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The Private Practice of Urban Law

Tersh Boasberg

There is, today, a new and growing field of practice called urban law which is making fine copy for law review editors, creating exciting excuses for law school curricula changes, and providing law students with a chance to use the word "justice" on occasions other than when naming one of the nine members of the Supreme Court. It is also furnishing gainful employment to idealistic public lawyers, but has been perceived by the (realistic?) private practitioner only tenebrously. Hence the opportunity for this practitioner to light his candle and dispel the darkness.

The fledgling field of urban law has taken shape in the context of our awesome urban crisis — a crisis rooted in large part in the denial of social justice to 40 million Americans and marked by the failure of the legal profession to represent the unpopular cause and the unprepossessing man. The thrust of this article is that the legal profession — especially the private Bar — must seek to actively meet the urban crisis because: first, the crisis is significantly legal in nature and its solutions call for the application of legal skills; and second, the self-interest of the profession demands its greater concern. For unless the profession becomes more deeply involved, it risks permanent fragmentation into public and private segments, with the latter unable to provide a sufficiently attractive calling for the most imaginative and talented lawyers. Some would also argue that there is a third (overriding) reason, grounded in the assumption that our sins of omission have been a chief cause of the mounting racial violence and its concomitant of total police containment: the profession must make reparation for its past negligence and (by becoming involved) eliminate those two evils, which threaten fundamental change to our democratic institutions.¹

To help defuse the urban crisis the profession should move

¹ See remarks of William Stringfellow, PROCEEDINGS OF THE HARVARD CONFERENCE ON LAW AND POVERTY 6-11 (1967) [hereinafter cited as HARVARD CONFERENCE].
along three basic lines: (1) greatly expand legal services to the poor; (2) secure law reform and structural changes in the distribution of justice which are relevant to the demands of the city; and (3) fashion new vehicles for lawyer involvement in the quest for solutions to the crisis. Underlying all three approaches is the need to construct an economic rationale for the participation of the private Bar. This is not to say that the involvement of the private practitioner is the *sine qua non* to the solution of our urban problems. It may be, however, a prerequisite for the Bar to continue as a meaningful element in our society. At any rate, as a private practitioner, I want in, and I would like to point out just why I am needed.

Caution: I do not suggest that private attorneys could soon prove to be a panacea for all our urban ills. The plight of our cities will require an infusion of money, a realignment of power, and a resolution of will which the legal profession alone cannot provide. But if we can act now to meet the crisis, we can at least temper its ferocity, preserve a valued role for our profession, and perhaps account for a portion of our past neglect.

I. Urban Crisis and Urban Law

It seems hardly necessary to prove the existence of an urban crisis — that present critical state of urban poverty, violence, racial hatred, congestion, pollution, and the deplorable inadequacies of our urban education, housing, and health facilities. "[I]f you are not filled with foreboding, you don't understand your time."2 We are facing "challenges to public order and to the realization of American ideals greater than any since the Civil War — the cluster of problems known as the urban crisis."3 Unfortunately, it is difficult for people not directly involved to grasp the imminence and range of our peril. Crisis is the point of no return. And we are there, not just the Negro slum kid or the welfare mother; but you and I, here, now.

Directly related to this fulminating urban crisis is the practice of urban law. But the latter term may be misleading, for urban

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law can involve rural problems as well as urban, and as much sociology, city planning, and public administration as it does law. Included in this practice are the burgeoning fields of social welfare, legal aid, public housing, credit unions, consumer practices, civil rights, police-community relations, neighborhood corporations, juvenile delinquency, and mental health — areas whose legal aspects daily touch the lives of urban people, who are most often poor people, black people, and ghetto people. Urban law encompasses both poverty-stricken individuals in need of legal services and low income neighborhood groups in search of legal counsel. It is often as concerned with administrative action or omission as it is with judicial rulings, for it is the huge bureaucracies of public welfare, public housing, public education, and public health which dominate the lives of the poor.

But urban law means more than trying to redress the odds against the poor by legal representation and law reform. It is also concerned with the urban crisis as a whole: with ideas for expanding the tax base of cities; with ways of removing the archaic limitations on the ability of metropolitan units to govern themselves; with alternatives to secure legal enforcement of metropolitan-wide school districts; with novel corporate forms to stimulate private-public development efforts; and with new tools for fashioning flexible neighborhood grievance-response mechanisms. In short, urban law is what the lawyer works at as he grapples with those dimensions of the total urban crisis which are primarily legal in nature.

A. The Urban Crisis: Its Legal Nature

The urban crisis is significantly legal in nature, not in the vague sense that we are dealing with a batch of laws or with the need for

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4 For materials dealing with the legal problems of rural poverty, see NATIONAL CONFERENCE ON LAW AND POVERTY, CONFERENCE PROCEEDINGS 89-114 (Washington, D.C., June 1965) [hereinafter cited as POVERTY CONFERENCE]; Viles, War on Poverty: What Can Lawyers (Being Human) Do?, 53 IOWA L. REV. 122 (1967); Symposium: Legal Services and the Rural Poor, 15 KAN. L. REV. 401 (1967); Symposium: A Legal Service Program for West Virginia, 70 W. VA. L. REV. 277 (1968).

5 A quick review of urban law journals like the Law and Society Review, the University of Detroit's Journal of Urban Law, and Columbia University's Journal of Law and Social Problems will readily disclose a broad range of non-legal aspects of urban law.

6 "We cannot successfully confront solely the problems of the ghetto nor of the individual poor person; we must deal also with the institutions and problems of the broader community that contain that ghetto and that individual." Carter, Law and the Urban Crisis, 14 U.C.L.A. L. REV. 1135, 1136 (1968).
Congress to pass new forms of remedial legislation. It is legal in the sense of De Toqueville’s observation that “in a modern democracy social problems become translated into legal problems — if the democracy coheres . . . .” The urban crisis is legal in nature because it is caused in large part by the denial of legal and social justice to the masses in our cities. We are only slowly “coming to recognize how fundamental is the role of law in providing every man membership — and not merely existence — in our society.”

The urban crisis becomes more severe each day because city tax bases are being constantly eroded. True, this seems to be more of a fiscal than a legal problem. But there are legal (not fiscal) limits to a city’s bonded indebtedness; there are legal prohibitions in state constitutions which impede the establishment of promising joint public-private development corporations; and there are legal “anomalies in our present tax structure . . . that make solution of urban problems extremely difficult if not impossible.”

The urban crisis is exacerbated by the fractionalization of local government units. But solutions are often couched in legal terms. This recommendation on fractionalism from the Advisory Commission on Inter-governmental Relations fairly bristles with overriding legal considerations:

The Commission recommends the enactment of State legislation empowering a State agency — or a local agency formation commission — to (a) order the dissolution or consolidation of local units of government within metropolitan areas and (b) enjoin the use of an interlocal contract within the metropolitan area when it is found to promote fractionalization of the tax base without overriding compensating advantages; these actions should be taken pursuant to specific statutory standards, with adequate public notice and hearings, and subject to judicial review.

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7 Hazard, Forward to LAW IN A CHANGING AMERICA xi (G. Hazard ed. 1968) [hereinafter cited as CHANGING AMERICA].
8 Address by Nicholas de B. Katzenbach, in POVERTY CONFERENCE, supra note 4, at 61, 62-63.
12 2 ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, FISCAL BALANCE IN THE AMERICAN FEDERAL SYSTEM 14 (1967). In 1962 there were 18,442 independent governmental units within the 212 United States metropolitan areas. The average number of independent units per metropolitan area was 87; and Chicago
Not only are municipal finance and metropolitan government questions enmeshed in legal reservations, so is the urban drive for better education, decent housing, adequate health facilities, and welfare rights. These involve legal problems because they are essentially "social problems to which legal processes are relevant."13 Ghetto education today is fairly engulfed in such controversies as the legality of de facto segregation;14 the constitutionality of unequal state aid vis-à-vis city and suburban school districts;15 and the federal or state enforceability of metropolitan multi-district school systems.16

Certainly, the urban crisis is caused in part by non-legal considerations such as the lack of decent public housing and the inability to disperse public housing tenants because of popular racial attitudes. Yet, on closer examination the whole question of providing decent low-income housing is run through with legal considerations ranging from the contract authority of local public housing units to act independently of federal parent agencies,17 through the intricate legalities of mortgage financing Federal Home Administration (FHA) insurance and "turnkey" construction, to the ancient legal doctrines of real property law and landlord-tenant relations.18

The most simple of social welfare programs can be gutted by the barest of legal technicalities. For example, regulations issued

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13 CHANGING AMERICA, supra note 7, at xii.


16 Id. at 91 n.13, citing Wright, Public School Desegregation: Legal Remedies for De Facto Segregation, 40 N.Y.U.L. REV. 285, 305-06 (1965).

17 Cahn & Cahn, The New Sovereign Immunity, 81 HARV. L. REV. 929, 964-69 (1968). Also involved in this area are questions concerning the extent to which tenants have a right to participate in, and derive benefits from, the contracts between local units and federal agencies. Id. at 969.

under the rural small loan\textsuperscript{19} (maximum $3,500) program administered by the Farmers Home Administration under Title III-A of the Economic Opportunity Act\textsuperscript{20} required "reasonable assurance of repayment"\textsuperscript{21} before a loan could be made. This provision was interpreted by the Farmers Home Administration to mean that when the loan recipient was a lessee who planned to use the loan proceeds to increase the value of his leasehold interest (repair his chicken coop, fence in his pigs), he must "[h]ave such tenure on the farm to be operated as necessary to permit him to achieve the objectives of the loan . . . ."\textsuperscript{22} Absent a written lease the unadvised rural tenant may not be able to establish his right to a loan. The local official needs no great legal acumen to question the sufficiency of the "tenure" of a Southern Negro sharecropper or tenant farmer.\textsuperscript{23}

One need not search far to find legal patterns making a deep imprint on the social and economic dimensions of the urban crisis. Still, there is a more basic reason for attributing a significant legal nature to the urban crisis: the urban crisis itself is caused by the fundamental denial of social justice to the individual ghetto citizen and the inability of our legal system to provide an effective grievance-response mechanism to absorb the shock of his resultant outrage.

Three of the four recommendations of the National Advisory Commission on Civil Disorders having to do with avoiding the threat of future violence are essentially legal in nature and are concerned with securing greater participation by ghetto residents in the community's decision-making apparatus.\textsuperscript{24} As Learned Hand observed, "If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice." And who can doubt that we have rationed justice? And who can doubt that our present machinery of justice is largely irrelevant to the concerns of the urban ghetto?

Our current welfare policy helps but a fraction of those in need.

\textsuperscript{19} See note 4 supra referring to rural aspects of urban law.
\textsuperscript{21} 7 C.F.R. § 1833.6 (1968).
\textsuperscript{22} Id. § 1833.7(g) (1968).
\textsuperscript{23} In actual operation, the Farmers Home Administration sought to make its loans under Title III-A in the same racial ratio as the racial composition of the local county. In so doing, officials simply winked at the "tenure" provision. However, a local Farmers Home County Supervisor who wanted to be sticky about the regulations could fall back on good authority for not making loans to (black) sharecroppers or tenant farmers.
\textsuperscript{24} REPORT OF THE NAT'L ADVISORY COMMISSION ON CIVIL DISORDERS 8 (1968) [hereinafter cited as CIVIL DISORDERS REPORT].
That in itself is not a legal problem. But it was an unconstitutional law which riddled the Aid to Families with Dependent Children (AFDC) program by imposing one man's morality on another man's poverty.\textsuperscript{25} Furthermore, it was legal service attorneys, not welfare administrators, who challenged state welfare residency requirements which ensured that the neediest and newest ghetto immigrant remained penniless for at least a year.\textsuperscript{26}

It is the current state of the legal art (not lack of political power) which restricts taxpayers and members of neighborhood groups in obtaining the requisite "standing" to challenge, within the legal system, the lawfulness of ordinances, statutes, and administrative practices.\textsuperscript{27}

There is further reason for involving the practicing lawyer in urban problem-solving. He should be asked to help the nation rearrange its private property structure. It is clear that many solutions to our urban crisis will require more government activity rather than less. There is no retreat from the public interest state and the interdependency of American cities, counties, states, and regions. Government on all levels will continue to grow and, as it does, it must assuredly touch the lives of more citizens in more direct ways. As government spending and citizen contacts mushroom, new forms of wealth and new notions of what is valuable are developing. As Professor Reich has observed,

The valuables dispensed by government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth — forms which are held as private property. Social insurance substitutes for savings; a government contract replaces a businessman's customers and good will. The wealth of more and more Americans depends upon a relationship to government. Increasingly, Americans live on government largess — allocated by government on its own terms and held by...
recipients subject to conditions which express the "public interest."\textsuperscript{28}

That description of the change in private property is now a fact in the ghetto. The slum dweller's contact with government is the most pervasive of any citizen's. He is often dependent upon public welfare, sheltered in public housing, educated in public schools, retrained in government programs, attended by county hospitals, serviced by legal aid, and conveyed by public transportation. His status is his only property. His rights are held on the terms of others. And rights and property are legal notions. As Judge Charles E. Wyzanski, Jr., said, "any good lawyer will tell you, property is only an idea — meum and teum. Meum and teum are just a lawyer's idea. The things themselves are things. They don't belong to anybody except as we create the relationship."\textsuperscript{29} These relationships must now be recreated if we are to give meaning to words like "justice for all" and "equal opportunity." And the lawyer ought to have a hand in fashioning new legal relationships having to do with personal property.

I have portrayed the urban crisis as significantly legal in nature because it seems reasonable to assume that lawyers would have a special interest in dealing with legal problems. I have steered away from the usual platitudes which invariably urge attorneys to get involved in community problems because of the lawyer's touted virtues as skilled negotiator, analytical student, creative drafter of legislation, forceful advocate, talented debater, and "master of existentialist characterization."\textsuperscript{30} The reason is much more simple: a lawyer should be helpful in the solution of legal problems.

B. The Private Bar

The private practitioner should play a more active role in meeting the urban crisis not only because of its legal attributes but also because the self-interest of the profession demands it. This is not to say that lawyers hired by the government (the public Bar) are unable to bring sufficient legal skills to the problems. Rather, it is to suggest that the self-interest of the private Bar demands its greater involvement because, as the head of the Urban Coalition,

\textsuperscript{28} Reich, \textit{The New Property}, \textit{The Public Interest} 57 (Spring 1966). \textit{See also} Moore, \textit{Forthcoming Patterns of Social and Political Structure}, in \textit{Changing America}, \textit{supra note} 7, at 12.

\textsuperscript{29} Saturday Review, July 20, 1968, at 14, 62.

\textsuperscript{30} Viles, \textit{supra note} 4, at 128.
John Gardner, said, "the practice of law depends heavily on the framework of order and of orderly procedure that is being so directly challenged today. The legal profession cannot flourish while the society rattles to pieces. It is in the elementary self-interest of lawyers to prevent the disintegration of their society."\(^{31}\)

But if society disintegrates, it will be difficult for others as well as lawyers to work productively. An additional reason more personal to the private Bar is that unless it participates more actively in the quest for social justice it will not preserve itself as an attractive calling; it will not be able to draw to its ranks the most talented and gifted lawyers. In the words of Mr. Justice Brennan,

Many of the best of our young lawyers — those who are most idealistic, most concerned with the profession's public responsibilities . . . — will be increasingly reluctant to join the private sector of the profession, lest they be wholly cut off from what they consider are the most attractive aspects of the lawyer's role [for example, community service]. Practicing law firms will find themselves unable to attract and keep the most able and imaginative young lawyers.\(^{32}\)

The brightest and most able of recent law graduates are not going into private practice. The curricula of law schools throughout the country are mirroring this significant student change. Hundreds of new courses are being offered in urban affairs and poverty, such as public assistance law, social justice, school decentralization, land use planning, public housing law, consumer credit, civil commitment of narcotics addicts, race relations law, and urban legal studies.\(^{33}\) These courses mark a basic departure from traditional methods of legal education; urban problems are being studied first and legal methods for solving them second.

The organized Bar must commit itself more fully to the struggle toward social justice for still another reason. The legal profession

\(^{31}\) Gardner, supra note 11, at 13.

\(^{32}\) Brennan, The Responsibilities of the Legal Profession, 54 A.B.A.J. 121, 124 (1968). Mr. Justice Brennan notes that only eight Harvard Law Review editors for 1967 entered private practice. Id. at 124. B. Donald Shapiro, Director of the New York Practicing Law Institute, recently pointed out that "[i]nstead of following the traditional pattern of the brightest going to Wall Street firms and some of the others going to Legal Aid jobs, the situation has completely reversed itself." Martin, Bright Young Lawyers Often Turn Down Firms To Work in the Ghetto, Wall Street Journal, Sept. 26, 1968, at 1, col. 1.

\(^{33}\) Of 134 accredited law schools, at least 50 have urban law courses. See unpublished list on file with the Legal Services Program, Office of Economic Opportunity (OEO), Washington, D.C. Michael H. Cardozo, executive director of the 115-member Association of American Law Schools has stated, "In almost every law school you could name, the emphasis is changing [to urban problems]." Martin, supra note 32.
is becoming fragmented into two disparate sections, the public and the private Bars. Continuation of such a split could well bring about a progressive alienation on the part of the private Bar because, as Mr. Justice Brennan has pointed out, when private practitioners "become increasingly removed from the social and public problems and concerns that society deems more exigent and vital, they may become narrow in point of view, unduly circumscribed by the private and parochial interests of their clients, lacking in perspective and breadth of vision."34 Unless the private Bar is prepared to enter the field of legal services and urban problems on a far vaster scale, it risks cutting itself off from the best law students as well as from the general society which nourishes it.

II. THREE DIRECTIONS

The involvement of the private practitioner should proceed in three basic directions: (1) providing adequate legal services to the poor; (2) securing legal reform and structural changes in the distribution of justice; and (3) fashioning imaginative modes for lawyer involvement in the quest for urban solutions.

A. Legal Services

There is no accurate estimate of how much more money and how many more man-hours will be required to secure the goal of equal justice for all. Guesses range from 12 million poor people needing legal help, to the need for spending an additional $500 million annually in legal services.35 Whatever the guess, it is clear that our present efforts fall far short of the mark.

Other writings have thoroughly documented the subject of legal services for the poor, the extent of the need, and the suggested character of the response.36 I should like to summarize here. Legal

35 See P. WALD, supra note 18, at 47; Johnson, A Conservative Rationale for the Legal Services Program, 70 W. VA. L. REV. 350, 354-55 (1968); Note, Beyond the Neighborhood Office — OEO's Special Grants in Legal Services, 56 GEO. L.J. 742 n.6 (1968).
services must be: (1) available in far greater measure; (2) integrated more fully with non-legal services; (3) more comprehensive in nature; (4) more readily accessible; and (5) independent of other agencies which minister to the poor.

Legal services can be provided by neighborhood law firms, decentralized legal aid offices, or volunteer attorneys working in church basements. They can be supplemented (not supplanted) by judicare programs and legal insurance plans so long as the services are accessible to the poor and can honestly meet the other tests of integration, comprehensiveness, and independence.

Greater attention must be given to the provision of group legal services if we are to make quality legal service more available at a reasonable price. Recent organized Bar studies of the Canons of Ethics and late Supreme Court cases have opened up broad avenues for innovation in the group services area. The Report of the 1968 American Assembly on Law and the Changing Society has enthusiastically recommended that group legal service arrangements be encouraged.

It is obvious that the greatest single constraint on the provision of increased legal services is the high cost of additional attorneys. It is this cost which conditions the availability of manpower from both public and private sources. Yet there are a number of ways to increase the manpower supply and reduce the per case cost of legal services other than by adding more attorneys to neighborhood law firms. Extensive use will have to be made of law students and non-professionals. For example, the more imaginative legal service programs are now employing law students as assistant attorneys in neighborhood law firms, as draftsmen of model legislation, and as supervised representatives in lower courts.

But our law schools have fewer than 20,000 third year law stu-


38 Assembly Report, supra note 3, at 3. For further information on group legal services in general, see Zimroth, Group Legal Services and the Constitution, 76 Yale L.J. 966 (1967); Note, Group Legal Services, 79 Harv. L. Rev. 416 (1965); Note, Group Legal Services: The Ethical Traditions and the Constitution, 43 St. John's L. Rev. 82 (1968); B. Christensen, supra note 37.

dents. Nonprofessionals and lay advocates must be trained if we are to make significant inroads on the present legal services caseload problem. Individual lawyer caseloads in neighborhood law firms and legal aid offices reach the astronomical figure of 2000 per attorney in Los Angeles and 2200 in Philadelphia.\(^4\)

It is not solely because of the desperate need for additional manpower that we should turn to the nonprofessional. A neighborhood worker can often communicate more easily with a prospective client than can a bright young Ivy League lawyer. A ghetto resident has a better chance of gaining the confidence of the client, explaining and interpreting the consequences of his action and the complex alternative remedies which may be available to him. Furthermore, the LL.B.'s time, like any professional's, is often wasted on explanation of detailed matters which can be readily handled by a layman, such as interpretation of welfare regulations, details on installment sales purchases, and definition of entrance particulars for government training programs. Much of the time spent by the professional attorney as listener, note-taker, investigator, telephone-caller, researcher, handholder, and technician can be saved by intelligent use of nonprofessionals.

Another way of cutting costs and saving man-hours is the development of legal forms for recurrent, garden-variety problems. One legal aid lawyer claims to have cut down the amount of attorney time needed for a divorce to 15 minutes by properly using lay persons to screen out the difficult cases and by employing a set of well drawn domestic relations forms.\(^4\) Forms could be easily developed in routine and repetitive areas such as landlord-tenant complaints, domestic relations, consumer credit violations, and simple bankruptcies. There is no reason why the poor should not have access to the same kind of timesaving and inexpensive form service which the middle class uses in real estate transactions, inter vivos trusts, wills, and boiler plate contracts.\(^4\)

An as yet little utilized method of reducing the cost of legal services is through much more extensive use of community education in preventive law.\(^4\) The successful downtown law firms are

\(^{40}\) P. Wald, supra note 18, at 50. For an affirmative use of heavy caseloads to influence courtroom procedures because of the legal service attorney's control of a large block of the time of opposing counsel, judge, and witnesses, see discussion of Harold Rothwax, Harvard Conference, supra note 1, at 62-66.

\(^{41}\) See remarks by Jean Cahn (referring to Carol Silver of California Rural Legal Assistance), Harvard Conference, supra note 1, at 53.

\(^{42}\) Id.; What Price Justice, supra note 36, at 938.

\(^{43}\) See P. Wald, supra note 18, at 67; What Price Justice, supra note 36, at 940-46.
not paid for the nightingale quality of their courtroom advocacy.44

The aim of community education is the same goal which the private lawyer is forever trying to impress upon his client: when in doubt, consult your attorney.45 And an excellent preliminary device to ensure that preventive law is being practiced in the community would be to provide annual total legal check-ups for families just as we encourage annual medical examinations.46 In this way, advice could be secured before a bedroom furniture set is purchased, a tenant is evicted, or a questionable arrest is made.

Still another unnecessary expense of providing legal services is the system of fees and court costs for both civil and criminal actions. More than 25 years ago Judge Miller of the District of Columbia Court of Appeals likened the courts to the public schools and the fire, police, and health departments when he asked,

[W]hy have we put the administration of justice by one of the three great coordinate branches of Government on a basis of pay-as-you-go? No one would ask the Executive Branch, or the Legislative Branch to justify itself as a self-liquidating institution... Why should not the people be equally entitled to the services of the Judicial Branch of Government without being required to pay fees every time they turn around.47

Nor are court costs of the $2 variety.48 Plaintiffs and defendants pay for filing fees, costs of service, stenographers, jury subpoenas, depositions, transcripts, appeals scheduling, cash bonds, sheriff's and marshall's fees, execution of judgment fees, and a host of similar costs.

One of the most poignant findings of the McCone Commission's report on the Watts rioting was that the ghetto dweller believed that if the whites only knew of his desperate situation they would be prompt to respond. Now we have been made to stare at the nakedness of injustice in our society. We can no longer simply talk of increasing our contributions to legal aid societies or endorsing painless judicare and other legal credit card schemes. The poor seek justice — a justice which will continue to be denied

44 After 9 years of travail, a favorite classmate of mine has just been made a partner in one of Chicago's large, prestigious law firms — and he has yet to try his first jury case. What makes this unusual is that my friend is in the litigation division.
45 P. WALD, supra note 18, at 67.
46 See remarks by Jean Cahn, HARVARD CONFERENCE, supra note 1, at 54.
47 Silverstein, Waiver of Court Costs and Appointment of Counsel for Poor Persons in Civil Cases, 2 VALPARAISO U.L. REV. 21, 23 (1967).
48 See P. WALD, supra note 18, at 59-63. "Filing a complaint costs $25 in New York to put the case on the calendar; $50 after filing before trial; $75 for trial; and $20 for motions." Id. at 59 n.181.
them without a vast expansion of better integrated, more accessible, independently controlled, and comprehensive legal services.

B. Law Reform

The provision of vastly increased legal services on a scale sufficient to match the need is unlikely to occur in the near future. We lack the manpower and the resources, even if we have the will. There are, however, shortcuts which clearly will have to be taken if we are to come close to our goal of securing equal justice for all. One of these shortcuts is law reform — spearheaded in the civil field by OEO-funded neighborhood law firms.49

In the housing field significant legal breakthroughs have been made by the Supreme Court's landmark decision in Jones v. Alfred Mayer Co.,50 banning all racial discrimination in the sale or rental of housing; by limitations now placed on the landlord's right of retaliatory eviction;51 by the invalidation of a lease where premises are in violation of a municipal housing code at the time the lease was entered into;52 and by the constant advancement of the rights of public housing tenants to fair notice and hearing and causative grounds for eviction.53 True, many recent decisions are from lower courts and generally affect only one jurisdiction at a time, but they are having a widespread impact because of the ability of poverty law clearing houses to rapidly circulate decisions, briefs and pleadings to neighborhood legal service projects and other groups of reform-minded attorneys.

53 See, e.g., Quevedo v. Collins, No. 3-2626-c (N.D. Tex. 1968), cited in Clearinghouse Review, Sept. 1968, at 13 (order granting temporary injunction against public housing authority for inadequate hearing prior to eviction). But see Chicago Housing Authority v. Stewart, 39 Ill. 2d 237 N.E.2d 463 (1968) (holding public housing authority does not need "cause" to evict tenants). See generally P. WALD, supra note 18, at 19-20; Cahn & Cahn, supra note 17, at 964-66; Note, Public Landlords and Private Tenants: The Eviction of "Undesirables" from Public Housing, 77 YALB L.J. 988 (1968). For the latest cases in fields such as housing, welfare, consumer credit, education, and so forth, see Clearinghouse Review, supra note 51.
Similarly, in the expanding field of welfare law, landmark decisions have been secured invalidating the "man in the house rule" and state residency requirements for receipt of welfare benefits. In education, test cases are questioning the legal limits of de facto segregation, challenging the constitutionality of disproportionate state aid to city vis-à-vis suburban school districts, and seeking federal or state enforcement of metropolitan-wide school systems which cross city boundary lines. In addition, significant decisions have been rendered concerning the right to counsel for all jailable offenses; establishing more equitable practices in the consumer credit field; and liberalizing the traditional doctrines of plaintiffs' standing to sue and access to the courts. In all of these areas, justice is being made more relevant to the needs of the ghetto, and critical urban problems are being openly scrutinized.

Urban law reform, however, needs to be pinpointed far more than it has been to date. Instead of waiting for the client with the right test case to fortuitously appear at a neighborhood law office, urban law centers and specialized legal reform units should be aggressively choosing appropriate fields in which to bring legal suits. Litigation should be linked with a comprehensive plan for reform in chosen urban areas. This is being done on a small scale in the poverty law field by the New York University Center for Social Welfare Policy and Law, Northwestern University's National Institute for Education in Law and Poverty, and the University of Wisconsin's Institute for Research on Poverty.

But the spotlight has not been systematically turned on such broader urban ills as public housing, de facto segregation in education, uneven provision of municipal services, creaky metropolitan

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56 See note 14 supra & accompanying text.
58 See note 16 supra & accompanying text.
59 Stevenson v. Shields, No. 331805 (Multnomah County Cir. Ct., Ore., 1967).
60 See, e.g., W. T. Grant Co. v. Walsh, 100 N.J. Super. 60, 241 A.2d 46 (1968), condemning the credit system used by the nation-wide chain of Grant's Department Stores.
tax structures, apprenticeship training discrimination, criminal rehabilitation measures, inefficient urban health practices, and unequal state aid and tax formulas.\(^6\) The public and private funding of centers, foundations, institutes, and legal research programs is still in its infancy.\(^6\) What is badly needed is a national strategy for urban law reform buttressed by detailed legal research — perhaps a National Institute for Legal Health.

There are many advantages to specialized urban law centers. Legal processes such as litigation discovery, and detailed judicial decrees could be effectively planned and implemented with advice from lay urban experts. A center specializing in one particular field could coordinate legal research, draft appropriate forms, publish manuals and handbooks, and serve as a clearing house and source of professional consulting advice for local units and attorneys in other cities.\(^6\)

Centers could concentrate on the broader urban problems to be attacked as well as the immediate needs of the client. Too often now potential test cases are compromised by agencies willing to accept a setback in an individual case rather than risk the loss of a far-reaching decision; or because the attorney can serve the client's immediate interest without protracting the case to test an underlying social issue. Then too, "test cases" often demand the kind of expensive discovery, voluminous marshalling of evidence, comprehensive planning, and extensive resources which are beyond the slim budgets of neighborhood law firms or legal aid offices. The exposure of a law suit can force public officials and the electorate to

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\(^6\) Patricia M. Wald and Daniel J. Freed, attorneys in Washington, D.C., are proposing that an urban litigation center be funded from private sources to undertake "the development of affirmative judicial remedies [through litigation] to accomplish major structural reforms in urban institutions." Wald and Freed, unpublished proposal, at 1 (on file with the author).

\(^6\) This article does not go into the need for extensive legal research. For example Stanford Law School's Dean recently noted that of the $37 million Stanford University spent in 1967 on research, only $20,000 went for legal research. Manning, Introduction: New Tasks for Lawyers, in CHANGING AMERICA, supra note 7, at 1, 4. On the subject of legal research and urban problems generally, see Cavers, in id. at 139; Handler, The Role of Legal Research and Legal Education in Social Welfare, 20 STAN. L. REV. 669 (1968); Stumpf, Law and Poverty: A Political Perspective, 1968 WISC. L. REV. 694.

\(^6\) See generally Clearinghouse Review, supra note 51. The N.Y.U. Center for Social Welfare Policy and Law, in addition to acting as a legal consultant on welfare law to attorneys throughout the nation, has also published two useful handbooks: Housing for the Poor: Rights and Remedies and The Law and the Low-Income Consumer. Another example of a center's work is the hardcover book published by the (Newark) New Jersey Institute for Continuing Education for New Jersey's Legal Services Projects, LEGAL REPRESENTATION OF THE POOR (Jarmel ed. 1968).
choose between increasing a program to its proper funding level or abandoning it, because present funding levels force the program to operate so poorly that it actually deprives a person of his constitutional rights.65

Intensive efforts in the area of law reform and pooling of specialized knowledge are leading to another related development — the development of new causes of action. For instance, there have been law review articles published dealing with novel causes of action such as "slumlordism" as a tort,66 "the consumer nuisance theory of consumer protection,"67 and decent housing as a constitutional right.68 The traditional right versus benefit distinction surrounding the individual's prerogative to receive welfare payments, occupy public housing, and secure other forms of the government largess is constantly being reexamined.69

Urban law may witness a host of other new developments — especially in the growing administrative law field, where the new Freedom of Information Act70 and the increasing contacts of administrative agencies with the poor promise fertile litigation firsts. Indeed, the central legal problem of the urban crisis may well be: How does the lawyer protect the rights of the individual against the public interest of the bureaucracy? As Harvard's Dean Cavers has noted, a critical problem is "how to provide a bureaucracy capable of protecting the individual or how to assert the public interest effectively... These tasks may entail the enforcement of existing law or the creation of new law."71

Agencies have rarely been scrutinized with respect to their relatively new grant-making roles in areas such as specificity of grant conditions, due process in termination procedures, equality of guide-

65 Examples are badly over-crowded jails, sub-standard mental health facilities, and woefully inadequate alcoholic rehabilitation programs. See Inmate of Cook County Jail v. Tierney, No. 68C504 (N.D. Ill., complaint filed Apr. 8, 1968), charging incarceration in Cook County (Chicago) jail as cruel and unusual punishment.

66 Sax & Heistand, Slumlordism as a Tort, 65 MICH. L. REV. 869 (1967).


71 Cavers, Legal Education in Forward-Looking Perspective, in CHANGING AMERICA, supra note 7, at 139, 144.
lines, uniformity of eligibility criteria, or fairness of review and appeals procedures. When agency grant funds are limited (which is always), what legitimate devices can agencies use to reduce the demand? Several alternatives are available: first come, first served basis (but how do all potential grantees receive equal notice?); quality of proposal submitted (how specific do quality guidelines and eligibility standards have to be?); formation of restrictive agency standards not set forth in the legislation (to what extent has the enabling statute authorized such limitations?). What right does the public have to review agency decisions made in "the public interest" or to serve on advisory councils to give effect to legislative mandates of citizen participation? What are the boundaries and the legitimate exceptions to agency discretion in administering programs within often broadly expressed legislative goals?72

Lobbying is another law reform activity which can have a high cost-benefit ratio. The recent enactment by the Michigan legislature of a strong tenants' "Bill of Rights" will save that state's legal service attorneys innumerable hours of work on individual test cases in the housing field.73 Last year Connecticut passed 13 major laws in the anti-poverty area alone.74 On a national level, Ralph Nader, the consumer crusader, has proposed a lobby-oriented public interest law firm in Washington, D.C., paid for by private foundation funds, to counterbalance the very effective private interest lobbying work done by Washington's better paid attorneys.75

Not only are legal service attorneys and law reformers in short supply. Justice too is in short supply — at least the kind of justice which is relevant to the needs of the inner city.76 Our current system of distributing justice is based upon litigation as the ag-

72 See Skoler, Lynch & Axilbund, Legal and Quasi-Legal Considerations in New Federal Aid Programs, 56 GEO. L.J. 1144 (1968); Cahn & Cahn, supra note 17. But see Wilson, The Bureaucracy Problem, THE PUBLIC INTEREST 3 (Winter 1967). "There are inherent limits to what can be accomplished by large hierarchical organizations." Id. at 6 (emphasis omitted). See also Jones, Role of Administrative Agencies as Instruments of Social Reform, 19 AD. L. REV. 279 (1967).

73 For a summary of Michigan's new legislation, see Law in Action, Aug. 1968, at 5.


The Connecticut Commission on Civil Rights and the Hartford Legal Services Program directed by Howard Orenstein played a particularly vital role in the enactment of this legislation: they represented to the General Assembly the needs and desires of the poor, and were able, because of their expertise in poverty law, to serve as a uniquely valuable resource for the legislative committees. Id. at 4.


76 See generally What Price Justice, supra note 36; War on Poverty, supra note 36.
grieved party's right of last resort. But litigation is so cumbersome, time-consuming, and expensive that even the middle class avoids it if at all possible. There is a variety of other ways to secure rights and remedies without resorting to litigation which may prove more efficient and relevant in the urban crisis.

(1) Arbitration.— In Cleveland, Ohio, a unique demonstration OEO legal services project is learning more about the use of arbitration as a technique for resolving neighborhood disputes without invoking the courts. The American Arbitration Association, the project sponsor, has been successful in obtaining binding arbitration clauses in a number of leases between landlords and tenants in the Hough ghetto. Evidently both parties welcome the chance to have their disputes handled rapidly and inexpensively by arbitration rather than by protracted court proceedings.

(2) Mediation.— An experimental OEO-financed legal services project involving mediation has been funded in Los Angeles. This effort will seek to build a small mediation center to service neighborhood disputes. While mediation does not have the enforceable attributes of arbitration, many neighborhood disputes can readily lend themselves to mediation techniques. For instance, informal mediation efforts by third parties have been successfully employed to cool hot cities during summer crises, to resolve gang disputes, and to ease explosive neighborhood tensions.

Both mediation and arbitration processes allow a neighborhood to keep judicial-type decision-making under local control and therefore on more familiar grounds. Both can offer effective and speedy alternatives to costly and lengthy court proceedings. Furthermore, both lend themselves to being operated (or at least supplemented) by trained non-professionals. Mediation or arbitration investigators, aides, and panels can be composed of trained neighborhood residents and thus significantly advance neighborhood goals of self-regulation and participatory justice.

(3) Neighborhood Tribunals.— Carrying one step further the use of arbitration and mediation mechanisms are the neighborhood tribunals proposed by Jean and Edgar Cahn. Such a neighborhood court or tribunal system would constitute an emphatic response to the demand of the ghetto for a role in the decision-mak-

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78 See Note, Beyond the Neighborhood Office — OEO's Special Grants in Legal Services, 56 GEO. L.J. 742, 773-76 (1968).
79 See What Price Justice, supra note 36, at 950-55.
ing process and to what the Kerner Commission has called the de-
mand for "comprehensive grievance-response mechanisms."\textsuperscript{80}

A neighborhood tribunal could include an arbitration branch, a
number of mediation panels, independent fact-finding boards
and investigative resources, and special branches dealing with such
things as youth problems, welfare practices, and other specialized
areas where the poor routinely deal with administrative proce-
dures.\textsuperscript{81} It would offer decentralized and convenient fact-finding
and conciliation branches concentrating on particular areas such
as a very few of the better small claims courts and domestic rela-
tions courts have endeavored to do. The goal is to generate a
sense of wider participation in the decision-making apparatus and
to democratize the machinery of justice so as to secure a greater
stake in its successful administration for neighborhood residents.

(4) Ombudsmen.— Another suggestion for securing a more
expedient and less expensive resolution of grievances is the crea-
tion of local (less so with state and federal) ombudsmen offices.\textsuperscript{82}
Though we do have an existing Federal Ombudsman Office\textsuperscript{83} and
even a model state ombudsman statute,\textsuperscript{84} we have little actual ex-
perience in this country with the Scandinavian-type ombudsman. An
ombudsman should not be thought of as someone who shapes pub-
lic policy, overturns administrative decisions, or acts solely as an
advocate of the poor. He is more of an independent mechanism for
heightening government responsiveness to individual complaints —
a bureaucratic humanizing device.

An ombudsman is an information giver, an expediter of com-
plaints, and a maker of recommendations. He acts by pursuing
inquiries, making independent investigations, using persuasion, and
bringing publicity to bear on often hidden, discretionary admin-
istrative decisions. An ombudsman can be as helpful to an ad-
ministrator who does not know that lower-level subordinates are
thwarting announced agency policies as he can be to an individual
complainant. He can be as useful to a harassed city councilman as
to a wronged neighborhood worker.

\textsuperscript{80} CIVIL DISORDERS REPORT, supra note 24, at 8.
\textsuperscript{81} See What Price Justice, supra note 36, at 950-55.

\textsuperscript{83} See Cahn & Cahn, supra note 17, at 972 & n.151.
\textsuperscript{84} 2 HARV. J. LEGIS. 213 (1965).
(5) Citizen Complaint Centers.— Similar to ombudsman proposals are those for citizen complaint centers such as advanced by the Cahns in their recent Harvard Law Review article and funded by OEO at the University of Buffalo. Whereas an ombudsman is usually a public officeholder, the citizen complaint center is a private group. The latter has the advantage of being more directly subject to neighborhood control, but may not be as effective a device for securing voluntary agency compliance. The ombudsman, as a high-level public official, may have a better chance of persuading his fellow public servants than a complaint center, which may tend to rely more on tactics of exposure and confrontation that would stiffen resistance to voluntary agency remedial action. Also, complaint centers may suffer some disadvantages from greater personnel changeover. Compared to an ombudsman who would normally hold office for a longer continuous period, a complaint center may be more subject to neighborhood fads, need continual publicity to justify its existence, tend to seek shorter term solutions, and fail to master detailed bureaucratic niceties. One important advantage of the complaint center, however, is its greater ability to win popular support and hold the confidence of its clientele.

C Lawyer Involvement

The third general direction in which the private Bar should move, in addition to providing vastly increased legal services and securing law reform and structural changes in the distribution of justice, is to fashion new forms for the individual attorney’s participation in the solution of urban problems. Clearly, these three approaches are not mutually exclusive. Private practitioners can participate in both legal service efforts and experimental arbitration projects. However, it is critical to the successful involvement of the private Bar in all of these efforts that the vehicles of its participation be financially viable.

While the last section of this article suggests economic inducements for the participation of the private attorney in all three efforts, this portion on lawyer involvement will suggest only new vehicles for the inclusion of lawyers in the solution of urban problems; forms in addition to the traditional legal role of the private practitioner as advocate for indigent citizens. These new vehicles, however, must be economically viable.

85 Cahn & Cahn, supra note 17, at 971-91.
86 See Note, supra note 78, at 767-70. The Buffalo project cannot use the potent weapon of publicity.
There are many areas of urban law into which the private Bar can now move with its present fee-generating clientele. For example, private businesses are learning that they have a stake in solving the urban crisis for more attractive reasons than altruism. If American cities are to be rebuilt, their education systems overhauled, and their transportation networks redesigned, then there are huge monetary sums involved for participating businessmen. Defense industries are presently diversifying into numerous social action fields; systems analysis firms are applying their talents to government agencies as well as to private clients; and government contracts underpin more than supersonic transports. The list of private corporations operating multi-million dollar Job Corps Centers, signing labor training contracts, consulting on Model Cities, public housing, and education programs, and participating in large economic development and loan guaranty projects reads like a Who's Who in American Industry. Ambitious social engineering is being undertaken by private companies as well as by local Chambers of Commerce and the National Association of Manufacturers. These "good works" are not being donated by business and industry — they are being fully paid for by the government.

Yet few members of the private Bar can tell an employer, for example, how he can benefit from government job training funds under the Economic Opportunity Act, Manpower Development and Training Act, or Vocational Rehabilitation Act. How many business lawyers are conversant with OEO's experimental and demonstration projects, labor's special manpower guidelines, the National Alliance of Businessmen's retraining efforts, or HEW's vocational education programs? There are billions of dollars for private industry tied up in bureaucratic acrostics such as CEP, BWTP, OMPER, EDA, NAB, SBIC, Turnkey II, and JOBS. In the

87 Estimates of the magnitude of need for American cities run generally around one trillion dollars. See Crisis, supra note 3, at 32-33.
90 Id. § 2571 (1964).
92 In translation — CEP: Concentrated Employment Program (now in over 100 cities, administered by U.S. Dep't of Labor). BWTP: Bureau of Work Training Programs, Department of Labor (administrates CEP, Neighborhood Youth Corps, JOBS). OMPER: Office of Manpower Policy Evaluation and Research (old name given to United States Department of Labor Office responsible for experimental and demonstration projects). EDA: Economic Development Administration of the United States
widespread fields of housing, health, education, and economic development, government is literally pleading with private industry to get involved — for pay.

Another untapped field for private lawyers is representation of clients in front of municipal councils, state legislatures, and Congress. How many city governments, local mayors' organizations, county boards of supervisors, regional districts, and states can wend their way through the proliferation of government programs and the maze of agency regulations? Only a handful of cities now have Washington representatives and fewer still have state representation. Attorneys can be more than "grantsmen," fitting together complicated federal or state program packages. They also can act as effective lobbyists, intelligent draftsmen of legislation and testimony, and interpreters of legislative or administrative rulings. And it is not only cities which are seeking representation and advice on multiplying federal and state aids. Universities, colleges, school districts, hospitals, business associations, labor unions, economic development groups, contractors, real estate developers, lending institutions, and a wide variety of other clients need representation, counsel, and advice on government programs, contracts, grants, loans, guarantees, and development projects.

One idea for private practitioners is to expand a specialty which already characterizes their daily legal practice in an urban law direction. Thus a firm specializing in labor law should familiarize itself with government manpower policies, federal and state job training projects and union apprenticeship programs. A tax lawyer or municipal bond firm should become conversant with current trends in municipal taxation, new revenue-raising devices, and how to organize and finance quasi-public corporations. Firms with clients such as highway and bridge districts, rapid transit units, and metropolitan-wide service districts should learn more about metropolitan government matters, multi-district school programs, annexation laws, and inter-city local compacts. Lawyers for real estate developers, contractors, or union pension funds could expand their

housing knowledge to include new legislation dealing with public and private low-income housing, rehabilitation, turnkey operations, new towns, and the government financed social services which can be incorporated within many new housing projects. The clients are already in the office. It is the lawyer's lack of knowledge which keeps him from providing the most up-to-date service in the rapidly expanding area of government contacts.

Another suggestion for a new vehicle which can involve the private Bar in the urban law arena is for lawyers or law firms to act as counsel to administrative agencies — not as traditional house counsel but as representatives of the public interest. Every public housing authority ought to have a lawyer review its tenant practices to make sure tenants are given a fair hearing, receive due notice of impending actions, and are accorded impartial treatment. Welfare agencies similarly need independent counsel on their practices, hearings, and review and appeals procedures. School systems rarely accord expelled students even elementary constitutional rights or legal safeguards.

In most administrative agencies, overworked staff counsel can never be truly independent or owe their primary allegiance to the individual citizen. Many agencies' announced goals are often thwarted by legal considerations which pose formidable obstacles to lay subordinates but which can be easily overcome by the trained attorney, such as the problem with the sharecropper's land tenure noted earlier.

In addition, legal impediments to realizing social objectives and institutional change can be removed if lawyers are thoroughly familiar with operating programs. A slight revision in a municipal charter, an acceptable alternative interpretation of a statutory paragraph, or a legally sufficient substitute can unsnarl seemingly insuperable administrative problems. Proof of age for a social security claimant can be obtained by means other than producing the original birth certificate. Sufficient surety techniques other than regular bonding forms can help ghetto contractors meet statutory requirements for securing government contracts. And acceptable substitutes for gleaming kitchens can enable destitute schools to participate in government hot lunch programs. But in the vast

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93 See P. WALD, supra note 18, at 86.
95 See notes 20-23 supra & accompanying text.
majority of instances no lawyer is nearby and the lay subaltern makes quasi-legal decisions which can keep programs tied into bureaucratic knots.

One of the noticeable areas where legal counsel is often lacking is the representation of private non-profit neighborhood action organizations, although it is group action which promises to gain perhaps the most substantial benefits for the ghetto citizen. Equal education organizations, neighborhood corporations, tenant councils, credit unions, welfare rights associations, and block clubs face numerous legal hurdles in their quest for social justice. This is not to say that attorneys should endorse the views of their client neighborhood organizations any more than they need agree with the political philosophy of their business clients. It is, however, to point out that legal advice can play a substantial role in assisting organized local groups to press their demands in a non-violent context.

Most of these groups have little notion of the wide range of organizational forms open to them — such as unincorporated associations, non-profit corporations, or some form of organized participation-sharing. Nor are they knowledgeable about formation of by-laws and constitutions, composition of boards of directors, trustees, advisory councils, executive committees, and so forth. Few understand what alternatives to direct action may be available — such as discovery proceedings, injunctive relief, arbitration, mediation, class suits, and extraordinary writs. Even less is known about choice of forum — federal courts, state courts, agency hearings, citizen review boards, or municipal councils. Techniques for marshalling evidence, use of discovery procedures, data compilation methods, and knowledge of investigative techniques are woefully inadequate.

Perhaps the most obvious way for the private practitioner to directly participate in solving urban problems is to enter public service for 2- or 3-year stints. Law firms should strongly encourage both associates and partners to obtain government experience and then return to the firm. The young lawyer who wishes to go into

97 Community Counsel Demonstration Project (CCDP), funded by OEO and administered in Chicago and Detroit by the National Legal Aid and Defender Association, is one of the few organizations which counsel neighborhood groups exclusively. See CCDP, Year End Progress Report (Apr. 24-Dec. 31, 1967) on file at OEO’s Legal Service Program, 1200 - 19th St. N.W., Washington, D.C. 20006. CCDP also publishes a newsletter, Community Legal Counsel Reporter, 116 S. Michigan Ave., Chicago, Ill. 60603.

98 This practice would also be helpful to the government. See Yarmolinsky, Responsible Law-Making in a Technically Specialized Society, in CHANGING AMERICA, supra note 7, at 97, 107-08.
public service upon graduation from law school should find the private law firm as willing to hire him as if he had spent 3 years in the armed services. Government lawyers with 10 years of experience should not find that private practice is closed to them. Valuable experience can be gained not only in Washington, D.C., but also in state capitals and in the increasingly important field of local government. Bar associations and large firms would do well to underwrite such exchanges between private practice and government service.

Unless the private Bar can fashion new vehicles for lawyer involvement, it will be unable to constantly infuse its legal acumen into the matrix of urban problem-solving. It will be remanded to the more traditional roles of individual advocate and volunteer advisor — roles which do not take advantage of the permeative legal nature of many of the urban problems.

III. An Economic Rationale

To date few brilliant schemes have been devised for paying lawyers well to do good works. There are, however, a number of devices for bridging the gap between the private attorney and the urban crisis which have not been fully explored.

The provision of expanded legal services is the most difficult area for which to develop an economic rationale for private involvement. If possible, all but the wealthy avoid a lawyer because of the tremendous costs involved. To provide sufficient legal services to the poor is probably beyond the resources of the private Bar alone. But before giving in to complete dependence on public funds to support the necessary expansion of neighborhood law firms and legal aid offices, perhaps a few significant private ameliorative measures are possible.

Bar associations should devote far greater resources to the provision of legal services — not through judicare or lawyer reference plans, because these do not meet the tests of accessibility, integration, and comprehensiveness required to reach and adequately serve the poor. Rather, the Bar should use its funds to underwrite the more effective neighborhood law firms and to help finance lawyers willing to serve full time in the ghetto. Bar associations should pay for lawyers to act as house counsel to neighborhood action groups, public interest attorneys to administrative agencies, and to be available for service on neighborhood arbitration and mediation panels and in citizen complaint centers.
The leader of the Urban Coalition has suggested that in order to help satisfy the huge demand for increased legal services, individuals and law firms ought to engage in the practice of tithing. It was suggested that lawyers devote one-tenth of their time to community services. Clearly, this is the scale on which we must seek to provide the needed services; but this appeal calls for supplication far more evangelical than a law review article.

Another suggestion is that volunteer attorneys working part time can provide legal services more effectively if they could pool their efforts around a small permanent paid staff, thereby stretching the usefulness of their volunteer time. Such an approach makes greater sense than merely adding additional volunteer attorneys. A few paid staff members can save countless volunteer hours. Staff attorneys could make sure that all necessary court appearances and emergency actions were covered when private business unexpectedly kept the volunteer attorney away. Also, a paid staff could ensure that services were coordinated, deadlines met, and office continuity maintained. Most importantly, a few people on duty all the time could gain the confidence of the community in a way a volunteer attorney working only Tuesday nights never could.

The simple expedient of permitting a successful plaintiff to recover his attorney's fees as allowable costs might significantly enhance the ability of the private Bar to provide greatly increased legal services to the poor. Indeed, it is difficult to see how such an obvious improvement has escaped detailed comment. The lawyers get more business, the poor get more service, and it is standard operating procedure throughout the rest of the world.

Another proposal for obtaining increased legal services is to make volunteer attorneys' services tax deductible. This idea has some obvious drawbacks. Most tax officials do not want the Internal Revenue Code used to further social, as against revenue-raising, objectives. There are difficulties in valuing a lawyer's time, al-

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99 Gardner, supra note 11, at 12. Mr. Justice Brennan has also suggested that law firms allocate a fixed percentage of their billable hours to legal community service. See Brennan, supra note 32, at 126.

100 See generally Shamberg, The Utilization of Volunteer Attorneys to Provide Effective Legal Services for the Poor, 63 NW. U.L. REV. 159 (1968).


102 Id. In certain limited situations, plaintiffs now can recover attorneys' fees under a few state statutes. See, e.g., IDAHO CODE ANN. § 45-605 (1948) (action to recover wages); MASS. ANN. LAWS ch. 151, § 20 (1965) (action to recover statutory minimum wage). See also Ehrenzweig, supra note 101, at 799-800.
though a number of current government programs do place dollar values on donated legal services. There are also problems with setting an upper limit on the number of hours a lawyer could annually contribute and in defining the clients for whom donated service would be deductible. But these problems are not intractable once the basic decision is made to use the tax structure to secure social goals.

An economic rationale for participation of the private attorney in the areas of law reform and lawyer involvement is easier to construct than for legal services. Law reform units of neighborhood law firms, specialized urban law centers, even arbitration, mediation, and ombudsmen projects are not terribly expensive. Large private law firms, local bar associations, and private foundations can spend their available funds (and some additional percentage) on much more effective ways of restructuring the distribution of justice than increasing the staffs of downtown legal aid offices. Every metropolitan bar association should support at least one law reform unit or specialized urban law center. It is embarrassing that our wealthy large law firms do little more as entities to advance the cause of social justice than contribute a few hours of associates’ time or a few dollars to local legal aid agencies.

The suggestion made earlier of seeking lawyer involvement by having attorneys act as counsel to administrative agencies and neighborhood groups could be made financially viable. Administrative agencies could pay legal fees from their own budgets. The Office of Criminal Justice in the United States Department of Justice is a kind of house counsel for the public within the Justice Department. Also, bar associations could underwrite the cost of providing public interest counsel to local administrative agencies.

Increasingly, funding agencies are giving community groups and neighborhood organizations consultant funds in their budgets which can be used to hire experts such as lawyers, financial counselors, and accountants. Moreover, a number of federal grants now carry planning funds which can be utilized to hire attorneys and other professionals in the formative stage of group activity or to develop more detailed program proposals for additional funding.103 There are also substantial sums for technical assistance.

103 This is especially true where grants are being made to community or neighborhood groups which obviously do not have seed money of their own. Grants under the Economic Opportunity Act of 1964, 42 U.S.C. § 2701 (1964), for job training [Title I-B, 42 U.S.C. §§ 2732-36 (1964)] and community action type programs [Title II-A, 42 U.S.C. §§ 2781-91 (1964)] have great flexibility. But planning funds are
training, and development work which can assist neighborhood organizations to pay for counsel and advice.

Law firms could receive government contracts, grants, and technical assistance funds directly. While there are potential problems in this approach, such as solicitation of business and possible questions as to their status as grantees, law firms have already received contracts from the Public Land Review Commission and could qualify under other programs as well. A slight variation from this is the practice of legal consulting. Lawyers and law firms, acting as consultants (under contracts, grants, or in personal service capacities) could be extremely helpful to administrative agencies, local government units, and neighborhood groups. Consultant firms can as easily be law firms as business corporations.

Whether or not lawyers could also incorporate the urban consulting portion of their practice is more questionable. It is sometimes extremely difficult for a lawyer to draw the line between lay urban consulting and giving legal advice. A corporation giving legal advice would seemingly violate the Canons of Ethics relating to the unauthorized practice of law and the use of lay intermediaries, even though the firm’s directors and staff members were all attorneys. Yet, it could be argued that OEO-funded neighborhood legal service corporations have generally been upheld. Like neighborhood law firms and public defender programs, the legal consultant firm would be engaged in work furthering the public interest when consulting for governmental and tax-exempt organizations.

What should be borne in mind is not the need for finding clever ways to circumvent the Canons of Ethics, but rather the need to develop an economic rationale for employing the resources of the private Bar in helping to solve the urban crisis. The purposes


104 Except, of course, where the grantee or contractee must be a non-profit organization.


106 See ABA CANONS OF PROFESSIONAL ETHICS NO. 47.

107 See id. No. 35.

108 B. CHRISTENSEN, supra note 37, at 3 n.9.
behind the prohibition of corporate practice, namely, to avoid an attorney's possible conflict of interest between his corporation and his client and the risk of interference with the attorney's independence, are not applicable in the context of public service work. As the author of the recent American Bar Foundation's study on group legal services concluded with regard to liberalization of rules surrounding such services:

The profession's interest in preserving the lawyer as an effective element in society — as well as the public's interest — would therefore seem to be best served by extending and expanding the ability of lawyers to serve the public and thus increasing the public's utilization of lawyers. The future vitality of the legal profession lies not in its ability to resist encroachment by other socially useful institutions but in its own ability to change and adapt to today's needs.\(^{109}\)

The private Bar, if it has the will, can find economic solutions to present restrictive practices which prohibit it from playing a more active role in meeting the urban crisis.

IV. Conclusion

There is (after all) a private practice of urban law — a new field maturing in the context of the nation's urban crisis. It seeks to apply legal resources and processes to the solution of urban problems. The plight of our cities is enmeshed in more legal considerations than is commonly suspected by the average attorney. At bottom is a fundamental denial of social justice to 40 million Americans; and throughout the entire superstructure are legal thickets and roadblocks which keep social programs from reaching their goals, self-help efforts from being more effective, and orderly protest and challenge stifled.

Lawyers have a vital role to play in solving the legal problems surrounding the urban crisis. So far only the public Bar has acted with energy and imagination. Unless the private Bar becomes more deeply involved, it risks permanent fragmentation into public and private segments, with the resultant loss of occupational attractiveness and progressive alienation from the rest of society.

The three general directions in which lawyers should move to meet the urban crisis are: first, to provide vastly increased, accessible, integrated, and comprehensive legal services to the poor; second, to secure far-reaching law reform and structural changes in

\(^{109}\) Id. at 73-74.
the distribution of justice which will make justice more relevant to the needs of the ghetto; and third, to fashion new ways for private lawyer involvement in dealing with urban problems, such as urban counsel to private business and local government, public interest counsel to administrative agencies, and attorney for neighborhood action organizations.

Underlying all three directions is the need to construct new economic incentives for the private Bar. In addition to obtaining increased individual contributions and more efficient utilization of private funds, bar associations and law firms should underwrite far greater efforts in law reform, specialized urban law centers, arbitration, mediation, neighborhood tribunal, complaint center, and ombudsman experiments. The traditional way of allocating attorney’s fees as costs in litigation, current tax incentives, and present restrictive interpretations of the Canons of Ethics should be revised to encourage the private practitioner to become more active in the struggle for social justice.

The time is short, the need is critical. We would do well to heed John Steinbeck’s admonition in the *Grapes of Wrath*, "Must the hunger become anger and the anger fury before anything will be done?"