," American Behavioral Scientist 14, No. 6 (July, August 1971): 812-835.

⁵³ Ford Foundation, The Public Interest Law Firm: New Voices for New Constituencies (New York, February 1973), p. 5.

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55 Charles R. Halpern and John M. Cunningham, "Reflections on the New Public Interest Law: Theory and Practice at the Center for Law and Social Policy," The Georgetown Law Journal 59 (May 1971): 1095-1126.

56 Ford Foundation, Public Interest Law Firm, p. 20.

57 Geoffrey Shields and L. Sanford Spector, "Opening Up the Suburbs: Notes on A Movement for Social Change," Yale Review of Law and Social Action 2, No. 4 (Summer 1972): 304.

58 Appalachian Research and Defense Fund, Newsletter, No. 8 (Fall 1972), p. 3.

59 Native American Rights Fund, Announcements 1, No. 1 (June 1972), 3.

60 Raymond Marks argues that only a very limited number of private public interest firms financed wholly by public interest clients are financially possible since major metropolitan location and fee-paying environmental and/or consumer clients are presumed necessary. The argument is that for a firm doing a great deal of public interest work, conflicts of interest will develop between regular and public interest clients to such an extent that regular clients will cease to do business with public interest firms. In such cases, public interest firms will be able to continue only if there are enough fee-paying clients with environmental or consumer concerns to finance the free or reduced fee work done for others.

61 Susan Braudy, "The New People," Glamour, (April 1971): 174-256; New York Times, 5 September 1971; Washington Post, 7 February 1970.

62 See James, People's Lawyers.

63 Rita J. Simon, Frank Koziol, and Nancy Joslyn, "Have There Been Significant Changes in the Career Aspirations and Occupational Choices of Law School Graduates in the 1960s?" Law and Society Review 8 (Fall 1973): 95-108.

⁶⁴"Structuring the Public Service Efforts of Private Law Firms," Harvard Law Review note 84 (1970-71): 410-423; Marna S. Tucker, "The Private Lawyer and the Public Responsibility: The Profession's Armageddon," Nebraska Law Review 51 (1971-72): 367-391.

⁶⁵Philip R. Lochner, "The Distribution of No Fee and Low Fee Legal Services by Private Attorneys" (unpublished Ms., 1973).

⁶⁶Another context in which lawyers have been mobilized to do public interest work is the corporation. During the 1970s, the whole issue of corporation involvement in social considerations has come to a head, with mixed results. Within corporate legal departments, public interest programs were, in some cases, developed. Usually they involved released time (either a few months or a percentage of time) for work with a Legal Services public defender, or volunteer program. The E. I. duPont Corporation has received more recognition for the activities of its lawyers than any other corporation, and it is clear that most corporations have neither a formal nor informal pro bono program.

⁶⁷For example, recently the Boston Bar Association assumed the sponsorship and responsibility for the local Lawyers Committee for Civil Rights Under Law.

⁶⁸American Bar Association, Pro Bono Report, July 1, 1971.

⁶⁹Ibid., December 1973.

⁷⁰Marks, Lawyer and Professional Responsibility, pp. 146-148, 186-197.

⁷¹Marks, Lawyer and Professional Responsibility, esp. ch. 6.

⁷²Doron Weinberg and Marty Fassler, A Historical Sketch of the National Lawyers Guild in American Politics, 1939-1968 (National Lawyers Guild pamphlet, No date), pp. 19-22; Katie Airing Piper, "The National Lawyers Guild" (unpublished paper, 1973), p. 22.

⁷³Weinberg and Fassler, Historical Sketch of the Guild, pp. 22-23.

⁷⁴Ibid., p. 23.

⁷⁵Piper, "National Lawyers Guild," p. 22.

⁷⁶Douglas E. Rosenthal, Robert A. Kagan, and Debra Quatrone, Volunteer Attorneys and Legal Services for the Poor: New York's CLO Program (New York: Russell Sage Foundation, 1971).