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“THOU SHALT NOT RATION JUSTICE”:
THE LAW AND THE POOR MAN
IN THE SIXTIES

Marshall S. Shapo†

I

THE BACKGROUND

Some of the crucial questions dealing with the prevention of in-
justice in our system concerning the legal rights of poor Americans
are in many respects rather different questions than the ones that were
being raised in the 1930’s. When my parents became engaged the day
after Roosevelt closed the banks, when in the same year my father
was writing a Note in the Temple Law Quarterly on housing legisla-
tion,1 discussions of the kinds of issues raised today about law and
poverty would have seemed fantasies to most lawyers. But waves of new
events have produced different challenges to our legal system.

The legal problems of the poor begin and end with hunger and
degradation and are tangled with politics, ancient rules, and the elec-
tronic promises of Utopia. In a memorable passage, Schlesinger de-
scribes November of 1930: the apple peddlers on the street corners;
moving families living on beans without salt or fat; men on the lower
level of Chicago’s Wacker Drive, feeding night fires with stray pieces
of wood while automobiles sped along above, “bearing well-fed men to
warm and well-lit homes.”2 The invitation of a white southern doctor,
issued in hearings in 1967, made it painfully evident that the misery
of the 1930’s had not faded:

[Let] Senators Eastland and Stennis . . . come with me into the
vast farmlands of the Delta, and I will show them the children of
whom we have spoken. I will show them their bright eyes and in-
ocent faces, their shrunken arms and swollen bellies, their sick-
ness, and pain, and the misery of their parents.3

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University. This essay was substantially delivered as a talk to the Law Library Institute
in Milwaukee, Wisconsin, on June 2, 1969.

1 Note, Recent Trends in Housing Legislation, 8 Temp. L.Q. 99 (1933).
2 A. Schlesinger, Jr., The Age of Roosevelt: The Crisis of the Old Order 168
(1957).
The team of doctors of which he was a member suggested that "'malnutrition' is not quite what we found; the boys and girls we saw were hungry—weak, in pain, sick . . . . They are suffering from hunger and disease and directly or indirectly, they are dying from them—which is exactly what 'starvation' means."4

One of the two most outstanding documents in the history of poverty in America in this decade was Michael Harrington's little book, The Other America.5 Its memorable snapshot of the migrant mother breast-feeding her four-year-old because it was the only food she had for him is, as he says, eerily reminiscent of the final scene of the Grapes of Wrath. But Harrington's book was more than a chronicle of starvation. It was a story of hopeless and despairing people who were being left in the exhaust of the splendid vehicles rolling along the Wacker Drives of America. His picture of the unemployment rates of black Americans, of psyches driven by the tensions of being poor in a society of growing wealth, and of the final drain on the dignity of welfare clients by the probing of the caseworker is said to have moved a new President of the United States to declare "war on poverty."

The progress of the 1960's has produced a better world for many residents of The Other America. As he left the post of Secretary of Health, Education and Welfare, Wibur Cohen claimed that the forty million people living in poverty in 1960—Harrington's minimum figure in 1962—had been reduced to perhaps twenty-two million by the opening of 1969.6 Even this figure, however, places more than one American in ten below the line of poverty, and a second fundamental document in the recent intellectual history of the subject reflects one terrible harvest of these statistics. The Report of the National Advisory Commission on Civil Disorders dealt with 164 occurrences of urban upheaval in a nine-month period in 1967. The eight classified as "major" invoke the names of great cities as labels for horror and violence; the names of Newark and Detroit are permanent symbols of the tensions of poverty becoming unbearable. Although the Riot Commission made a general indictment of "white racism," it is its particularization of life in black urban America that compels the attention of those who seek to understand the problems of law and poverty in the United States. Among the problems spotlighted by the Commission were the

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4 Id.
disproportionate crime rates in the core cities, a condition that contributes mightily to the residents' insecurity.\textsuperscript{7} The inflated prices that urban blacks pay for their groceries, which rise even more on the days when welfare checks arrive; the bleak story of unemployment, under-employment, and educational deprivation; the awful rates of infant mortality; and again the degrading aspects of "The Welfare"—all these were made by the Commission to pass like grim horsemen before the reader.

The reason for recounting this melancholy listing even in brief fashion is to observe that each of these issues is closely tied to some legal doctrine, some statutory command or deficiency, or some policy of societal appropriation. In short, a great many of the problems of the poor are essentially "legal" problems at a time when government is increasingly dependent on a feeling among its citizens that they have rights that are vindicable. It is therefore critical what kinds of legal services are provided to underprivileged Americans.

II

THE POOR MAN AND LEGAL SERVICES

The idea of providing free legal aid for poor people arose before 1900, but only about 50,000 people had benefited thereby by the end of World War I. The greatest figure in the Legal Aid movement before the "War on Poverty" was Reginald Heber Smith, whose book \textit{Justice and the Poor}, published in 1919, is a landmark in any bibliographical history of the subject. The impetus provided by Smith and other distinguished Americans led to increased legal aid over the next decades, particularly in the years after World War II.\textsuperscript{8}

In the sixties a quantum leap took place. A bellwether in this development was the Supreme Court's decision in \textit{Gideon v. Wainwright},\textsuperscript{9} which recognized a federal constitutional standard requiring legal representation of indigent defendants in felony trials. Subsequent cases have spelled out this right to counsel in criminal matters in greater and well-publicized detail.

\textsuperscript{7} Paradoxically, the Commission pointed also to the "deep hostility" between police and residents. \textit{REPORT OF THE NAT'L ADVISORY COMM'N ON CIVIL DISORDERS} \textbf{135} (1968).


Partly as a result of judicial concern with the right to counsel, various scholarly essays began to lay bare the facts on how the legal system discriminates against the poor in many cases all over the legal spectrum. One of the most brilliant treatments was written by the late, blind Berkeley scholar, Jacobus tenBroek, who argued compellingly that California had built up over the last century what was truly a "dual system of family law"—one set of laws for the main body of its citizens, and another for those who were poor. Another factor in the growth of legal services was a remarkable article, "The War on Poverty: A Civilian Perspective," by a pair of young Yale lawyers, Edgar and Jean Cahn. The Cahns recognized the necessity for the traditional kinds of legal aid—securing divorces for those whose married lives were torn irreparably, raising champions for individual tenants opposing landlords who refused them heat because of refusal to comply with illegal demands, and defending the poor against loan sharks. For them, however, the poor needed much more in the way of legal services than specific law suits in trial courts. The article emphasized the possibilities for law reform achieved by appellate litigation aimed at the nullification of unequal laws or unfair regulations, by negotiation on behalf of groups of poor people seeking a fairer share of municipal services, and in general by communicating to poor communities a sense of their rights under the law.

The Cahns and their article helped guide the construction of the Office of Economic Opportunity's legal services program, which today embraces more than 700 neighborhood law offices. In 1968 these offices extended legal services, ranging routinely from representation of individuals in divorce cases to unspectacular landlord-tenant and installment sales litigation, in 500,000 cases. In fiscal 1967 neighborhood lawyers won two-thirds of the appeals they filed, averted or won stays of eighty-six percent of eviction cases, and achieved reversals in sixty-two percent of hearings involving cut-offs of public assistance. It should be emphasized that all this legal service was free, and that these lopsided percentages represent abstract rights that never would have been realized without that service. Beyond this routine litigation, these offices, as well as related groups of like-minded lawyers, already have begun to chalk up successes in cases with great quantitative sig-

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nificance. Typical of this kind of case is King v. Smith,\textsuperscript{14} decided by the Supreme Court in June 1968. The plaintiff in that case was Mrs. Sylvester Smith, a mother of four. She had been receiving Aid to Families with Dependent Children, a major public assistance category financed mostly by the federal government, but administered primarily by the states. The Alabama Board of Pensions and Security, which oversaw the program for the state, had adopted a regulation ostensibly designed to discourage immorality in general and the production of illegitimate children in particular. The federal statute setting up the program granted aid to children who were "deprived of parental support," but the Alabama agency barred them from assistance if they had a "substitute father." This term was defined to include, among other things, men who did "not frequent the home but cohabit[ed] with the child's natural or adoptive mother elsewhere." Under this regulation the state barred Mrs. Smith from aid because of her alleged intimacy with Mr. Williams, the father of nine children himself, who lived with his wife and family but allegedly visited Mrs. Smith on the weekends. Despite the clear lack of any obligation of Mr. Williams to support Mrs. Smith, Alabama applied its regulation to their alleged weekend trysts and denied benefits.\textsuperscript{15} On appeal the Supreme Court held that Alabama's substitute father regulation conflicted with the purpose of the Social Security Act and invalidated it. Another example is Levy v. Louisiana.\textsuperscript{16} There, suit was brought on behalf of five illegitimate children for their mother's death and her pain and suffering caused by injuries alleged to have been tortiously inflicted. Every American state has statutes which allow suits by various relations—including "children"—for "wrongful death" and "survivor" damages. The Louisiana courts, however, had dismissed the Levy suit on the ground that "child" in the Louisiana death statute meant "legitimate child." The Supreme Court reversed, holding this classification to be a denial of equal protection.\textsuperscript{17}

Several points may be made in connection with cases like these. One is that the legislation and thought of the sixties have produced lawyers who will take indigents' cases like Mrs. Smith's into all the

\textsuperscript{14} 392 U.S. 309 (1968).

\textsuperscript{15} It might be pointed out that Mrs. Smith hardly fits what one suspects must have been Alabama's stereotype: she worked for a living—or at least, she worked, although how much of a living she earned was debatable. Her salary was between $16 and $20 a week for a 3:30 a.m. to noon shift as a cook and waitress. Id. at 315.

\textsuperscript{16} 391 U.S. 68 (1968).

\textsuperscript{17} In a companion case, the Court held it a denial of equal protection to bar a mother's suit for the death of her illegitimate son. Gliona v. American Guar. & Liab. Ins. Co., 391 U.S. 73 (1968).
courts of the land. Another is that *King v. Smith* and *Levy v. Louisiana* are decisions with considerable effect beyond restoring to Mrs. Smith her A.F.D.C. allotment and obtaining damages for the Levy children. Indeed, they are reverberating yet throughout state welfare departments and have raised even fresher issues for attorneys concerned with legal representation of the poor. Still another is that lawyers and judges are resting no longer on the ancient conventions of what constitutes "legal materials." Poverty litigation presents subtle relationships in all areas of the humanities, because it involves allocations of funds that are not unlimited, strands of slightly veiled racism, the needs of individuals for affection and gratification, and the great intellectual problems presented by the attempt to make "cooperative federalism" work. In *Smith* the Supreme Court cited books and articles on the theory and background of public assistance programs, mostly for historical purposes; and judges in the future may draw much more heavily on "non-legal" literature, including that of the psychotherapeutic disciplines, economics, and political science, to solve this kind of case. For example, resort to such references seems necessary if courts are adequately to spell out the premises as to the nature of family life implicit in Justice Douglas's opinion in *Levy*.

Even after these successes, however, the viability of a legal services program has been challenged. Just two years after they had inspired the program, the redoubtable Cahns questioned whether the poor did not need a substantially modified legal system rather than better access to the existing one.¹⁸ Positing an "inflation" that was operating to drive the price of justice even farther beyond the ability of the poor to afford it, they argued that the middle class had developed a "network of privately negotiated consensual agreements" which served to minimize its contact with lawyers, noting that as a last resort either side could threaten to hire a lawyer and "utilize all the law's subtlety, delay, refinement, insensitivity and winner-take-all principle to vitiate the worth of victory for either side."¹⁹ Abjuring faith that just providing more and more lawyers for the poor would solve these problems, they made several new and far-ranging proposals, the central one being the creation of a neighborhood court system manned primarily by neigh-

¹⁸ New legal service programs for the poor cannot ... rest with providing the poor with greater opportunity to use a legal system which the middle class has found to be obsolete, cumbersome—and too expensive in monetary, psychological and temporal terms.

¹⁹ Cahn, *supra* note 18, at 938.

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They envisioned tribunals that would have the power to make investigations and decisions on a wide range of problems of great significance to poor people, ranging from allegations that policemen were revoking licenses unfairly to charges that school principals were submitting budget requests that were insufficient for hot lunches and recreational equipment as well as educational materials.\(^2\)

For some at work in the field, however, the Calms' brilliance had outrun the potential of politics; in any event, it seemed irrelevant to the immediate pounding of the caseload upon their doors. For Brian Olmstead, a District of Columbia neighborhood lawyer, legal services was not a matter of dealing with "ultimate issues," but of "attempting to get the most minimal concept of law to have some relation to reality." Even in the application of established law in individual cases, the hurdles seemed gigantic. A federal court of appeals had held that unconscionability could be used as a defense in contract cases;\(^2\) but, said Olmstead, "[Y]ou go into court on the cesspool level at which we practice . . . you talk about unconscionability, and the answer of the judge is, 'Don't give me that liberal garbage.'\(^3\)

This antinomy between those who theorize about legal services and those who purvey them characterizes much of the debate over the direction of legal services. Many are prone to sneer at "putting the band-aid" on grave social illnesses. For those in the offices, however, pressed by the father stricken with bleeding ulcers, his tubercular wife who yet wants work, and the specter of their starving child—all about to be evicted from their wretched apartment—it is enough to keep a roof over their heads. It is not practical to discuss ultimate solutions.\(^4\)

\(^{20}\) Id. at 950-55.

\(^{21}\) For a review of a subsequent reiteration of this approach by the Cahns see Shapo, Book Review, 62 Law Lib. J. 107 (1969). To round out one aspect of the history of this subject, it should be noted that the original architects of the legal services program have set out a brilliant extension of their probe of institutional frameworks aimed at securing for the poor greater participation in our democracy. The Cahns, using as a springboard the cut-off of federal funds to a Mississippi poverty program under severe political attack within the State, have suggested the creation of private "citizens advocate centers" to check the development of the "new sovereign immunity" inherent in abuses of bureaucratic power. E. Cahn & J. Cahn, The New Sovereign Immunity, 81 Harv. L. Rev. 929 (1968). \textit{See also} the contributions to the Symposium in 1 Conn. L. Rev. 201 (1968).


\(^{24}\) The illustration is no composite hypothetical, but a real case described to me recently by a former neighborhood lawyer in the nation's capital. It is not a picture unique in its horror.
III

THE ISSUES OF THE SIXTIES

No issues are more significant in poverty law than those dealing with welfare, for welfare may be called the quintessential law of the poor. All citizens at one time or another face problems dealing with the legal rules governing real property and with the law merchant, but only for the poor-by-definition is "The Welfare" a part of their daily lives.\(^{25}\) The Supreme Court's decision on the "man in the house" in _King v. Smith\(^ {20}\) has produced great repercussions in the chambers of current legal history, and the state welfare agencies charged with administration of the A.F.D.C. program have not been making a joyful noise about it. Accepting the decision that they cannot bar a family entirely from benefits because of the mother's occasional intercourse with a continuing partner, the agencies have begun to probe other possibilities. Does he contribute on a regular basis to her groceries? If so, should not that payment be deducted from her check, despite the fact that he is in no way legally obligated for her support or that of her children?\(^ {27}\) How significant is the length of their relationship or his "fatherly" interest in her children when they do not hold themselves out to the community as being married? And other questions are being put before the courts. The Supreme Court recently struck down state requirements that welfare applicants must reside within the jurisdiction for at least one year to be eligible for benefits.\(^ {28}\) Still other dockets include questions like these: May a state impose maxima on the amount of grants to families with more than a stated number of children? How much must the state take into consideration the actual cost of necessaries in figuring the size of grants? When and how may it legally cut off payments, even if a hearing procedure is granted?

These problems involve difficult questions of statutory interpretation and constitutional law, and require careful investigation of social, economic, and political realities. These difficulties were brought home to me with special force at a hearing of the Texas Welfare Appeals Board two years ago. The members of that board impressed me as decent, able people, well grounded in the daily problems of disburs-

\(^{26}\) 392 U.S. 309 (1968).
ing limited funds to people on the verge of starvation, and seasoned in the atmosphere of state politics. Dealing with a "man in the house" case rather more difficult than *King v. Smith*, their questions reflected considerable anxiety about the possible effects of a decision in favor of the recipient. They seemed genuinely committed to helping poor people who could not help themselves, but truly fearful that an upsurge in welfare payments compelled by judicial or administrative decisions would bring legislative wrath upon the slender pocketbooks of the poor.

The great question beyond the amount of the grant, beyond the particular condition under which a welfare grant may be withdrawn, is whether there is in fact a "right to life" in our civilization. When earlier this year the *New York Times*, in an article reminiscent of Schlesinger's mining families, quoted a Mississippi mother of nine as saying that "We have pinto beans and bread. That's all for supper," and when on the same day the Secretary of Health, Education and Welfare said he is ordering a speed up of efforts to investigate the causes and extent of malnutrition in America, surely a "right to life" is overdue. Surely, in the words of a very tired chestnut, there ought to be a law.

Another cluster of problems that face the poor man has to do generally with living conditions. Within the boundaries of most large cities, there are several areas where the standard of housing drops sharply. The quality of municipal services falls off in the same precipitate way, and where well-paved roads become rutty dirt paths, legal services attorneys are beginning to see constitutional issues. Another group of issues arises with respect to discrimination in the sale or rental of housing. New legislation and decisions have come on the books in the last year in this area, but they want implementation. Still other issues concern the standards and procedures for admission to public housing. For example, may the moral or political life of an applicant for a publicly built apartment be taken into consideration in

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30 See, e.g., Arrington v. City of Fairfield, — F.2d — (5th Cir. 1969) (granting standing on a complaint charging that displacement in the absence of adequate relocation housing would deny thirteenth and fourteenth amendment right, as well as alleging discriminatory denial of municipal services); Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920 (2d Cir. 1968) (upholding the right of displacees to sue as a class).


accepting or denying that request. In other cases involving landlords and tenants, lawyers for poor tenants are using recent scholarship to support complaints theorizing that abuses perpetrated by “slumlords” are tortious. For example, legal services attorneys are suing a Chicago landlord to compel him to repair an apartment in which they allege children were poisoned by lead from peeling paint and broken plaster. Tenants also are claiming that it is unlawful to evict them in retaliation for their charges of housing code violations. Under a statute allowing the withholding of a month’s rent, they are seeking to establish that they may make monthly payments for major repairs totaling four months’ worth, so long as their monthly installments to the repairman do not exceed the rent for any one month.

In the area of the law merchant, lawyers for the poor have been attacking various aspects of overreaching. The inability of a party to a contract to speak or write the language in which it is written is being pleaded as a defense. Legal services attorneys for the poor of many cities are handling impoverished clients’ litigation against smooth-talking “home renovation” salesmen who charge exorbitant prices for shoddy goods. Washington lawyers are attacking utility company practices, alleging excessive charges, discriminatory and arbitrary deposit requirements and the assignment of credit ratings that vary widely by geographic area. A group of clients in the national capital area are testing whether a new federal rule of procedure will allow them to sue as a class against what they claim is the fraudulent conduct of a credit company which advertises that it can reduce debts and rescue them from creditor harassment.

The competing social interests involved in the problems of the poor man’s marketplace are difficult to resolve, and visceral reactions

33 See Thorpe v. Housing Authority, 393 U.S. 268 (1969), in which the complainant alleged that she was evicted for political activity in organizing other tenants. The case resulted favorably for her in her second hearing in the Supreme Court, which said that she was entitled at least to the reasons for her eviction.


35 Lest this appear a solitary piece of driftwood on the legal shore, it should be pointed out that of 31,000 Chicago slum children screened in 1967, 757 were found to have toxic levels of lead in their bodies. Lead Poisoning Attacked by Chicago LSP, 2 LAW IN ACTION, March 1968, at 5. See also Unsuspected Lead Poisoning, TRIAL, Feb.-Mar. 1969, at 58.

36 See Edwards v. Habib, 397 F.2d 687 (D.C. Cir. 1968), in which a reversal was secured for the tenant. Interestingly, she was represented by Brian Olmstead, quoted in the text accompanying note 28 supra.

sympathetic to the poor client may not always withstand analysis. Although studies have shown that the poor do in fact pay more for their goods, Elman in his journalistic treatment *The Poorhouse State* draws a sympathetic and compelling picture of the small slum grocer who sells a slice of bologna at a time, working fourteen hours a day, seven days a week for a very small profit margin in a high-risk neighborhood. The slum grocer may serve an important social function, since poor people, lacking automobile transportation, are generally forced to purchase food in their immediate neighborhood. Yet the fact that slum markets raise their prices a day or two after the arrival of welfare checks brings bitterness as well as a few extra dollars. With other goods the poor lack the information and sophistication, as well as the transportation, to seek competition on prices and, more importantly, credit beyond their neighborhoods. They rely in many ways on slum merchants who charge prices and interest rates that are exorbitant in terms of what may be available a few miles away.

The problems will not always be solvable with reference to legal precedents and will require, ideally, a consultation of economic and sociological literature which lawyers often have eschewed. One of my students, whose efforts as a law intern helped put a relatively respectable loan company out of business, lamented to me that he was increasingly unsure of the social value of his action. For he knew that his erstwhile clients would now turn to even more marginal operators who would squeeze them even more brutally. At the end of the complicated involutions of these problems is the need for a fundamental and comprehensive revision of the law—but when one speaks of a true solution, one speaks of the abolition of poverty. And one is forced back upon the ad hoc, single-problem-oriented way that lawyers do things. Yet, as the Cahns have reminded us, there are choices to be made as to how lawyers spend their time, and the area of the modern law merchant presents serious questions bearing on that kind of allocation.

Another vitally significant category of issues concerns the right of access to the legal process itself. Poor men's lawyers are contending successfully that poor persons cannot be said to have "slept on their rights" in failing to pursue a lawsuit because they could not afford an attorney.

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40 One of my students, a former used car salesman, explains that the reliance becomes a psychological one in part, noting that the minority-group teenagers in Austin "just love" a used car dealer who is most notorious among attorneys who must try to bail poor customers out of his legal quicksand.
They are attacking financial barriers to the securing of divorces and are seeking the removal of bond requirements as a prerequisite to suits defending against eviction.\(^{41}\)

From the battle fronts on which these cases are being fought there have arisen more special issues within the ranks of legal services attorneys. Given the premises of the need to make equal protection a living thing throughout the law, and the need for the law to encourage a fearless supply of legal services to the poor, questions inevitably are posed as to the legitimate concerns of counsel for the poor. Although sneers about divorces representing a band-aid approach are bottomed on powerful arguments, the need for a divorce may represent the biggest problem in an impoverished client's life, and his ability to get it may be tied very closely with his general respect for the legal system.\(^{42}\) Yet one longs for an expanded role for the legal services lawyer, desires him to function on behalf of poor communities as house counsel does for a corporation. For example, large industries have on occasion exercised their muscle in communities in whose economic life they play a significant part, and effectively have integrated their housing.\(^{43}\) The kind of negotiation necessary to produce this result when the key parties may be willing but reticent has been historically the job of the lawyer. And indeed the wealthier citizens in our society use lawyers on behalf of formalized groups for just this kind of private negotiation. But, even agreeing that this function is appropriate to his job,\(^{44}\) how far does it take the poverty lawyer? Does it lead him to challenging residency rules and taking them to the Supreme Court if need be, a general Galahad on behalf of thousands of welfare clients? Does it drive him to lobbying for expanded welfare benefits at the state level, or guaranteed income plans at the federal? In determining the proper role of the legal services lawyer, it must

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\(^{41}\) But a recent suit has been unsuccessful at the state supreme court level. State v. Sanks, 225 Ga. 88, 166 S.E.2d 19 (1969).

This kind of activity does not take place without gut-fighting response. The Governor of California, for instance, has railed against a successful legal services operation in that state, claiming that its representation of poor people in suits against state agencies should be prohibited—even though the foundation of these lawsuits is that the agencies are acting illegally.

\(^{42}\) Jeffreys v. Jeffreys, 57 Misc. 2d 416, 296 N.Y.S.2d 74 (Sup. Ct. 1969), holding that the city of New York should pay publication fees for an indigent party in a divorce action.


\(^{44}\) It should be remembered that there are more starving children in Mississippi than there are lawyers to take their individual cases to under-funded welfare agencies and to unsympathetic courts.
be borne in mind that his services may themselves create problems. One does not want a totally litigious world, with clients running about asserting incredible grievances stemming from imagined violations of diaphanous rights. A friend of mine who is an attorney for a state agency recently wrote me that legal services attorneys in his state were buzzing about tying up all kinds of governmental machinery with inadequately drawn complaints based on pie-in-the-sky theories. But although we do not want a world full of litigation, we do say that people should have their rights, and that their financial condition should be neutral in the determination of those rights, both as to access to services and the decision on substantive grounds. A related problem—and one that will not be downed easily—arises when the party opposing the poor client is not a state agency but a private party, not impoverished but not wealthy either. Legal services attorneys have not failed to notice that they may squeeze such adversaries unmercifully in cases involving money just above the small claims level—the choice is to hire an attorney to stay in court for more time than the case is worth, or to give up on what is in some cases a meritorious position.

However the question of whether poverty lawyers should work on a small or a grand scale is resolved, there are further problems arising from their potential role as publicists. It is a cardinal principle of jurisprudence that the law be known. But all too often this is not the case when the legal position of the indigent is involved. Educating people in the existence of the most fundamental rights, if done by lawyers, may run afoul of condemnations of solicitation of legal business, even though the cases may not involve the generation of fees. The kind of education that is unnecessary for wealthier potential clients may be thought by old-line lawyers to be “stirring up litigation” among the poor—and yet it may be a prerequisite to the realization of equal protection.

45 It was necessary for me to write three letters, one to a United States Senator, to flush from the Department of Health, Education and Welfare its Handbook of Public Assistance, one of the fundamental documents in the welfare area. Two of my students have had similar problems in keeping up to date with revisions of state welfare regulations:

An even greater obstacle to the preparation of an effective appeal is that the Manual [of the Texas Welfare Appeals system] itself frequently does not contain up-to-date information. It is supplemented at frequent intervals by Departmental executive or “E” letters that delineate the latest policy changes, and although these memoranda are eventually incorporated into the Manual, they are not included when a Manual is checked out.


The special problems of poor Americans are the problems of us all; we are linked together indissolubly by a common destiny. It is traditional to support that statement with words flavored with the notion that equality is the essence of the American dream, and that we fail to realize that dream as we fall short of that goal. But although I feel much that way in my heart, let me suggest that the dependence we all have on one another is rather more practical. When legal services attorneys attack poor people's problems as consumers, they are setting the foundation for greater protection of us all, for in our role as purchasers of products in this impersonal and technical economy, we are all as powerless in many ways as are poor people generally. Indeed, the movement which has brought expanded legal services to many poor Americans raises serious questions about the availability of legal services to all of us. Although there is argument that the middle class has solved the problem of buying justice, the recent testimony of a lawyer in a letter to the Harvard Law Record points out that in many cases it is the middle class that has significant problems in affording that commodity. "Many good rights die on the vine," he wrote concerning commercial problems, "because they cannot be handled on a contingency." The increasing availability of legal services should serve to hasten the day when equal justice—and more justice—will rule the relations between all Americans. Further, the push for more justice for the poor necessarily will bring into the public eye—as it is doing already—serious questions about the economic allocations our governments are making. The questions of whether municipal services will be uniformly provided or expressways flung through the modest homes of the poor without adequate planning for relocation have broad implications throughout our national life. Municipal services or moon shots raise at bottom a question of justice.

When a great American judge said that the first commandment of our legal system is that we shall not ration justice, he was not indulging cheap sentiment. Checking the abuse of government power and preventing encroachments on human dignity are problems for everyone in an increasingly complex society. The quality of equality under the law is not only an abstract constitutional concept but a practical crucial determinant of the nature of our national existence. The question of what we as the ultimate governors are willing to invest in justice is one that truly affects us all.

47 See p. 49 supra.