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POVERTY LAWYERS' INDEPENDENCE—BATTLE CRY FOR JUSTICE

by
JOHN D. ROBB, Jr.*

This is the sixth anniversary of the creation of the Office of Economic Opportunity (O.E.O.) Legal Services Program (L.S.P.). From the inception of the program some have feared that the use of federal funding and full-time staff lawyers would destroy the independence of lawyers serving the poor. Many threats to this independence have indeed developed since the conception of the program. The purpose of this article is to review these challenges and the responses thereto and to consider to what extent the freedom of poverty lawyers has been abridged, whether the poor have been denied vigorous advocacy, and to suggest a possible solution.

As applied to lawyers, independence imports freedom to provide vigorous representation to a client limited only by requirements of law and ethics.¹ Such unimpeded advocacy springs directly from the requirements of a free and democratic society. Such a society requires justice based on the rule of law—law which protects the rights of individuals and the citizen's unfettered exercise of those rights.² Without such protection no one can guard against infringement of his rights by the state³ or by others. A lawyer's independence is also rooted in our adversary system,⁴ and it is designed to protect the public, not serve the vanity of lawyers.⁵

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1. Cf. A.B.A. Canons of Professional and Judicial Ethics No. 15 (1947); A.B.A. Code of Professional Responsibility, Canon V, § § 5-21 and Cannon VII (Final Draft 1969).

2. Preamble to A.B.A. Code of Professional Responsibility, *supra* note 1; Joint Statement of American Bar Ass'n, Nat'l Bar Ass'n, Nat'l Legal Aid and Defender Ass'n, 116 Cong. Rec. 518,034 (daily ed. Oct. 14, 1970) [hereinafter cited Joint Statement].

3. Preamble to Code of Professional Responsibility, *supra* note 2.

4. Joint Statement, *supra* note 2, at S 18,034.

5. In *Re Baker*, 8 N.J. 321, 85 A.2d 505, 514, (1951); Rep. of Comm. on Unlawful Practice of Law, 33 N.Y.S.B.J. 354, 355 (1961); Joint Statement, *supra* note 2, at S 18,034.

LEGAL ETHICS

Independence for the lawyer is embedded in the ethics of the profession both under the older canons of ethics⁶ and the new code of professional responsibility.⁷

Under the code, independence is clearly articulated for lawyers generally and for poverty lawyers specifically.⁸ Moreover it is the lawyer's imperative to help provide legal services for the disadvantaged⁹ as well as to effect reforms in the legal system.¹⁰ Canon V provides: "A lawyer should exercise independent professional judgment on behalf of a client." Section E.C. 5-1 states: "The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties. Neither his personal interests, the interest of other clients nor the desires of third persons should be permitted to dilute his loyalty to his client." Sections E.C. 5-21 and 5-23 alert the lawyer to certain "strong economic, political or social pressures" against which he must remain alert. They specifically require the lawyer to guard against any interference by persons or organizations who pay or furnish lawyers to represent others. That this includes interference by a legal aid board is clearly spelled out in Section E.C. 5-24, in which lawyers are forbidden to accept employment from such programs "unless the board sets only broad policies and there is no interference in the relationship of the lawyer and individual client he serves."

Canon VII of the new code succinctly states: "A lawyer should

6. Under the Canons, *supra* note 1, a lawyer is enjoined to avoid adverse influences and conflicting interests; he may not represent such interests and must disclose any such matters to his client (Canon 6); he owes "undivided fidelity to his client and is forbidden to acquire interests in litigation in which he is engaged" (Canon 10); a lawyer may not use his own personal gain to abuse his client's confidence (Canon 11); he owes "entire devotion" to the client's interest, zealously, the use of "his utmost learning and ability", not restrained by "fear of judicial disfavor" or "public unpopularity"; he must assert every "remedy or defense" (Canon 15); his services may not be controlled or exploited by any lay agency which interferes between client and lawyer since a lawyer's obligations are direct to his client; however, charitable societies are exempted from this requirement (Canon 35); he may withdraw from employment only for good cause but is required to withdraw if incapable of conducting his case effectively (Canon 44); he is forbidden to permit himself to be used by others to engage in unlawful practices (Canon 47).

7. Canon 2 states: "A lawyer should assist the legal profession in fulfilling its duty to make legal counsel available;" *see also* § E.C. 2-25. A lawyer may not refuse representation because a client or a cause is unpopular or community feelings may be adverse. § E.C. 2-27; his personal preferences do not justify avoiding employment which may involve as adversaries judges, other lawyers, public officials or influential members of the community. § E.C. 2-28.

8. *Id.*

9. *Id.*

10. Canon 8 states: "A lawyer should assist in improving the legal system".

represent a client zealously within the bounds of the law." Moreover he cannot "... fail to seek lawful objectives of the client through reasonably available means. . . ." (Section E.C. 7-101(A) (1)).

STANDARDS OF LEGAL AID, O.E.O. AND THE BAR

The desirability of using an independent agency to furnish legal aid services became obvious at an early date in the legal aid movement.¹¹ Accordingly, long before the advent of O.E.O., the lodging of legal aid agencies within a larger organization (frequently a social agency or welfare office) gave way to the single purpose legal aid society—a separate agency governed by a board of directors.¹² Surprisingly few ethical questions were raised concerning attempted restrictions on the scope and vigor of representation of the poor prior to federal funding by O.E.O. The three chief causes for this appear to have been: (1) the unusual exception contained in Canon 35 respecting charitable societies;¹³ (2) the misguided notion that legal services were purely "charity" existing by the grace of the community;¹⁴ (3) the desires of legal aid agencies to "get along" with the community sources and the bar which provided necessary funds and assistance.¹⁵ These concepts at least partly caused legal aid societies to be unduly restrictive in their eligibility standards and to refuse or condition employment in certain matters such as divorce, adoption, bankruptcy, mental commitment hearings, juvenile proceedings and certain administrative hearings.¹⁶

The requisite freedom of lawyers to represent clients, and the potential threats to such freedom were squarely faced at an early date in the development of the O.E.O. Legal Services Program.¹⁷

The guidelines for the L.S.P., issued in early 1966, forthrightly stated that effective representation of the poor requires assurances of independence of professional judgments from the policies of the Community Action Agency; that independence was best assured by creation of a separate policy-making board; and that lawyers in the program must ensure that it conforms to the canons of ethics and

11. R. Smith, *Justice and the Poor* 176-177 (1919).

12. *Id.*; H. Brownell, *Legal Aid in the United States* 87-101 (1951).

13. *Cf.* *The Extension of Legal Services to the Poor*, Conference proceedings, Nat'l Conference on Law and Poverty 97 (1964).

14. Note, *Neighborhood Law Offices: The New Wave in Legal Services for the Poor*, 80 *Harv. L. Rev.* 805, 807 (1967).

15. Brownell, *supra* note 10, at 72, 73.

16. *Id.*; P. Wald, *Law and Poverty*: 1965 49, 51, (1965). However, overwhelming case-loads also contributed to these restrictions. Brownell, *supra* note 10, at 72; Wald, *supra* at 50.

17. Wald, *supra* note 16, at 64-65; *Extension of Legal Services*, *supra* note 13, at 79, 97; Conference proceedings, Nat'l Conference on Law and Poverty, at 160 (1965).

rules of professional conduct.¹⁸ The guidelines also mandated that representation should include all areas of the civil law—a “full spectrum” of legal work including advocacy of appropriate changes in statutes, regulations and administrative practices.¹⁹

The American Bar Association resolution endorsing the L.S.P. in February of 1965 called for “independent lawyers” and conditioned the Association’s support on the statement that “such legal services were to be performed by lawyers in accordance with the ethical standards of the profession.”²⁰ Furthermore, to ensure that these values were woven into the O.E.O. fabric, the organized bar wisely reached an understanding with Sargent Shriver, the first director of the O.E.O., that resulted in the establishment of a National Advisory Committee of distinguished members of the bar to recommend policies and procedures under which the program would operate, including assurances that it would be “developed, implemented and managed by lawyers.”²¹

LEGISLATION AND LEGISLATIVE HISTORY

The Economic Opportunity Act of 1964, as amended in 1966, insisted that the L.S.P. must be “carried on in a way that assures maintenance of a lawyer-client relationship consistent with the standards of the legal profession.”²² The 1967 report of the House Education and Labor Committee provided further legislative cement for these concepts by recognizing the “unique professional problems” involved in the L.S.P. The report noted that these problems embrace “legal ethics, including the preservation of proper lawyer-client relationships, confidentiality of communications between lawyer and client, the exercise of independent judgments by lawyers, complete fidelity to the client’s cause, rendering of a full range of adequate legal services, insistence upon the use of properly qualified lawyers and legal personnel, and observance of all standards of the legal profession governing such services.”²³ It also found with satisfaction that “primary responsibility for the direction and administration” of the program had been vested in lawyers, that this was the primary cause of its success and warned that the committee “expects

18. O.E.O. Guide Lines for Legal Services Program 8.

19. Guide Lines, *supra* at 22, 23.

20. A.B.A., *Lawyers and the Poor* 4.

21. Draft report and investigation by Subcomm. of Nat’l Advisory Comm., at 9-15 (1970).

22. Economic Opportunity amendments of 1966, § 2(B)(I), Tit II, § 211-1(B) 80 Stat. 1451.

23. 42 U.S.C. § 2809(a)(3) (Supp. V 1970). H.R. Rep. No. 866, 90th Cong., 1st Sess. 24-25 (1967).

the continuance of these features of the program's administration."²⁴

ATTEMPTS TO UNDERMINE THE LAWYER'S INDEPENDENCE

Threats to the independence of poverty lawyers to represent their clients have ranged from outrageous attempts to interfere with the handling of specific cases to more subtle restrictions concerning the types of cases to be handled. Some attempts have been casual, and others concerted; some direct, and others oblique; some from without O.E.O., others stabbing from within; some at the community level, others launched at state, regional and national levels.

1. *External threats.*

Forty-nine principal complaints or attacks against legal services programs originating outside of O.E.O. were mounted in 1969 according to a compilation made by the National Legal Aid and Defender Association (N.L.A.D.A.)²⁵ in late 1969 and supplemented by the author.²⁶

A wide range of matters has provoked these attacks. However, nearly one-half have involved suits against governmental agencies, including ambitious class actions and "law improvement," *i.e.*, test cases and legislative or administrative action designed to achieve important changes affecting many persons in poverty.²⁷ Approximately 50% of the disputed actions against local, state or federal agencies have involved as unhappy defendants either law enforcement agencies and officers, or housing authorities.²⁸ Welfare, labor matters, and food programs were involved in the bulk²⁹ of the remaining suits. Actions other than those involving governmental agencies causing the most complaints have been predominantly landlord and tenant and domestic relations cases.³⁰ Dissatisfaction with the handling of matters designed to improve the laws, class actions,

24. *Id.*

25. Undated and unpublished memorandum compiled by N.L.A.D.A. entitled Independence of Legal Aid Lawyers Summary.

26. The analysis presented herein is based primarily upon this compilation, together with other principal matters reported to the Nat'l Advisory Comm. from time to time.

27. Independence of Legal Aid Lawyers, *supra* note 25. "Law Improvement" is the author's phrase for O.E.O.'s term "Law Reform". See J. Robb, *Controversial Cases and the Legal Services Program*, 56 A.B.A.J. 329 (1970) and *Hearings on the Legal Services Program of the Office of Economic Opportunity Before the Subcomm. on Employment, Manpower and Poverty of the Senate Comm. on Labor and Public Welfare*, 91st Cong., 1st Sess. 14 (1969) [hereinafter cited *Hearings*].

28. Independence of Legal Aid Lawyers, *supra* note 25.

29. *Id.*

30. *Id.*

and matters which may be controversial have also generated sharp reprisals.³¹

The interference has consisted mainly of three types:³² (1) action or threatened action against sensitive local funding sources such as the United Fund and federal funds provided by O.E.O., (2) "investigations" and other forms of harassment or criticisms, and (3) grievances filed against poverty lawyers with bar associations.

These threats have come from three principal sources:³³ lawyers, bar associations, and disgruntled governmental agencies or officials. Approximately forty percent of these complaints have originated either with lawyers or bar associations; approximately twenty-five percent have come directly from public officials or politicians.³⁴ Of the numerous matters submitted to grievance committees only one involving any disciplinary action has been reported to the American Bar Association (A.B.A.) or the N.L.A.D.A. These figures suggest either that some bar associations and lawyers do not yet understand the purposes and prerogatives of the L.S.P. or that they are purposely initiating groundless complaints. The A.B.A.,³⁵ N.L.A.D.A.,³⁶ and some local bar associations³⁷ have defended against these unjustified attacks.

The most serious threat to the independence of lawyers was mounted on a national level in the fall of 1969 when Senator George Murphy of California introduced his "Murphy Amendment". This amendment was cleverly designed to give the governor of each state a veto power over the funding of all or any part of an L.S.P.³⁸ It stemmed primarily from Governor Reagan's antagonism to the tough California Rural Legal Assistance Program which had won notable battles on behalf of its clients including a case involving ill conceived attempts to curtail the Medical program. Senator Murphy candidly acknowledged that the purpose of the amendment was to stop the filing of actions against governmental agencies and "law improve-

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. See A.B.A. Resolution dated Aug. 19, 1969, deploring attacks by government officials against legal aid lawyers (Summary of Action of House of Delegates, Feb. 1970, at 32). Members of the Standing Comm. on Legal Aid and Indigent Defendants have participated on the FACT Committee described in 36, *infra*.

36. See Executive Comm. Resolution dated Apr. 16, 1970. In early 1970 N.L.A.D.A. established the FACT Comm. for the purpose of investigating complaints against legal services programs and providing support for them where the complaints were unjustified.

37. Particularly laudable support has come from bar associations in St. Louis, Philadelphia and Chicago.

38. 115 Cong. Rec. S12,565, S12,568, S12,569 (daily ed. Oct. 14, 1969).

ment" matters.³⁹ A similar amendment had been handily defeated on a voice vote in the Senate in 1967. This time, however, the amendment passed the Senate.⁴⁰ It was not offered in the House, however, after O.E.O. and the organized bar launched a massive protest.⁴¹ The organized bar viewed the amendment as a blatant attempt at political interference with the L.S.P. and with the attorney-client relationship, as well as a blow to remedies vital to the poor.⁴²

2. *Internal interference.*

Attempts to curb the independence of poverty lawyers have emerged from time to time from within the halls of the O.E.O. itself. Until October of 1970 these smouldering controversies attracted little attention outside of O.E.O., the leadership of the organized bar, the National Advisory Committee and some members of Congress. These internal disputes have involved problems at the local, regional and national level. Some have raged within the local legal services programs; most, however, have involved disagreements between legal services personnel on the one hand and officials of the Community Action Program (C.A.P.) on the other at all administrative levels.

Within the local legal services program, the threats to the independence of lawyers have generally arisen out of attempts by well-meaning boards of directors and individual board members to screen the eligibility determinations and to review questions concerning acceptance of employment and the handling of controversial cases.⁴³ Threats of discharge have sometimes been used to enforce requests for this type of review.

For most of the program's existence the L.S.P. has operated as a part of C.A.P.⁴⁴ Community Action officials and legal services lawyers have shared the responsibility⁴⁵ for operating the L.S.P. in

39. 115 Cong. Rec. S12,564, S12,565, S12,570 (daily ed. Oct. 14, 1969); *Hearings*, *supra* note 27, at 60.

40. 115 Cong. Rec. S12,571, S12,572 (daily ed. Oct. 14, 1969).

41. Robb, *supra* note 27, at 331. The opposition included not only the principal national bar groups, but also the Judicial Conference of the United States, fifty state and local Bar Associations, eighty-five law school deans and 11,000 law students.

42. See A.B.A. Resolution attached to *Hearings*, *supra* note 27, at 9.

43. See formal Opinion 324, A.B.A. Standing Comm. on Ethics and Professional Responsibility dated Aug. 9, 1970, concerning board approval sought before accepting employment by groups or suits against government agencies (St Louis); Informal opinion of A.B.A. Standing Comm. on Ethics and Professional Responsibility dated Jan. 27, 1970, involving veto rights over "new and unusual cases"; similar problems have occurred in Houston, Baton Rouge, and other areas.

44. Cf. Joint Statement, *supra* note 2, at S18,034.

45. *Id.* Memorandum from Director, Office of Legal Services to Director O.E.O., July 17, 1970, at 13.

an unusual marriage where the roles of the partners have sometimes been difficult to determine. The L.S.P. lawyers have generally had primary responsibility for the administration of the program and exclusive responsibility for the enforcement of professional policies.⁴⁶ The program was structured with the National Advisory Committee recommending policies to govern the L.S.P. and the national legal services director, a lawyer, policing the local programs with the assistance of lawyers in each of the O.E.O. regions.⁴⁷ However, for making grants and effecting major modifications or refundings, concurrent approval⁴⁸ from both spouses was required. The uneasy relationship between the L.S.P. and the C.A.P. for most of its existence has been poorly defined,⁴⁹ especially at the regional level. It has been the subject of almost continual marital bickering, negotiation and conflict.⁵⁰ Divided responsibility for the L.S.P. has included among other things the "conjugal" right of community action officials to have an important voice in the selection, promotion and pay of regional legal services lawyers, as well as the right to determine the budgets and staffing levels in the regions and in legal services headquarters.⁵¹ Legal services lawyers in the regions and in headquarters have been subjected to conflicts between professional policies of the L.S.P. and those of the C.A.P.⁵² The need for concurrence by community action officials has often resulted in exasperating bureaucratic delays in the funding of programs and much wasted time of legal services lawyers in trying to interpret professional matters to the community action laymen and in resolving family fights caused by the divided administration.⁵³ It also

46. House Education and Labor Comm. Rep., *supra* note 23, at 24-25; See O.E.O. memos from Director C.A.P. to Regional Directors as follows: No. 61 dated Feb. 10, 1966, amended Mar. 10, 1966; memo dated Feb. 13, 1967; No. 73 dated Apr. 29, 1966.

47. Cf. Lawyers and the Poor, *supra* note 20, at 11, 12; unpublished and undated "Memorandum Re O.E.O. Legal Services Program", prepared by A.B.A., at 2; House Education and Labor Comm. Rep., *supra* note 23, at 24-25.

48. See O.E.O. Memos, *supra* note 46; Cf. memorandum from Director, Office of Legal Services to O.E.O. Director dated July 17, 1970, at 9.

49. Undated "Position Memorandum of the Legal Services Program on the McKenzie Report" prepared by Office of Legal Services, at 1; Memorandum from Director, Office of Legal Services, *supra* note 48, at 13.

50. Draft Report by Subcomm. of Nat'l Advisory Comm. 1970; Joint Statement, *supra* note 2, at S18,034; Memorandum Re O.E.O. Legal Services Program, *supra* note 47, at 1; memorandum from Director, Office of Legal Services, *supra* note 45, at 13, 17, and subsequent text discussion herein.

51. Draft Rep., *supra* note 50; Joint Statement, *supra* note 2 at S18,034. Disputes on these matters have increased the friction between C.A.P. and L.S.P. See memorandum from Director, Office of Legal Services, *supra* note 45, at 11, 12.

52. Draft Rep., *supra* note 50; Joint statement, *supra* note 2, at S18,034; Memorandum from Director, Office of Legal Services, *supra* note 45, at 4, 13.

53. Draft Rep., *supra* note 50; Joint Statement, *supra* note 2, at S18,034; Memorandum from Director, Office of Legal Services, *supra* note 45, at 11, 12, 17.

has caused attempted domination of lawyers by laymen, many improper demands to be asserted by misguided local community action programs against community legal service programs (including insistence on seeing files, reviewing eligibility requirements, the handling of specific cases, the right to hire and fire its lawyers), and other attempted encroachments.⁵⁴ Such demands have been stoutly resisted by legal service programs.

During the life of the L.S.P. there have been three concerted efforts to place its administration in the hands of laymen.

The first arose in early 1967 following a management study within O.E.O. which recommended "regionalizing" many of its activities, including those of the L.S.P. The study, known as the McKenzie Report, was foolishly made without consulting the director of the L.S.P. or his staff and without considering the unique professional problems involved. The director of the C.A.P. decided to implement regionalization of the L.S.P. in the summer of 1967⁵⁵ over the vigorous objections of its director.⁵⁶ The thrust of the proposal was to transfer authority for the administration of the program from the director of legal services in Washington to community action laymen in the regions and to downgrade the role of the legal services lawyers in the regions from making operational decisions to being mere technical consultants.⁵⁷ The National Advisory Committee, after conducting hearings, issued its Fuchsberg report which eloquently rejected the McKenzie recommendations.⁵⁸ The report suggested that divorce was the best remedy for the incompatibility and recommended establishing L.S.P. as a separate and independent division within O.E.O., apart from the C.A.P.⁵⁹ It agreed, however, that the L.S.P. might temporarily continue as part of the C.A.P., provided its legitimate role as head of the family was definitely recognized by according it primary responsibility for administration.⁶⁰ This was to include ultimate decision-making powers in cases of disputes with community action officials.⁶¹ The National Advisory Committee thereafter unsuccessfully undertook to negotiate its differences in fruitless sessions with officials of the C.A.P.

The McKenzie report was not implemented as such. However,

54. *Id.*; Draft Rep., *supra* note 50; *cf.* Remarks by Senator Javits, 116 Cong. Rec. S18,030 (daily ed. Oct. 19, 1970).

55. Memorandum, Director C.A.P. to Director O.E.O., dated July 17, 1967.

56. Position Memorandum, *supra* note 49, at 1-4.

57. *Id.*; Memorandum, Director C.A.P., *supra* note 55.

58. Letter from Jacob D. Fuchsberg to Sargent Shriver, Nov. 20, 1967.

59. *Id.* at 7.

60. *Id.*

61. *Id.* at 5.

O.E.O. ignored most of the other "Fuchsberg" recommendations. Instead it initiated the second attack by issuing delegation orders⁶² on October 23, 1968 which, if fully implemented, would have resulted in removing from the director of the L.S.P. virtually all of his administrative authority.⁶³

Thus L.S.P. operations were, under the orders, vested in the director of the C.A.P. who, in turn, essentially redelegated his powers to regional directors.⁶⁴ This included full grantmaking and evaluation responsibility.⁶⁵ These delegations had a debilitating effect on the L.S.P.⁶⁶ C.A.P.s at local, regional and national levels used some of these delegations and the atmosphere they created to attempt serious encroachment upon the L.S.P. and to thwart some of its purposes and objectives.⁶⁷ In early 1969, representatives of the A.B.A. and the N.L.A.D.A. responded by seeking a new forum for the program's divorce from the C.A.P. They urged the Nixon Administration to provide independence for the L.S.P. either by removing it from O.E.O.⁶⁸ or at least by establishing it as a division within the agency separate from C.A.P.⁶⁹ O.E.O. elected the latter course⁷⁰ and additionally, on July 14, 1969, upgraded its director to the position of Associate Director of O.E.O., reporting directly to the

62. Undated Memorandum furnished by John W. Cumiskey to Director O.E.O. July 3, 1969, *Functional Autonomy for Legal Services—an Examination of Relevant Statutory Provisions and Delegation Orders*, at 3.

63. *Id.*; Draft Rep., *supra* note 50; *cf.* Joint Statement, *supra* note 2, at S18,034.

64. *Functional Autonomy*, *supra* note 62, at 3-6.

65. *Id.*

66. Draft Rep., *supra* note 50; "Memorandum Re O.E.O. Legal Services," *supra* note 47, at 2; Memorandum Director, Office of Legal Services, *supra* note 48, at 3, 4, 17; *cf.* Joint Statement, *supra* note 2, at S18,034.

67. Draft Rep., *supra* note 50; Memorandum from Director, Office of Legal Services, *supra* note 48, at 3, 4, 17; "Memorandum Re O.E.O. Legal Services," *supra* note 47, at 2.

68. Memorandum Re O.E.O. Legal Services Program, *supra* note 47, at 1; Joint Statement, *supra* note 2, at S18,034; Draft Rep., *supra* note 50.

69. Draft Rep., *supra* note 50; "Memorandum Re O.E.O. Legal Services Program," *supra* note 47, at 1.

This memorandum stated in part that community action agencies had "interfered significantly with the effectiveness of the program, demoralized many of the bright young attorneys attracted to the program, delayed the making of crucial decisions and impeded the necessary growth of L.S.P."

It continued: "Experience with the L.S.P. has demonstrated that preservation of the attorney-client relationship in local programs (particularly the independence of the lawyer to advise his client without interference from anyone) requires a corresponding independence within all levels of the administration in the agency." See also Joint Statement, *supra* note 2, at S18,034. Indeed, legislation to achieve separate division status for L.S.P. within O.E.O. was offered by Senator Mondale in the spring of 1969. S.1291, 91st Cong., 1st Sess. (1969).

70. July 14, 1969 O.E.O. Public Affairs Release; see also remarks by Don Rumsfeld, O.E.O. Director before Sen. Subcomm. on Employment, Manpower, and Poverty, 116 Cong. Rec. S18,030, S18,031 (daily ed. Oct. 14, 1970).

Director.⁷¹ The President himself concurred in this action.⁷² The staff of the L.S.P. was substantially increased and it was able to select its own personnel.⁷³ However, in the spring of 1970 storm clouds began to gather. It became O.E.O.'s established policy to cooperate closely with and delegate to State Economic Opportunity offices some of the functions theretofore exercised by O.E.O. regional offices.⁷⁴ Moreover, the machinery was created to return to regional directors rights of concurrence in making legal services grants.⁷⁵

In the summer of 1970, the Deputy Director of O.E.O.,⁷⁶ at the urging of the director of the C.A.P.,⁷⁷ decided to adopt a "regionalization" proposal for O.E.O. and to apply it to the L.S.P. Strikingly similar to McKenzie, the misnamed plan in fact transferred the basic administration of the L.S.P. to lay regional directors.⁷⁸ The anguished objections⁷⁹ of the director of the L.S.P. were overruled and the National Advisory Committee was not consulted by O.E.O.⁸⁰ It is unclear whether the plan enjoyed the support of O.E.O.'s director. A concerned National Advisory Committee in November 1970 recommended against regionalization of the L.S.P.⁸¹ after receiving a subcommittee draft report, backed by extensive investigation and study, which vigorously denounced the proposal.⁸² Earlier, influential committee members and members of Congress⁸³ had joined legal services lawyers⁸⁴ and an aroused bar⁸⁵ in a chorus of protest against the proposal.

71. *Remarks* of Don Rumsfeld, *supra* note 70.

72. President's Message to Congress of Aug. 11, 1969, 116 Cong. Rec. S18,030 (daily ed. Oct. 14, 1970).

73. Memorandum from Director, Office of Legal Services, *supra* note 48; remarks of Don Rumsfeld, *supra* note 70, at S18,033.

74. Draft Rep., *supra* note 50.

75. Draft Rep., *supra* note 50.

76. Confidential memorandum from Deputy Director, O.E.O., to Director, Office of Legal Services dated Aug. 12, 1970. This memorandum indicates that the plan to regionalize legal services had been agreed upon by high O.E.O. officials much earlier.

77. Memorandum from Director of Operations to Deputy Director, O.E.O., dated Jun. 8, 1970.

78. Confidential Memorandum, *supra* note 76.

79. Memorandum from Director, Office of Legal Services, *supra* note 48. The Director of Legal Services was reported ready to resign if the regionalization plan was implemented. See N.Y. Times, Sept. 22, 1970, at 34, col. 5.

80. See Draft Rep., *supra* note 50.

81. See Resolution filed Nov. 6, 1970, with the Director O.E.O. The Nat'l Advisory Comm. recommended that the L.S.P. must remain administratively independent, must have exclusive control over its lawyers and personnel and over the enforcement of professional standards.

82. See Draft Rep., *supra* note 50. This extraordinary document, when issued in final form, will become the L.S.P. charter of freedom.

83. See remarks of Senators Javits and Mondale, 116 Cong. Rec. S18,030, 31, 32, 35, 36 (daily ed. Oct. 14, 1970); S. Rep. No. 1335, 91st Cong., 2d Sess. 72 (1970); letter dated

Arguments advanced for the plan hail the supposed management advantages and efficiency which would result. Proponents argue that the L.S.P. is merely one part of a comprehensive assault on poverty; that it must be "coordinated" with other phases of the overall program for maximum effect; that it must, if necessary, be subordinated to the broader policies of the C.A.P. where they are incompatible.⁸⁶ Additionally, claims are made that implementation of regionalization would make the program more responsive to local needs because the regional offices are closer to the communities and would improve O.E.O.'s image.⁸⁷ The arguments by the National Advisory Committee⁸⁸ and the organized bar⁸⁹ against the proposal are that:

1. it flies in the face of congressional policy;⁹⁰
2. political and other interference with the handling of cases and the attorney-client relationship cannot be effectively prevented;⁹¹
3. ethical considerations may preclude lawyers from working within the program;⁹²

Oct. 14, 1970, from seven minority members of the House Education and Labor Comm. to Director O.E.O. suggesting deferral of action until further study by committee.

84. Resolution of Southeast and Southwest Reg'l Project Directors adopted Oct. 2, 1970; Remarks by Senator Javits, 116 Cong. Rec., S18,031 (daily ed. Oct. 14, 1970); of legal services lawyers polled in the 265 programs all but 6 opposed regionalization. See Draft Rep., *supra* note 50.

85. Joint Statement, *supra* note 2, at S18,033, 34; N.L.A.D.A. Resolution dated Sept. 23, 1970; letter from Ed Wright, Pres. American Bar Ass'n to Director O.E.O., Oct. 16, 1970; letter from Richard Markus, Pres. American Trial Lawyers Ass'n to Director O.E.O., Oct. 30, 1970.

86. Statement by Donald Rumsfeld, *supra* note 70, at S18,032, 33; Draft Rep., *supra* note 50; 44 Nat'l J. 2393, 94 (1970).

87. See Draft Rep., *supra* note 50.

88. See Draft Rep., *supra* note 50, at 121.

89. Joint Statement, *supra* note 2, at S18,033, 34.

90. Regionalization clearly conflicted with the views of the committee expressed in the 1967 House Education and Labor Comm. Report and seemingly with the statute itself.

91. Lay Regional Directors would have been less inclined and less able to resist political interference. They would not have appreciated the importance of professional standards generally and the lawyer-client relationship specifically. O.E.O.'s increased orientation toward and delegation to state agencies intensified this problem. See note 95, *infra*. Further, regional directors would not have enjoyed the backing of a prestigious national advisory committee to help insulate them from political pressure as does the legal services director.

92. Conflicting interests definitely confront administrative lawyers within O.E.O. See discussions of ethical considerations *supra*. Regionalization and the increased involvement of State O.E.O. offices (O.E.O.'s version of the New Federalism) are part and parcel of O.E.O.'s policy to make government more responsive to localities and states. See Draft Rep., *supra* note 50. The agency desire to reach an accommodation with the very local and state agencies and officials, all potential defendants of the L.S.P., is one of O.E.O.'s policies which is not compatible with L.S.P.'s duty to provide independent advocacy for the poor. See Draft Rep., *supra* note 50.

The pressures which expose lawyers in local L.S.P.'s to potential conflicts of interest must be avoided since no lawyer may ethically continue in such an employment. See Draft Rep.,

4. the program would lose the services of many able, young lawyers who had made it a success;^{9 3}
5. the overall quality of service to the poor would be affected;^{9 4}
6. the poor would lose confidence in the program;^{9 5}
7. it would cost the Legal Services Program at least the enthusiasm and close supervision of the bar and perhaps the support by the bar itself.^{9 6}

The regionalization proposal plainly affected matters of substance rather than just management and form. On November 15, 1970 embattled O.E.O. Director Rumsfeld concluded not to implement the legal services regionalization proposal.^{9 7} He decreed that the L.S.P. should continue to be administered by lawyers under a "decentralized" plan in which the regional lawyers would assume many operating responsibilities formerly exercised by headquarters personnel.^{9 8} Under the Director's order L.S.P. was to be closely coordinated with other anti-poverty programs both in communities and at various levels within O.E.O. so as to create a "working partnership" between them.^{9 9} The decision terminating the program's short lived bachelorhood reaffirmed L.S.P.'s role as senior partner; however, it created an administrative maze through which decisions affecting the program had to be channeled.^{1 0 0} Moreover it escalated

supra note 50. Experience has shown that both internal and external attempts to interfere with the L.S.P. at higher levels within O.E.O. are inevitably felt by the lawyer representing the client in the community. See "Fuchsberg Report," *supra* note 58; Joint Statement, *supra* note 2, at S18,034. Furthermore, administrative lawyers within O.E.O. whose duties include enforcement of professional standards and guidelines, may also find themselves ethically proscribed from working within an administrative structure which produces such conflicts. See Draft Rep., *supra* note 50.

93. Unanimity of opposition by young lawyers makes it clear that many would have left the program if regionalization had been implemented for legal services. No self-respecting lawyer will work in a program where his professional work is dominated or directed by laymen. See Joint Statement, *supra* note 2, at S18,034.

94. Diluted advocacy would have been the inevitable effect of the regionalization proposal.

95. The poor, who were slow to develop confidence in lawyers, are quick to sense divided loyalties. See Testimony of George Moore on behalf of the Nat'l Clients Counsel, 116 Cong. Rec. S18,032 (daily ed. Oct. 14, 1970); Joint Statement, *supra* note 2, at S18,034.

96. The opposition by the bar was overwhelming. The basis of participation by the organized bar in the L.S.P. was the assurance that it would be established and managed by lawyers. Even if the bar had retained an interest despite regionalization it would not have been physically able to supervise adequately the ten regional offices in their enforcement of professional standards.

97. See *supra* note 92.

98. See Memorandum re O.E.O. Legal Services Program, *supra* note 47, at 2; Joint Statement, *supra* note 2, at S18,034.

99. Draft O.E.O. Press Release, Nov. 15, 1970, at 1.

100. Memorandum Director O.E.O. to senior staff regional directors, Nov. 14, 1970, and

many kinds of disputes between the L.S.P. and the Office of Operations (formerly C.A.P.) to the director or deputy director of O.E.O. for resolution.¹⁰¹ Besieged by protests of the organized bar and legal services lawyers, and faced with hostile congressional hearings, O.E.O. rescinded its "Coordination" order.¹⁰²

The rescission order provides that the program will continue with its centralized administration.¹⁰³

Presumably this action restores the quasi-independent status which the program had achieved under the July 14, 1969 announcement prior to the regionalization proposal.¹⁰⁴

Shortly before issuing its rescission order, however, O.E.O. Director Rumsfeld fired the Director and Deputy Director of the L.S.P. allegedly for inability or unwillingness to administer the program.¹⁰⁵

The discharged lawyers contended that they were fired because they defended the program too vigorously from political interference.¹⁰⁶

RESULTS OF ATTACKS ON INDEPENDENCE

What has been the effect of these threats to the independence of poverty lawyers? Remarkably, their freedom of advocacy has been satisfactorily preserved on the whole. Few reports have been received in which improper restraints on such advocacy have been actually imposed. This is a tribute primarily to the fidelity and tenacity of the legal services lawyers and additionally to the backing they have received from most segments of the organized bar. These attacks, however, have taken their toll. Some lawyers have become demoralized.¹⁰⁷ Excessive lawyer turnover has occurred at head-

attached "Procedures for Administering the Legal Services Program in the Regional Offices."

101. Draft O.E.O. Press Release, *supra* note 99; Memorandum, *supra* note 100; "Procedures", *supra* note 100. Critics of the O.E.O. Director's "coordination" order (*see supra* note 100, contended that it accomplished indirectly the objectives of the regionalization proposal. *See* Citizen's Advocate Center, *An Analysis of the Procedures Implementing Director Rumsfeld's Decision to Shift From Regionalization to Decentralization of the O.E.O. Legal Services Program*, Nov. 18, 1970, at 1-6. Shortly thereafter O.E.O.'s Director fired the Director and Deputy Director of the L.S.P. because of their alleged inability or unwillingness to administer the program, *N.Y. Times*, Nov. 21, 1970, at 1, col. 3, and failure to cooperate with the Director and other officials of O.E.O., *Wash. Post*, Nov. 22, 1970, § A-16, col. 1. The deposed Director and Deputy Director of the L.S.P. in turn charged the Nixon Administration with permitting politics to interfere with the representation of the poor. *N.Y. Times*, Nov. 22, 1970, at 46, col. 1.

102. O.E.O. Press Release dated Dec. 15, 1970.

103. *Id.*

104. *See supra* note 68.

105. *N.Y. Times*, Nov. 21, 1970, at 1.

106. *Id.*; *Wash. Post*, Nov. 22, 1970, § A, at 1.

107. *N.Y. Times*, *supra* note 101.

quarters and in the regions.¹⁰⁸ Moreover, resisting such interference has diverted extraordinary amounts of productive time and effort of lawyers on all levels.¹⁰⁹

Somewhat more inroads have from time to time been made with respect to the freedom of administrative lawyers at the regional and national levels within the O.E.O. structure. Nevertheless, with the exception of the brief period in the latter part of 1968 and early 1969 lawyers in the legal services headquarters and regional offices have preserved their freedom of action reasonably well. It remains to be seen whether the O.E.O. director's new "working partnership" erodes lawyer independence or produces bureaucratic paralysis.

SEPARATE HOME FOR LEGAL SERVICES

During its early history undeniable advantages accrued to the L.S.P. from being lodged within O.E.O. It received a political base of support from local community action agencies and benefited from the overall cover which a larger agency could provide it against attacks caused by its controversial activities. However, the program has matured to the point where the disadvantages of being within O.E.O. probably outweigh the advantages. The best future solution for preserving the independence of L.S.P. is to provide it with a new home in a single purpose agency. The same conflict of interest considerations which long ago prompted the separation of legal aid services from community multi-purpose welfare agencies¹¹⁰ now require divorcing the program from O.E.O.¹¹¹ From July 1969 until recently the administrative setup within O.E.O. has functioned more satisfactorily than ever before.¹¹² However, while L.S.P. can pos-

108. *Id.*

109. See Joint Statement, *supra* note 2, at S18,034; "Fuchsberg Rep.," *supra* note 58, at 4; memorandum from Director, Office of Legal Services, *supra* note 48, at 17.

110. See *supra* note 7.

111. Studies concerning a new structure for the L.S.P. are currently being conducted by A.B.A., the Nat'l Advisory Comm. (see Resolution adopted Nov. 6, 1970, by N.A.C.) and reportedly by O.E.O., 116 Cong. Rec. S18,032 (daily ed. Oct. 14, 1970), and the Ash Comm'n. 44 Nat'l J. 2398 (1970).

Among the solutions reported to be under consideration are: Various types of new public, quasi-public and private non-profit agencies, including a separate office in the Executive Office of the President. They range from a single purpose structure to a "National Justice Foundation" which latter proposal would combine the L.S.P. with criminal defense and combine or coordinate it with the legal services programs in the Dep't of Housing and Urban Development (H.U.D.) and the Dep't of Health, Education and Welfare (H.E.W.).

Existing agencies which have been considered in the past as a future home for Legal Services include the Dep't of Justice, H.E.W., H.U.D. and the Administrative Office of the Courts. All have serious drawbacks. Justice and H.E.W. pose greater potential conflicts of interest than O.E.O. Memorandum re Legal Services Program, *supra* note 47, at 2. H.U.D.'s urban orientation detracts from vigorous rural programs. The Administrative Office is exclusively concerned with the federal court system and its administration.

112. See Draft Rep., *supra* note 50.

sibly be freed from C.A.P. policies, it can never escape pressures for subordination of its mission to the broader agency-wide objectives of O.E.O. so long as it remains within the agency. Nor can it avoid the wasteful efforts required to protect it from the administrative invasions within O.E.O. which have plagued it in the past. Although a single purpose agency will not be immune from external attacks, attempted interference will be directed against lawyers, whose sole concern will be preserving the effectiveness of that one program.

A Juarez-style divorce, however, could prove a disaster for the program. The L.S.P. must carefully be placed in fertile soil where it can continue to grow. The type of separate organization, the makeup of the governing board, safeguards against political retaliation and interference and adequate funding levels must all be weighed in determining the most suitable vehicle for the program. O.E.O., having launched the L.S.P. has a plain obligation to find it a new and more effective home with the assistance of the organized bar. In the interim, O.E.O. must preserve the program's independence within the agency.

A new home for the L.S.P. will thrust a much greater responsibility on the organized bar than heretofore. It will then have to shoulder exclusively the burden now sometimes shared by O.E.O. in guiding the destiny of the L.S.P. and preserving the professional aspects of the program. The National associations of lawyers and many state and local bar associations have demonstrated by their prior support that they are prepared to assume this role.^{1 1 3}

113. The organized bar, however, must continue to inform and educate lawyers and bar associations as to their responsibilities toward the L.S.P. if the program is to receive truly effective support. *See supra* notes 33, 34.