



1976

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Recommended Citation

Anthony M. Champagne, *Lawyers and Government Funded Legal Services*, 21 Vill. L. Rev. 860 (1976).

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LAWYERS AND GOVERNMENT FUNDED LEGAL SERVICES

ANTHONY M. CHAMPAGNE†

I. INTRODUCTION

ONE OF THE MOST widely discussed topics in the research on federally funded legal services (legal services)¹ is the relationship of legal services with the organized bar and the bar's individual members.² At the national level, the legal services program has consistently received support from the American Bar Association (ABA),³

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1. This article focuses primarily on legal services programs as they existed under the authority of an amendment to the Economic Opportunity Act of 1964, Pub. L. No. 90-222, § 222(a)(3), 81 Stat. 698, *as amended*, 42 U.S.C. §§ 2996 *et seq.* (Supp. V, 1975). The Act provided that the purpose of the legal services program was the

further[ance of] the cause of justice among persons living in poverty by mobilizing the assistance of lawyers and legal institutions and by providing legal advice, legal representation, counseling, education in legal matters, and other appropriate legal services.

Id.

Recent amendments replace the legal services program funded by the Office of Economic Opportunity (OEO) with programs funded by a newly formed private nonprofit corporation, the Legal Services Corporation. Legal Services Corporation Act of 1974, 42 U.S.C. §§ 2996 *et seq.* (Supp. V, 1975). The stated purpose of the Legal Services Corporation Act of 1974 (Corporation Act) is "to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel and to continue the present vital legal services program . . ." *Id.* § 2996(2). Aside from providing a new funding entity for the legal services program, the extent to which the Corporation Act will change the basic operation of legal services is as yet unclear.

The report of the House Committee on Education and Labor, concerning the version of the Corporation Act that was subsequently adopted by the Conference Committee in slightly altered form, suggested that one of the motivating forces behind the formation of an independent legal services corporation was the conviction that the Legal Services program, in order to remain effective . . . should and must be placed in an independent corporation free from any outside interference, political or otherwise. Such a private nonprofit corporation will assure this program's independence and will protect the integrity of the lawyer-client relationship. H.R. REP. No. 247, 93d Cong., 1st Sess. 3 (1973). Accordingly, the new Corporation Act established certain limitations upon the activities of recipient organizations, such as prohibiting recipient organizations from bringing actions relating to the desegregation of certain schools, or actions relating to nontherapeutic abortions. 42 U.S.C. § 2996f(b) (Supp. V, 1975). The effect of such limitations may be to shift in importance the goals of the prior legal services program, especially those goals relating to law reform. For a more detailed discussion of these limitations, *see* note 26 *infra*.

2. *See, e.g.,* Hannon, *Legal Services and the Local Bars: How Strong is the Bond*, 6 CALIF. W.L. REV. 46 (1969).

3. *See, e.g.,* Pye & Garraty, *The Involvement of the Bar in the War Against Poverty*, 41 NOTRE DAME LAW. 860, 865-66 (1971).

but only in return for certain concessions involving ABA control of legal services.⁴ At the local level, support for legal services has been much more erratic.⁵

While many legal services projects have experienced some opposition from the legal community throughout their operation, such opposition is generally much more evident at the initial stage of local project development than at any other time.⁶ When projects are first established, some members of the legal community, uncertain about the project goals, have been concerned that legal services may be the first step in bringing socialism to the legal profession.⁷ Others have contended that those from lower socioeconomic groups are not in need of federally funded legal services — either because their legal problems are not sufficiently serious to warrant the program, or because pro bono work and the traditional legal aid societies can supply the necessary services.⁸ Additional criticisms which have been leveled at the legal services program by local bar associations include: 1) the program will cause a radicalization of poor people;⁹ 2) it

4. Obtaining support from a conservative ABA has often required the compromise of the program's original goals, particularly that of reforming areas of the law which discriminate against the poor. R. Pious, *Advocates For the Poor: Legal Services in the War on Poverty* 388-90 (1971) (unpublished doctoral dissertation in Columbia University Library) [hereinafter cited as *Advocates for the Poor*]. This aspect of bar politics is portrayed in Pious, *Congress, the Organized Bar and the Legal Services Program*, 1972 WIS. L. REV. 418. See also E. JOHNSON, *JUSTICE AND REFORM* 67-69 (1974) [hereinafter cited as *JOHNSON*].

5. See generally Champagne, *The Internal Operation of OEO Legal Services Projects*, 51 J. URBAN L. 649 (1974), where, utilizing the Kettelle and Auerbach, Corporations' surveys relied upon herein (see text accompanying notes 17-23 *infra*, board members of OEO funded legal services project were interviewed concerning their perceptions of local community support for these projects. A majority of the board members felt that the local bar demonstrated a hostile attitude toward the projects, particularly where controversial cases had been handled. A large percentage of the board members maintained that the projects had no benefactors at all in the local community. Those who felt that advocates of the project did exist in the community ranked the legal community (the organized bar, attorneys, and judges) lowest in their support, while potential recipients of the services, government employees, and politicians were perceived to be most sympathetic. *Id.* at 657-59. See also Pye & Garraty, *supra* note 3, at 867.

6. There have been instances where segments of the legal community have attacked the activities of the local legal services project, even after it had been in existence for a considerable period of time. One local bar association even hired a private detective to investigate a project in an effort to determine whether any questionable activities were involved. (The Office of Legal Services maintained files of evaluation reports on each local project. These reports, ranging in length from short essays to volumes, describe the projects and indicate their particular strengths and weaknesses. The author was given access to some of these files in the course of his research, the contents of which have not been made available to the general public.)

7. Davidson, *Legal Aid/Socialized Law?*, 22 J. MO. B. 321 (1966). See generally Bethel & Walker, *Et Tu, Brute!*, 1965 TENN. S.B.A.J. 11, 26.

8. Pye, *The Role of Legal Services in the Antipoverty Program*, 31 LAW & CONTEMP. PROB. 211, 219-20 (1966).

9. *Id.* at 244.

will increase the volume of litigation; 3) legal services attorneys' actions are contrary to the Canons of Ethics;¹⁰ and 4) the program may cause financial loss to the private bar.¹¹

While the tenor of these criticisms might lead one to believe that projects function autonomously at the local level, the legislative intent was otherwise. Although the ABA's support has been an important factor in the survival of the fledgling legal services program on a national level,¹² Congress intended that local bar associations be the primary determinants of the local projects' policies. Thus, the legislation which created legal services stated that members of both state and local bar associations should be consulted regarding the operation of the project, and that they should be afforded an opportunity to submit recommendations both prior to and following authorization of the creation of a new project.¹³ Project funding frequently depends upon endorsement by the state or county bar association,¹⁴ and a project often requires the support of local attorneys who volunteer their time to carry out activities of the project until it becomes fully staffed.¹⁵ The local bar association may also perform a public relations function by educating the public, as well as members of the bar, concerning project activities, and by defending those activities when necessary. One evaluation of the legal services program concluded that the projects have "rarely been able to enlist active and continuing bar association support" for the latter task, however.¹⁶

10. See Bethel & Walker, *supra* note 7, at 16-18; Pye & Garraty, *supra* note 3, at 874-80.

11. Pye & Garraty, *supra* note 3, at 880-85. Their arguments have prevailed a number of times, thus preventing, at least temporarily, the establishment of legal services projects in several areas of the country. Advocates for the Poor, *supra* note 4, at 171-72.

In some instances, opposition to legal services has forced a change in the mode of delivering legal assistance to the poor, rather than its elimination altogether. For example, in Fremont, California, local bar opposition caused abandonment of plans for a legal services project which was to be subsidized directly by the Government. In its place, a judicare program was established whereby members of the bar would volunteer to provide the services, and would be reimbursed by the Government in accordance with a specified fee schedule. H. STUMPF, COMMUNITY POLITICS AND LEGAL SERVICES 205-30 (1975) [hereinafter cited as STUMPF].

For further explanation of the issues which divided some members of the bar with respect to their support of the legal services program, and a description of the devices utilized to prevent establishment of legal services projects, see JOHNSON, *supra* note 4, at 89-90.

12. See note 3 *supra*.

13. Economic Opportunity Act of 1964, Pub. L. No. 90-222, § 222(a)(3), 81 Stat. 698, as amended, 42 U.S.C. §§ 2996 *et seq.* (Supp. V, 1975). See also STUMPF, *supra* note 11, at 183-204.

14. See AUERBACH CORPORATION, OFFICE OF LEGAL SERVICES INDIVIDUAL PROJECT EVALUATIONS: FINAL REPORT 2-17 (1971) [hereinafter cited as AUERBACH REPORT].

15. *Id.*

16. *Id.* at 2-18.

It is clear that the attitude of the legal community toward legal services may determine the success or failure of an individual project. This article seeks first, to examine empirically the relationship that exists between the various segments of the legal community and the legal services program; second, to isolate the sources of legal community support; and finally, to suggest factors that may determine the attitude adopted by diverse groups within the legal community.

II. THE DATA

The data relied upon in this article was obtained from three sources:

1. An evaluation of 201 legal services projects,¹⁷ conducted by the Auerbach Corporation under contract with the Office of Legal Services. This study assessed the effectiveness of each of the projects in delivering legal assistance to the poor,¹⁸ selecting its analysts from the Auerbach staff on the basis of prior experience in evaluating poverty and urban programs.¹⁹ Lawyers and judges were considered to be important sources of information concerning the competence of a project's legal staff and the success of its law reform activities.²⁰ Thus, the legal community's appraisal of legal services was recorded in interviews by the Auerbach analysts, and the conclusions derived therefrom are included within the final report.²¹

2. A study of 37 legal services projects, conducted by the Kettelle Corporation²² under contract with the Office of Economic Opportunity (OEO). While this study is primarily a cost-benefit analysis of the legal services program,²³ the study was comprehensive, and included interviews with a large number of attorneys and judges who the staff believed would provide views representative of the legal community. Responses elicited in these interviews help to illustrate how certain segments of the legal community view legal services.

17. The 201 projects evaluated comprised approximately 80% of the total legal services program. The evaluation did not include 45 other projects, the National Back-Up Centers, and the VISTA program. *Id.* at 1-5.

18. *Id.* at ¶¶ 1.1 -3.3.

19. *Id.* at ¶ 3.2.1.

20. *Id.*

21. *Id.* at ¶ 5.3.

22. KETTELLE CORPORATION, EVALUATION OF ECONOMIC OPPORTUNITY LEGAL SERVICES PROGRAM: FINAL REPORT (1971) [hereinafter cited as KETTELLE REPORT]. The Kettelle Corporation is presently doing business as Kappa Systems, Inc.

23. The Kettelle study measured the extent to which the legal services program has provided the poor with greater access to the legal system, and computed the costs of providing legal services for these people in a government-funded program, as compared with the cost of providing the same service through the private bar.

3. Results of a survey of 410 attorneys engaged in private practice.²⁴ The questionnaire, formulated by the author, included numerous questions concerning the attorney's background as well as his or her attitude toward legal services. By comparing this background data with the views expressed by each attorney toward legal services, the author was able to determine the correlates of attorney favorability toward the program.²⁵

III. ATTORNEY SUPPORT FOR THE GOALS OF THE LEGAL SERVICES PROGRAM

In a report to Congress by the OEO, the goals of the legal services program were outlined as follows:

1. Provide quality legal services to the greatest number of poor people
2. Educate target area residents as to their legal rights and responsibilities
3. Ascertain what rules of law affecting the poor should be changed to benefit the poor and achieve such changes
4. Serve as advocate for poor clients in the social decision-making process
5. Help the poor in forming self-help groups
6. Involve the poor in the [program's] decision-making process²⁶

24. Since the name of the last attorney listed on every 10th page of the *Martindale-Hubbell Law Directory* was chosen for inclusion in the sample of respondents, there would appear to be no systematic bias in the method of selection for the sample.

25. For a critique of evaluations which have been conducted regarding legal services, see Berk, *Champagne's Assessment of Legal Services Programs: An Evaluation of an Evaluation*, 9 URBAN AFFAIRS Q. 490-509 (1974). See also Barvick, *Legal Services Program Evaluations*, 20 LEGAL AID BRIEFCASE 195-200 (1968).

26. COMPTROLLER GENERAL OF THE UNITED STATES, *THE LEGAL SERVICES PROGRAM — ACCOMPLISHMENTS OF AND PROBLEMS FACED BY ITS GRANTEEES* 7 (1973) [hereinafter cited as COMPTROLLER GENERAL]. See also UNITED STATES GENERAL ACCOUNTING OFFICE, *EFFECTIVENESS AND ADMINISTRATION OF LEGAL SERVICES PROGRAM UNDER TITLE II OF THE ECONOMIC OPPORTUNITY ACT OF 1964* (1969).

Congressional enactment of the Legal Services Corporation Act appears to have decreased the importance of some of these goals. See 42 U.S.C. §§ 2996 *et seq.* (Supp. V, 1975). For example, the Corporation Act provides that no funds are to be used, directly or indirectly,

to influence the issuance, amendment, or revocation of any executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress of the United States, or by any State or local legislative bodies

42 U.S.C. § 2996f(a)(5) (Supp. V, 1975). The Act provides for exceptions, however, when: 1) it is necessary to protect an individual client's legal rights and responsibilities, or 2) the legal services lawyer is requested to do so by a governmental body. *Id.* § 2996f(a)(5)(A), (B). It remains to be seen whether the first exception will be interpreted broadly enough to permit any degree of lobbying for law reform. Nevertheless, it should be noted that the Corporation Act expressly distinguishes between acting in a manner necessary for the protection of a particular client's rights,

For the purposes of this article, the goals of legal services include: 1) individual representation; 2) law reform; 3) economic development; 4) community education; and 5) group representation.

TABLE 1
ATTORNEY ATTITUDES TOWARD OEO LEGAL SERVICES GOALS*
(KETTELLE SAMPLE)

	<i>No Need</i>	<i>Moderate Need</i>	<i>Substantial Need</i>
1. Individual Representation	4% (7)	11% (18)	85% (142)
2. Law Reform	23% (38)	16% (26)	60% (97)
3. Economic Development	22% (33)	23% (35)	55% (83)
4. Community Education	15% (23)	19% (30)	66% (104)
5. Group Representation	25% (25)	25% (25)	51% (53)

* Percentages rounded to nearest one-hundredth.

The Kettelle data, summarized in Table 1, indicates that attorneys²⁷ are generally supportive of the goals of legal services and recognize the need for such services within the lower income community. Nearly every attorney believed that the poor were in need of individual legal representation.²⁸ A majority of the attorneys

and soliciting an individual client or group in order to make such representation possible. *Id.* § 2996f(5)(A).

The Corporation Act has also limited other activities which were aimed at law reform and community action. Such prohibited activities include: 1) supporting or conducting training programs for the purpose of advocating particular public policies or encouraging political activities; 2) organizing, or encouraging the organization, of any organization, coalition, or other similar entity, unless such entity is formed for the purpose of providing legal services to eligible clients; 3) providing legal assistance with respect to desegregation of any elementary or secondary school system; and 4) providing legal assistance with respect to any proceeding which seeks to procure a nontherapeutic abortion. *Id.* § 2996f(b)(5)-(8). Thus, the Corporation Act appears to emphasize the providing of legal services on an individual basis while it de-emphasizes such goals as law reform, economic development, and group representation.

27. The following segments of the legal community were interviewed by the Kettelle Corporation: 1) private attorneys — 83; 2) judges — 79; 3) government attorneys — 38; 4) bar association officers — 27; 5) law school professors — 24; 6) justices of the peace — 4; 7) others — 2. KETTELLE REPORT, *supra* note 22.

28. A large proportion of the work performed by legal services involves individual representation of clients in divorce proceedings, procurement of stays of eviction, declarations of bankruptcy, and the rendering of other routine legal assistance. AUERBACH REPORT, *supra* note 14, at ¶ 1.3.1.

interviewed also expressed support for the other legal services goals, although to a lesser extent than for the individual representation goal.²⁹

The legal community often plays a direct role in the formulation of policy through representation on the boards of directors of legal services projects.³⁰ These boards have occasionally hampered the projects in their pursuit of goals other than individual representation, particularly law reform and community education. As the Auerbach study noted,

[b]oard[s] of directors which play an active role in determining policy, usually reflect a conservative local bar association. Since most boards are numerically as well as psychologically dominated by attorneys and since most boards have the power to veto the project's handling of particular cases, some bars have in effect been able to restrict LSP's [Legal Services Program's] caseloads to individual services.³¹

A possible explanation for the more favorable attitude toward the goal of individual representation on a case-by-case basis, than toward any other goal, is that individual case handling presents less challenge to the status quo; it is more consistent with the traditional "legal aid society"³² method of rendering legal assistance to the poor. Also, individual representation is more typical of the type of legal work

29. While most of the legal services projects do minimal law reform work, certain law reform specialists have made great strides in landlord-tenant law, administrative and welfare law, and consumer rights. *Id.* at ¶ 1.3.2. See also COMPTROLLER GENERAL, *supra* note 26, at 160. The project workers have found it difficult to engage in community education, economic development, and community representation/involvement. This deficiency has been attributed to several factors, including lack of bar support at both the regional and national levels. AUERBACH REPORT, *supra* note 14, at ¶ 1.3.3.

30. Pious, *Policy and Public Administration: The Legal Services Program in the War on Poverty*, 1 POL. & SOC'Y 373 (1971).

31. AUERBACH REPORT, *supra* note 14, at ¶ 2.2.1. Specific examples of such action cited in the Auerbach study include the Laredo, Texas board's proscription of class actions on the ground that they are inherently fee generating, and bar association criticism in Morgantown, West Virginia, that the project's community education program was unethical advertisement. *Id.*

A survey of board members, some of whom were not attorneys, revealed the following:

Twenty-eight per cent of the board members felt the boards extensively controlled the types of cases handled by the local projects; 22 per cent felt the boards exercised moderate control; and 29 per cent felt they exercised little or no control over the type of cases handled by the projects.

Champagne, *supra* note 5, at 655.

It should be noted that only 14 percent of the project directors interviewed in the Kettelle sample — those having responsibility for coordinating the projects on a daily basis — felt that the boards with whom they worked were not committed to the law reform goal. *Id.* at 657.

32. Funding for these legal aid societies was generally supplied by the private bar, which exercised extensive control over the types of cases which were accepted. See Hannon, *supra* note 2, at 47-49.

handled by private attorneys, and is more likely to be understood and appreciated by them.

The results of the Kettelle study suggest that supporters of the goals of legal services vastly outnumber the opponents, and that there is not the mass attorney opposition to legal services which was anticipated by several observers when the program was initiated.³³ While the legal community has expressed a generally favorable attitude toward legal services, those attorneys opposed to the program have been quite vocal and have made their influence felt to a greater extent than their numbers might suggest.³⁴ Considerable confusion exists, however, concerning these nonsupporters and the factors which motivate their distrust of the program. Is this distrust purely a function of the attorneys' individual personalities, or are these attitudes a product of environmental factors, such as the attorney's specialization, education, or economic status? The author has attempted to provide some insights into these questions using a statistical comparison of the characteristics and attitudes of the attorneys surveyed, and has formulated from this data some hypotheses regarding the sources of attorney support for legal services.

IV. SOURCES OF ATTORNEY SUPPORT FOR LEGAL SERVICES

The correlation matrix contained in Table 2, which is based upon data obtained by the author,³⁵ reveals the relationships among a number of variables which are relevant to a determination of the source of support for legal services. Correlations are Pearson's r ,³⁶ and are statistically significant unless marked by an asterisk.

33. See, e.g., *id.* at 45-56. The belief was also expressed that attorneys were particularly opposed to the law reform goal of legal services. Hannon, *The Murphy Amendments and the Response of the Bar: An Accurate Test of Political Strength*, 28 LEGAL AID BRIEFCASE 163 (1970). The author accused OEO of neglecting to mention the law reform goal in its original guidelines, and maintained that this omission caused severe problems when the goal was emphasized later in the development of the program. *Id.* at 167. But see Johnson, *Refutation and Endorsement: A Reaction to Hannon's Analysis of the Murphy Amendment and the Bar*, 28 LEGAL AID BRIEFCASE 267 (1970). A fascinating account of law reform activity may be found in Abbott & Peters, *Fuentes v. Shevin: A Narrative of Federal Test Litigation in the Legal Services Program*, 57 IOWA L. REV. 955-1001 (1972). See also Clark, *Legal Services Programs — The Caseload Problem, or How to Avoid Becoming the New Welfare Department*, 47 J. URBAN L. 797-816 (1970).

34. See STUMPF, *supra* note 11, at 183-204; Bethel & Walker, *supra* note 7, at 11-26; Davidson, *supra* note 7. See also text accompanying note 31 *supra*.

35. See note 24 and accompanying text *supra*.

36. Pearson's r is a means of showing statistically the interrelationship between different variables through correlation analysis. Pearson's r ranges from +1, which represents perfect positive association, through 0, meaning no association, to -1, which indicates perfect negative association. W. BUCHANAN, UNDERSTANDING POLITICAL

TABLE 2
A CORRELATION MATRIX OF VARIABLES RELATED TO A
FAVORABLE ATTITUDE TOWARD LEGAL SERVICES†
(MAILED QUESTIONNAIRE SAMPLE)

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Legal Services Desirable (1)	---	-40	-18	+13	+19	-13	+13	+14	+24	-12	-12
Personal Injury Practice (2)	---	---	-02*	-30	+05*	+07*	-01*	-28	+02*	+20	+17
Protestant (3)	---	---	---	-10*	-27*	+24	-23	-12	-14	+07*	+09*
Upper-Income Clients (4)	---	---	---	---	+35	-05*	-13	+10*	-06*	-17	-14
Urban (5)	---	---	---	---	---	-06*	+09*	+03*	+26	-31	-20
Southern (6)	---	---	---	---	---	---	-02*	-13	+13	+07*	+04*
Economic Liberal (7)	---	---	---	---	---	---	---	+14	+17	+08*	-05*
Political Liberal (8)	---	---	---	---	---	---	---	---	+12	-06*	-10*
Lawyers Seen as Important for Poor (9)	---	---	---	---	---	---	---	---	---	-13	-07*
Defends Indigent in Criminal Cases (10)	---	---	---	---	---	---	---	---	---	---	+35
Defends Indigent in Civil Cases (11)	---	---	---	---	---	---	---	---	---	---	---

† Decimals were eliminated; statistically insignificant at .05 level.

VARIABLES 275 (1969). It should be noted that correlation coefficients are merely suggestive of a cause and effect relationship. None of the correlations reported here are large, so it is clear that the amount of variance explained is limited.

An analysis of the matrix suggests that an attorney's area of legal specialization or mode of practice may affect his attitude toward federally funded legal representation of the poor. For example, the data discloses a strong negative relationship between practicing as a personal injury lawyer and advocating legal services ($r = -.40$). Salaried corporation attorneys, however, tend to favor legal services, although the positive correlation of $+.15$ is not statistically significant.³⁷ This dissimilarity in attitude, it is submitted, stems from the fact that legal services may have a significant impact upon the financial security of an individual private practitioner, especially if his clientele is culled from the lower socioeconomic strata; whereas the effect upon the economic well-being of a corporation attorney would be negligible.³⁸ This hypothesis is supported by the negative correlation between practicing as a personal injury lawyer and having upper-income clients,³⁹ suggesting that personal injury lawyers tend to have more low-income clients.

The data discloses a general tendency for those attorneys who may lose clients to the program to disfavor expansion of legal services.⁴⁰ There is a negative correlation between favoring legal services and defending indigents in criminal ($r = -.12$) and civil ($r = -.12$) cases. On the other hand, there is a positive correlation between viewing legal services as desirable and having upper-income clients ($r = +.13$). The "solo" practitioner may entertain fears which do not trouble an attorney associated with a corporation or large law firm.⁴¹ Two commentators have noted:

The "solo" practitioner who ekes out a marginal existence representing individuals for less than adequate fees may not view

37. This datum is not recorded within the matrix in Table 2.

38. This theory has been advocated by several commentators. See, e.g., JOHNSON, *supra* note 4, at 85; Ladinsky, *The Impact of Social Backgrounds of Lawyers on Law Practice and the Law*, 16 J. LEGAL ED. 127, 139-42 (1963); Pye & Garraty, *supra* note 3, at 864-65, 880-85.

39. For the purposes of this study, a lawyer is defined as having upper-income clients if the approximate income of his average client exceeds \$14,000 per year.

40. Verbal responses to the questionnaire support this observation. For example, one attorney stated that he opposed the legal services program because lawyers are often able to obtain personal injury retainers under the guise of doing free work. Thus, he felt that legal services prevented lawyers seeking fee-generating cases from obtaining some of these retainers. Another attorney felt that it was almost always possible to get a fee from a divorce case, either from the wife or by obtaining a court judgment against the husband. Legal services diminished this source of income.

41. These fears are not unfounded; it has been noted that "[t]he kinds of legal problems brought to free legal service programs were the same as the kinds of problems brought to private lawyers." F. MARKS, *THE LEGAL NEEDS OF THE POOR: A CRITICAL ANALYSIS* 9 (1971).

the proposal for an expanded program of legal services the same way as the corporate lawyer on Wall Street His principal fears are that some of his clients may qualify for free representation; that other clients may compare the quality of his services unfavorably with those of the legal aid lawyer who, secure in a salary, may be able to spend more time in preparation . . . that legal aid lawyers may develop reputations for excellence and then hang out their shingles to compete with him Any of these dire predictions conjure up visions of financial loss which are not shared by his more affluent colleagues who depend upon a different clientele for their compensation.⁴²

Other variables appear to be related to a favorable attitude toward legal services. For example, urban lawyers⁴³ generally support the establishment of legal services programs ($r = +.19$). This urban factor also supports the proposition that attitudes are dependent upon economic factors, since there are substantial negative relationships between practicing as an urban lawyer and defending indigents in criminal ($r = -.31$) and civil ($r = -.20$) cases. The interrelationship of these factors is further supported by the fact that urban lawyers tend to have upper-income clients ($r = +.35$). The attitudes of attorneys toward legal services may result from ideological factors as well. A positive correlation between being both an economic and political liberal⁴⁴ and favoring legal services is one example of this ideological influence. While economic factors may continue to play a role in creating hostility toward legal services, an effort to educate the legal community concerning the goals of legal services may eventually eradicate the ideological barrier to support of the program.

V. JUDICIAL RESPONSES TO LEGAL SERVICES

Implementation of the goals sought to be achieved by legal services is very much dependent upon the judiciary — more specifically, upon the judiciary's assessment of its own role in accomplishing

42. Pye & Garraty, *supra* note 3, at 864. The authors also observed: To this group of private practitioners who fear competition of legal aid must be added another group which foresees financial loss resulting from the aggressive defense of cases which in the past they have won by default. These are the collection lawyers who make their living from a volume practice

Id. at 864-65.

43. For the purposes of this research, an urban lawyer is defined as one who maintains an office in a city of 100,000 or more persons.

44. Economic liberals are defined as those respondents who expressed agreement with the statement: "More government regulation of the economy should be introduced into our society." S. NAGEL, *THE LEGAL PROCESS FROM A BEHAVIORAL PERSPECTIVE* 199-212 (1969). Political liberals are defined as those respondents who expressed disagreement with the statement: "Only people with a definite minimum of intelligence and education should be allowed to vote." *Id.*

these objectives, and upon its evaluation of the services rendered by project attorneys and directors. The support of the judiciary is particularly important with respect to the goal of law reform, since the courts are capable of instituting meaningful changes in the law as it affects the poor through interpretation of statutes and administrative regulations and through the development of common law doctrines. One commentator has cited several examples of such modifications of the legal structure:

The common law is relevant to poverty, for it is an integral part of the legal system that currently distributes the nation's goods and services, including the purchasing power of dollar income received by the poor. The price they pay for major purchases and the quality of those goods is intimately related to whether the courts will cut outrageous prices as unconscionable whether the courts will void unreasonable contracts . . . and whether courts will prohibit evasion of usury laws through time and price differentials. . . . Similarly, the value of the poor man's housing dollar will be influenced by whether the common law gives him a right to withhold rent if the landlord is failing to maintain the apartment in a livable condition.⁴⁵

Table 3 contains the data⁴⁶ obtained by evaluators for the Kettelle Corporation. While only a limited amount of information is presently available regarding the judiciary's attitude toward the goals of legal services, the available data indicates that while individual representation of the poor is advocated by a clear majority of the judges studied, group representation and law reform were viewed as less important objectives.

45. JOHNSON, *supra* note 4, at 254. The effect that the judiciary can have upon the legal services program is exemplified by cases such as *Shapiro v. Thompson*, 394 U.S. 618 (1968). In *Shapiro*, the United States Supreme Court struck down a statutory provision denying welfare assistance to those residents of a state or the District of Columbia who had not resided within the jurisdiction for at least 1 year immediately preceding their applications for such assistance. This decision, which marked the culmination of a series of 16 cases instituted by legal services lawyers to challenge welfare residence laws, has been estimated to have increased the income of the poverty population by several million dollars per year. COMPTROLLER GENERAL, *supra* note 26, at 14-15.

46. Unfortunately, only 18 of the 79 judges interviewed were asked about their attitudes toward legal services goals.

TABLE 3
 JUDGES' ATTITUDES TOWARD OEO LEGAL SERVICES GOALS*
 (KETTELLE SAMPLE)

	<i>No Need</i>	<i>Moderate Need</i>	<i>Substantial Need</i>
1. Individual Representation	--- (0)	17% (3)	83% (15)
2. Law Reform	17% (3)	28% (5)	56% (10)
3. Economic Development	17% (3)	33% (6)	50% (9)
4. Community Education	11% (2)	22% (4)	67% (12)
5. Group Representation	29% (2)	43% (3)	29% (2)

* Percentages rounded to nearest one-hundredth.

In a survey conducted of judges located in the San Francisco Bay area,⁴⁷ which has a diversity of legal assistance programs,⁴⁸ the judges were presented with a list of activities in which legal services could engage, and were asked to respond with their views of each activity. Nearly all of those interviewed agreed that the program should pursue individual representation, community education, and law reform;⁴⁹ however, a "radical shift in judicial responses became manifest"⁵⁰ when the judges were asked whether legal services attorneys should serve as advocates for the poor in the social decision-making process. This activity, as well as assisting the poor in the formation of self-help groups and involving the poor in the legal services program itself, was deemed an activity unworthy of practice by the bar. Consequently, it appeared that the judiciary opposed any departure from the traditional "legal aid" representation to which they had become accustomed.

47. Stumpf & Janowitz, *Judges and the Poor: Bench Responses to Federally Financed Legal Services*, 21 STAN. L. REV. 1058 (1969). The authors initially interviewed 67 attorneys regarding judicial reaction to the legal services project of which they were a part. From the 112 judges named by the project attorneys, a sample of 23 judges was chosen, 18 of whom consented to be interviewed.

48. Programs operating in the San Francisco Bay area include judicare, legal aid societies, and legal services. Thus, judges in the area have been exposed to several methods of delivering legal assistance to the poor and have observed the important changes which may be brought about by a group concerned with law reform.

49. Stumpf & Janowitz, *supra* note 47, at 1073.

50. *Id.*

The judges were also questioned about their evaluation of the program and its attorneys. Although many of the judges initially professed a positive opinion, they became more critical when questioned about specific aspects of the program.⁵¹ The most frequent complaint concerned the performance of the program's attorneys; the judges alluded to the lawyers' inexperience, their appearance and lack of proper decorum, and their "social worker" attitudes in presenting cases.⁵² These and similar responses led those conducting the survey to conclude that legal services attorneys and their clients would have a difficult time obtaining completely objective decisions in many courtrooms.⁵³

The conclusion in San Francisco is reinforced by the findings of the Kettelle and Auerbach Corporations' evaluators when they interviewed legal services attorneys, private practitioners, and judges regarding the treatment accorded legal services' clients. The results of the Auerbach study are disturbing in the extent to which judges appear to be biased against legal services. Project attorneys reported that several legal services agencies consistently appear before courts in which litigation on behalf of the poor is apparently regarded as an unnecessary burden upon the court, while only a small fraction of the agencies found that judges were genuinely supportive of legal services.⁵⁴ While open hostility was present only in a few instances of individual representation, an overwhelming majority of the courts resisted law reform efforts. On the other hand, the Kettelle evaluation revealed that, in a small percentage of cases, judicial treatment of clients and project attorneys varied from that received by private attorneys and their clients, but that in a majority of instances clients were treated fairly.⁵⁵

While the data available thus far enables one to draw only tentative conclusions regarding judicial responses to legal services, it appears that the judiciary as a whole is supportive of the individual

51. *Id.* at 1065.

52. *Id.*

53. *Id.*

54. This conclusion was based upon the Auerbach Corporation data.

55. The author's conclusion is based upon Kettelle Corporation data. For an example of the results which can be achieved with judicial cooperation, see Bianchi, *Effects of Progressive Court Administration on Legal Services and the Poor in New Jersey*, 55 JUDICATURE 227 (1972). The joint efforts of the legal services lawyers and the court resulted in the establishment of alternative admission rules for legal services attorneys, the provision of automatic waivers of court costs for legal services clients, and the adoption of mechanisms for the expedition of public interest appeals. *Id.* at 227.

handling of cases by legal services, but that support for other legal services goals exists only to a lesser degree.⁵⁶

VI. CONCLUSION

This article has attempted to test, in a preliminary manner, the relationship between the legal community and legal services. It has been demonstrated that the legal community supports legal services through the ABA, but that local bar support is needed to implement all of the goals of the program.⁵⁷ Lawyers generally felt that of the alternative systems of legal representation for the poor, government funded legal services programs were the most desirable. While such support existed for the goal of individual representation of the poor, other goals espoused by the organization, such as law reform and group representation, found considerably less support in the legal community.⁵⁸

Those opposed to the legal services program generally possessed at least one of two basic characteristics: first, they were economically situated such that they competed with the legal services program for clients; and second, their ideologies were such that they were opposed to governmental intervention in providing legal assistance to the poor.

It may be possible to lessen opposition to legal services by including more attorneys on referral lists maintained by the project, in order that financially attractive cases may be channeled to a wider segment of the legal community. Furthermore, attempts at education may also prove to be successful in alerting attorneys to the non-radical character of legal services, and in emphasizing that legal services will not handle cases which will place the program in competition with private legal practice.⁵⁹ The greatest threat to legal services is likely to result from the vast increases in the number of lawyers, and the concomitant increase in competition for clients. As

56. Other research has suggested a lack of judicial objectivity with regard to minorities. See Nagel, *The Tipped Scales of American Justice*, in *THE POLITICS OF LOCAL JUSTICE* 114 (J. Klonoski & R. Mendelsohn eds. 1970).

57. See notes 12-15 and accompanying text *supra*.

58. See notes 28 & 29 and accompanying text *supra*.

59. The Corporation Act provides that no funds shall be available to recipients "to provide legal assistance with respect to any fee-generating case." 42 U.S.C. § 2996f(b)(1) (Supp. V, 1975). *But see* *Townsend v. Edelman*, 518 F.2d 116 (7th Cir. 1975), where the court, in dicta, interpreted such language as not precluding the court from awarding attorneys' fees to a legal services agency under the proper circumstances. The *Townsend* court noted that the Corporation Act's prohibition covered cases "where a fee was likely to be paid by a client," or where the prospect of a contingent fee or fee provided by statute is sufficient to retain a lawyer. *Id.* at 123 n.16.

this competition grows, the "marginal attorney," viewing legal services as a direct economic threat, will become more commonplace.

Perhaps greater support from ideologically conservative attorneys can be obtained to counteract the effects of economic pressure upon the bar. However, those concerned with the continuance of legal services must determine to what extent the original goals of the program will be sacrificed to obtain such support. For example, it is possible that an increase in support by conservative attorneys through a decrease in law reform activity would be too great a price to pay: if law reform is downgraded as a legal services goal, the result would be a "band-aid" approach to the representation of indigents, similar to the activities of the traditional legal aid society.⁶⁰ The underlying structure of the law which discriminates against the poor, would never be altered. It is submitted that only strong support for law reform from both the ABA and the federal administration will enable the program to attain its goal of law reform.

60. The goal of law reform may already be undermined considerably by the Corporation Act. *See* notes 1 & 26 *supra*. However, the restrictions placed upon legal services activities by the Corporation Act seem likely to increase attorney support for the program.