

STATEWIDE LEGAL AID FEASIBILITY STUDY



COMMITTEE ON LEGAL AID

OREGON STATE BAR

June, 1971

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I. BACKGROUND

In November, 1969, the Honorable Governor Tom McCall held a meeting in his office at which legal services attorneys, representatives of the office of Economic Opportunity and members of the Governor's staff discussed the feasibility of a statewide legal aid program to expand assistance to the majority of Oregon's low income population that was then without legal aid service. It was decided that the Oregon State Bar would be the most appropriate and capable body to undertake a study of this problem. Subsequently a letter was sent from the Governor's office to John Holloway, Secretary of the Oregon State Bar, requesting that the Bar conduct a feasibility study to determine the need for statewide legal services, and if a need be found, to formulate a workable program to provide legal services to the state's disadvantaged citizens.

The Board of Bar Governors, through its secretary, assigned the matter to the Legal Aid Committee which voted to undertake the study if appropriate financing and personnel were available. On May 6, 1970, Governor McCall wrote to Donald Rumsfeld, the Director of the Office of Economic Opportunity in Washington, D. C., requesting on behalf of the Legal Aid Committee and the Oregon State Bar, a small research grant to conduct a three-month feasibility study. A grant of \$9,500 (of a requested \$11,350) was approved early in 1971; the Oregon State Bar bridged the gap by providing the remaining \$1,850, primarily for travel funds to canvass opinion in Oregon.

The Legal Aid Committee engaged Don Marmaduke and Steven Lowenstein as co-chairmen of the study team and Douglas Green and Charles Williamson as staff attorneys to carry through the study. Work began on March 15, 1971 and was divided into roughly three parts: more than a month of intensive travel seeking the opinions of attorneys, bar associations, low income persons and groups, minorities, social service agencies, state and county officials and law school faculty and students across the state, one month carefully evaluating these opinions as well as a broad range of other material on the subject, and a final month putting findings to paper in the following report. The Legal Aid Committee of the Oregon State Bar worked closely with the study team, defining the parameters of the work, helping to evaluate data obtained, and both overseeing and providing valuable assistance in arriving at program decisions and drafting the report. The study could not have been completed without the generous and time consuming help given by the Committee on Legal Aid and the Oregon State Bar, particularly its central office in Portland.

The study examines the need for a statewide legal services program in Oregon, and, as it determines there is such a need, outlines a legal aid program designed to meet that need. Initially,

an examination is made of poverty in Oregon, with particular emphasis on those parts of the state outside the major urban areas where government supported legal services presently exist. From extensive canvassing of the poor and social service agencies as well as various documentary sources, the legal problems confronting low income persons in Oregon are identified. The extent to which these legal problems are currently handled for the poor is then discussed in a section compiling data on and analyzing the effectiveness of present legal aid efforts. The source of this material is the many attorneys throughout the state who have so unstintingly assisted the study team in understanding the problems in their areas and the efforts being undertaken to assist the poor. The views of attorneys, the poor and relevant social service agencies operating in the field, concerning the effectiveness of current legal aid assistance are also reported.

Finally, an outline for the establishment of a statewide legal service program and potential sources for financing it are set forth. Wherever helpful, experience from neighboring states and other legal aid programs is incorporated in the report.

II. POVERTY IN OREGON

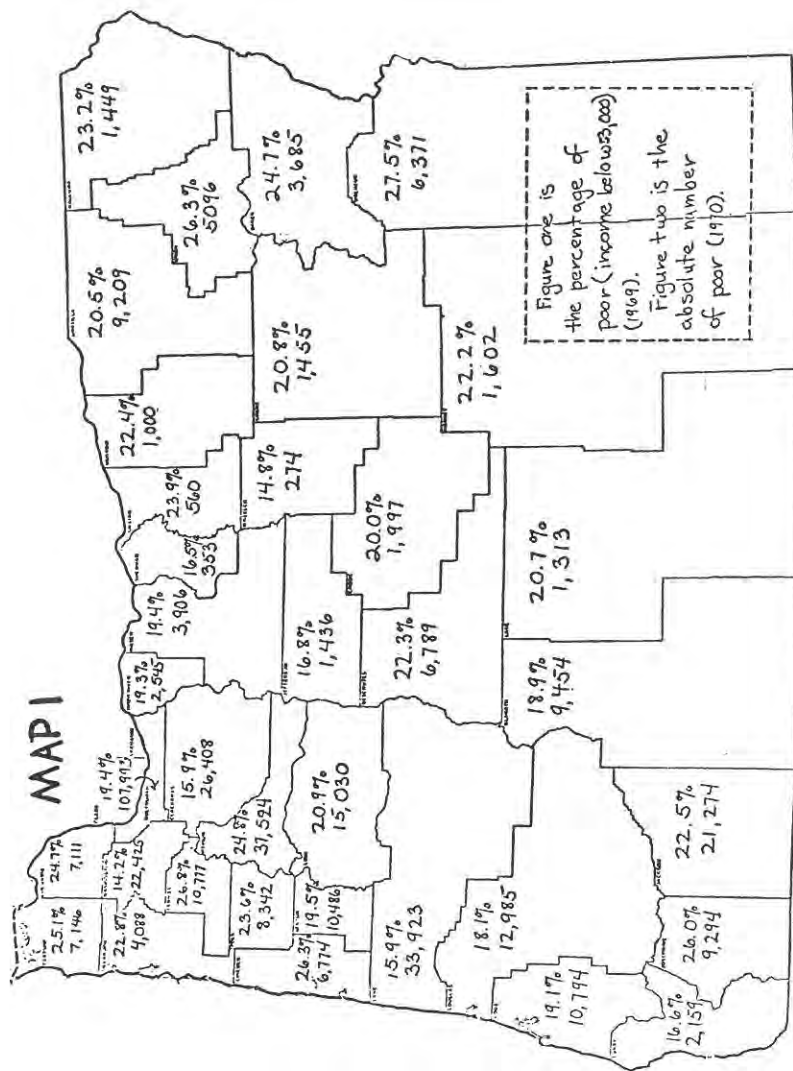
A. *Who Are the Poor?*

There are approximately 413,027 poor people in the state of Oregon, or 19.7% of the state's population.¹ Of this number, 179,440 (43%) live in counties containing the metropolitan areas of Portland, Salem and Eugene, called Standard Metropolitan Statistical Areas (SMSA's)², while 233,587 (57%) live in smaller communities and rural areas in Oregon; 19.4% of those within SMSA's are poor, while 19.9% of those outside these urban areas are poor.³ It comes as a surprise to most people that there is more

¹ See Map 1, page 3. The figure of 413,027 is arrived at by taking the latest percentage figures for households with income below \$3,000 in each Oregon county and multiplying them by 1970 census population figures. 1970 census income figures are unavailable until 1972. 1969 figures were used derived by the New York based Corporation, Market Statistics, for 1969. (See Sales Management and Marketing Magazine, 1970 "Census of Buying Power," June 10, 1970). We have independently made projections from the 1960 census figures for those with income below \$3,000, and from 1966, Office of Economic Opportunity, Community Profiles, and our figures are within a 1% deviation of those derived by Market Statistics. The percentage figures for households were multiplied by 1970 population figures to arrive at the absolute number of poor in each county. The figure of 413,027 and that for each county is probably low, as we have used the percent of poor households as the equivalent of the percent of poor individuals when dividing into the total population and, as the poor tend to have more children than the national average, our figures may be taken as generally low.

² A Standard Metropolitan Statistical Area (SMSA) is a city of at least 50,000 inhabitants and is defined along county lines.

³ If the suburban counties of Washington and Clackamas are not included, 21.8% of those outside urban areas are poor. These figures were obtained by creating a ratio of poverty population to total population.



For an explanation of how these figures are derived see footnote 1, p. 2.

poverty both in absolute numbers and by percentage in Oregon's smaller communities and rural areas than in its major urban centers. This section will outline the extent of poverty in Oregon, concentrating on that part of the state outside of the three Standard Metropolitan Statistical Areas which are each served by government supported legal aid programs.

Poverty in many Eastern urban areas is so concentrated that it is obvious for all to see. In Oregon, however, which has an area of 96,981 square miles with an average population of 22 persons per square mile, poverty is less visible. For the individuals who constitute Oregon's poor, the problems are just as intense as those of other poor whose plight is better recognized. As the 1967 Presidential Advisory Commission on Rural Poverty indicates, "poverty is a controversial word."⁴ It is impossible to define merely in terms of inadequate income. It reaches into the spirit and the mind. A poverty level income carries with it the inability to obtain positions of respect in the community, a constant struggle from generation to generation to maintain a survival existence, and the lack of power to effect change. To these general problems is added the isolation of the rural poor who usually live a distance from needed resources and in the hopelessness engendered by lack of social organization. Let us turn to specifics about Oregon.

The majority of Oregon's poor who do not live in the three Standard Metropolitan Statistical Areas are white persons residing outside towns of 2,500 or more population and do not occupy farms. This is the case in 26 counties. In six, most of the poor are residents of towns (2,500 population or above). Only one county has a poor population that consists mainly of white residents occupying farms (Malheur).⁵

Although all members of minority groups are not poor, a disproportionately high number are. In 1968, Oregon had 44,073 seasonal agricultural workers and approximately 45,000 permanent residents of Mexican-American descent. Of this number, 43,233 migrated into the counties where they worked.⁶ Oregon is the sixth largest user of migrant farm labor in the nation and Marion County is one of eight counties in the United States which has 10,000 or more migrant workers employed during the season.⁷

⁴ Report of the Presidential Advisory Commission on Rural Poverty, *People Left Behind*, (1967).

⁵ See Office of Economic Opportunity, Community Profiles for each county in Oregon; and generally, Governor's Coordinating Committee on the Economic Opportunity Act, *A Demographic Analysis of the State of Oregon*, (1965).

⁶ 1969 Annual Report of the Committee on Labor and Public Welfare, Subcommittee on Migratory Labor, United States Senate, Report No. 91-83, p. 125. These figures are considered low by Governor McCall's Task Force Report on Seasonal Agricultural Labor, p. 3 (1969).

⁷ *Ibid.*, pp. 115-129, and Glick, Martin, "Need for Legal Services in Oregon's Willamette Valley," (mimeo, Consultant's Report to the Office of Economic Opportunity, 1970).

Of Oregon's 26,308 black citizens, 24,070 live within the three major urban areas, most of these within Portland.⁸ There are also 9,100 Indians living in Oregon, 2,800 of them residing on the Warm Springs and Umatilla reservations, while a significant number have migrated to Portland, Klamath Falls, and other Oregon cities.⁹ The extent of poverty among minorities living outside the major urban areas is examined below.

B. Income

The Office of Economic Opportunity revised Poverty Guidelines of December 1, 1970¹⁰ list the poverty level income for a family of two as \$2,500 per year. The average family size in the United States is 3.75 persons per family. The poverty level income for the average family, according to the Office of Economic Opportunity lies between \$3,100 and \$3,800 per year.¹¹ Using the low monetary guideline — i.e., persons below \$3,000 income, for which we have accurate statistics — 22 Oregon counties have 20% to 28% of their populace with poverty level incomes.¹² If the income level is adjusted up from \$3,000 to accommodate an average family size of 3.75, approximately one-third or 12 counties have in excess of 30% of their populations below the basic subsistence level. It is interesting to note, in contrast, that the median family income in America today is \$9,870.¹³

An assessment of poverty levels over the period of the last decade will give a better sense of historical perspective and paint a stark picture, indeed, of poverty trends. The percentages of poor have increased in every Oregon county within the last ten years. In 14 counties, the percentage increase in poor was two to five times the percentage increase in population.¹⁴ Map number 2 on the following page indicates the percentage population increase and percentage poverty increase for each county.

Although statistics are useful in confirming the extent of a problem, it must never be forgotten that numbers are merely offered as substitutes for names, for the many individuals across the state who told their plight to members of the study team.

⁸ 1970 Census of Population.

⁹ Office of the Governor, State of Oregon, "Special Message to the 55th Legislative Assembly on the Problems of the Poor," p. 2 (April 9, 1969); and Portland American Indian Center, "American Indians of Today," p. 15 (1970).

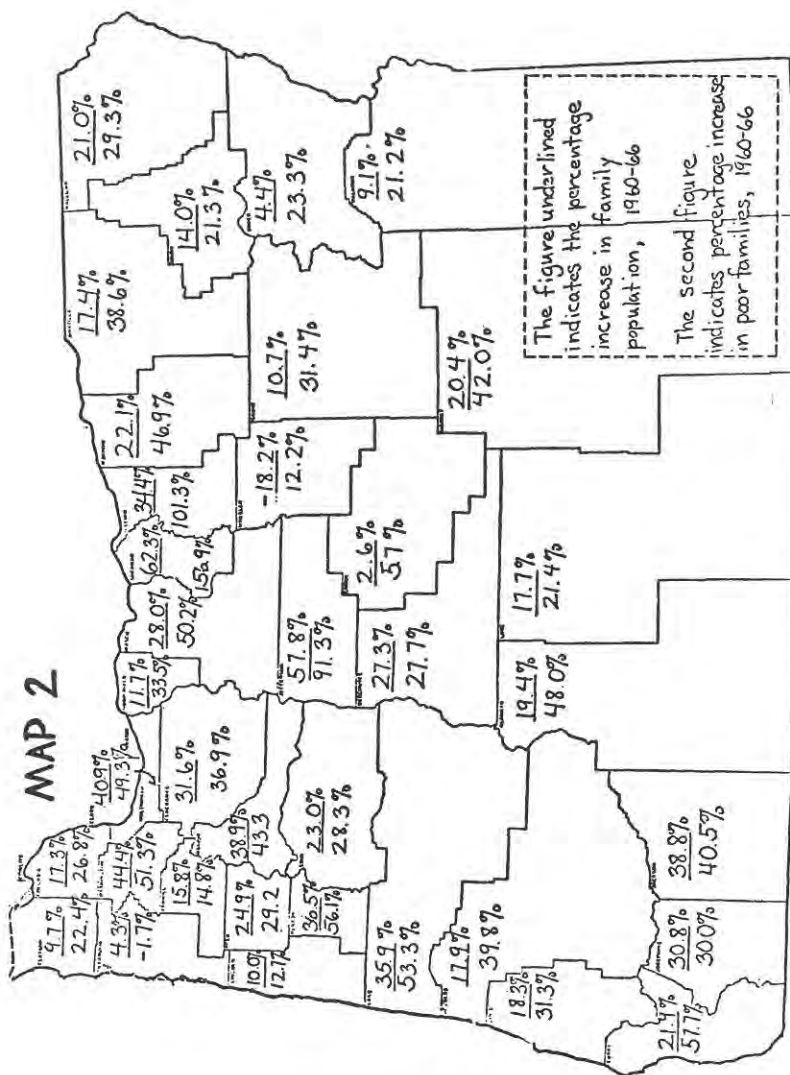
¹⁰ Office of Economic Opportunity, "Instruction No. 6004-1b," (December 1, 1970).

¹¹ *Ibid.*, p. 2.

¹² See Map 1, p. 3, and Footnote 1, *supra*.

¹³ The Oregonian, Sect. 1, p. 8 (May 30, 1971).

¹⁴ The source of this data is the Office of Economic Opportunity, Community Profiles for each Oregon county. For a thorough examination of poverty in Oregon based on data available in the early 1960's, see Governor's Coordinating Committee on the Economic Opportunity Act, *A Demographic Analysis of the State of Oregon*, (1965).



C. Housing

Functional heating, plumbing, a stable structure, and a sufficient number of rooms to accommodate family size are necessary components of adequate housing. In Oregon there are 38,629 dwelling units with more than the national average of 1.01 persons per room, 8,666 of which are in the Census Bureau's highest category enumerated for overcrowded housing (more than 1.50 persons per room).¹⁵ Further, according to 1970 census figures, in 20% of Oregon's counties, one-tenth of the housing units lack some or all of the basic plumbing facilities. In the state as a whole there are 26,425 units lacking adequate plumbing.¹⁶ 12,306 Oregonians own and occupy dwellings that are valued at less than \$5,000, while 13,889 persons rent and live in premises that rent for less than \$40 per month.¹⁷ The Governor of Oregon reports that in 1960 there were 145,630 dilapidated and substandard houses out of a total of 622,850; 27 counties in Oregon had more than 25% of their housing in substandard condition.¹⁸ The 1970 census does not use this category any more, but the University of Oregon estimates that the figure today would be even higher.¹⁹ There are, in addition, 130,000 Oregon families who cannot obtain housing without paying more than 25% of their income. The University of Oregon's Bureau of Governmental Research states that the payment of more than 25% of income for rent is an unacceptable economic and social condition, as insufficient funds are left for other basic needs.²⁰ Low income families frequently pay more than 25% as existing low rent housing is in short supply and new low cost housing is not being built. Rural Oregonians in need of public housing are placed on waiting lists for an average of two to six years.²¹ These figures on housing indicate a substantial number of Oregon citizens live at or below subsistence levels with respect to shelter.

D. Employment

As Calvin Coolidge once aptly described the situation, "When a great many people are out of work, unemployment results." That is the daily existence for over 55,000 Oregonians. For the year 1970, there were only two Oregon counties with unemployment of less than 5% and 23 counties with unemployment over 7%. Josephine

¹⁵ 1970 Census of Housing, "General Housing Characteristics." See Map 3, p. 8, *infra*.

¹⁶ *Idem*.

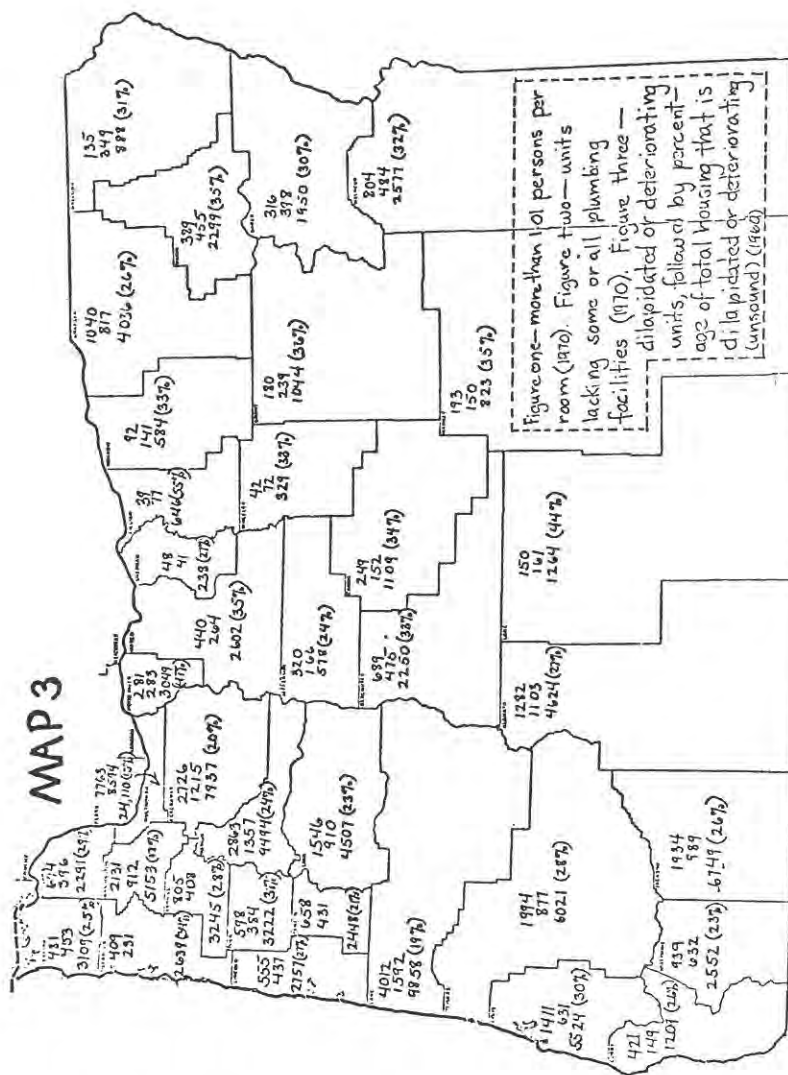
¹⁷ *Idem*.

¹⁸ Office of the Governor, State of Oregon, "Special Message to the 55th Legislative Assembly on the Problems of the Poor," p. 5 (April 9, 1969).

¹⁹ Bureau of Governmental Research and Service, University of Oregon, *Special Studies—Oregon Housing*, p. 16 (1970).

²⁰ *Idem*.

²¹ *Ibid.*, p. 63.



First two figures from 1970 Census of Housing. Figure three from 1960 Census of Housing.

County reached an unemployment level of 12.2%; Yamhill, 9.7% and numerous cities had extremely high levels as of March, 1971: Milton-Freewater, 22.5%; Grants Pass, 17.2% Hood River, 13.1%; and Baker, 12.5%.²² The United States Employment Service categorizes as a hardship area any county with unemployment over 6%.

Most Oregon counties rely heavily upon agricultural production for their livelihood. Thus they are confronted with not only seasonal unemployment adjustments, but during the last ten years, a consistently high rate of unemployed on a yearly basis.²³ In addition to the deleterious consequences to general economic stability, excessive unemployment produces a multiplier effect that pervades the social structure of a community and exacerbates other problems confronting the poor.

E. Public Assistance

Those on welfare are poor, indeed, by modern standards, generally having an income of less than \$1,800 per year for a single person and \$2,400 for a family of four.²⁴ Of 107,675 persons receiving Aid to Dependent Children and General Welfare Assistance (non-medical) in Oregon at the beginning of 1971, 52,104 were located outside Standard Metropolitan Statistical Areas.²⁵ In addition, 114,438 persons participated in Abundant Food Programs and 51,950 obtained Food Stamps.²⁶ The number eligible for these programs is substantially higher than those participating; the Oregon State Welfare Office estimates the number at approximately three times the number participating. Those receiving Social Security benefits — old age, survivors, disability and health insurance — are even higher in number and percentage of population than those on welfare.²⁷

F. Health

Health is a significant poverty indicator, and is another area in which Oregon's poor find themselves confronted by serious

²² State of Oregon, Employment Division, Statistics and Research, "Labor Force and Employment in Oregon," 1970, and week ending March 12, 1971. See Map 4, following page.

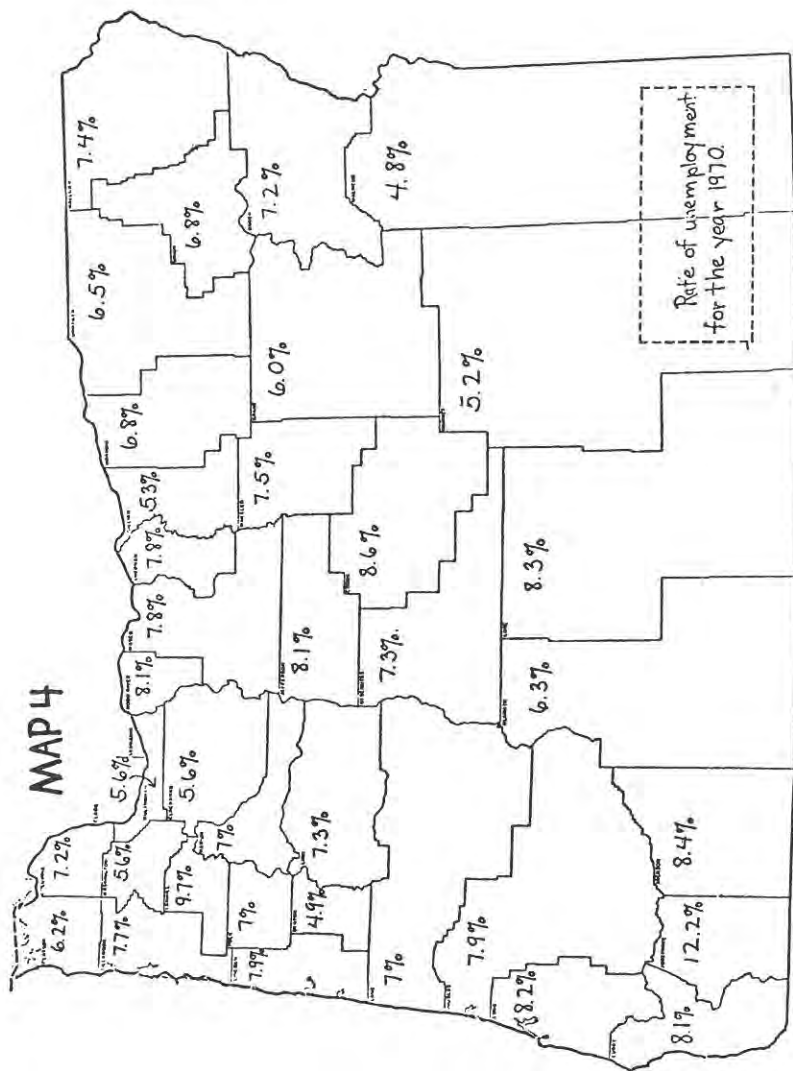
²³ Bureau of Business and Economic Research, University of Oregon, "Oregon Economic Statistics," p. 16 (1970); and Governor's Coordinating Committee on the Economic Opportunity Act, *A Demographic Analysis of the State of Oregon*, pp. 65 ff. (1965).

²⁴ State Public Welfare Commission, State of Oregon, "Revised Rules for Public Assistance," 1969. Anyone eligible for Welfare may automatically obtain Food Stamps or Abundant Food.

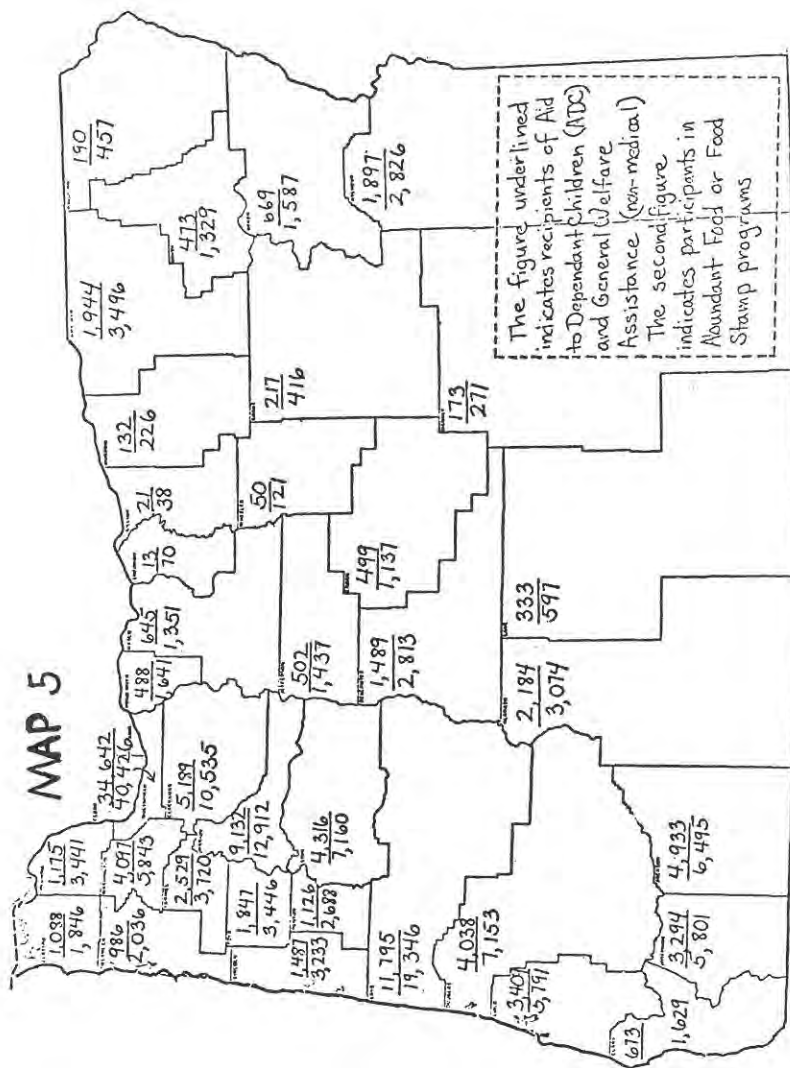
²⁵ Public Welfare Division, State of Oregon, "Public Welfare in Oregon," Vol. 36, No. 1, p. 5 (January, 1971).

²⁶ *Ibid.*, p. 13.

²⁷ Social Security Administration, United States Government, *Statistics on Old Age, Survivors, Disability, and Health Insurance*, 1969. See also State of Oregon, *Health Facts*, pp. 136-7 (1969).



Figures from State of Oregon, Employment Division, Statistics & Research, "Labor Force & Employment in Oregon Counties, 1970.



Figures from Public Welfare Division, State of Oregon, "Public Welfare in Oregon," January, 1971.

problems. The Comprehensive Health Plan for the State of Oregon completed in 1970 reports that "the number of restricted activity days and bed disability days among families with annual incomes below \$3,000 was more than twice the number for families with incomes above \$7,000."²⁸ In addition, the incidence of heart condition, arthritis, high blood pressure, mental conditions, and orthopedic and visual impairments for those with incomes below \$2,000 per year is three to six times higher than those with incomes between \$4,000 and \$7,000, and up to ten times higher than those with incomes over \$7,000.²⁹

According to the Public Welfare Division of Oregon, 366,160 people in the state are financially unable to provide for their own care.³⁰ The Public Health Service is the main source of health care for the rural poor. However, as the State of Oregon Comprehensive Health Plan points out, only minimal standards of health are being met by local public health agencies. "Thirteen counties do not provide immunization services to all age groups. Home Health Agency services are not available in thirteen counties and family planning services are not given in twenty counties. In twenty-four counties, well-child clinic services are not provided. Prenatal services are provided in only two counties and venereal disease program services are not readily available in nineteen counties."³¹ Oregon's poor have serious health problems and minimal remedial services.

G. Special Problems

Migrants: Most migrant farm laborers are Mexican-Americans from California, New Mexico, and Texas, although there are some Indians and white migrants also. The western migrant stream through California brings approximately 35,000 migrant workers to the Willamette Valley and the Wasco-Hood River area between late spring and early autumn each year. The remaining 9,000 Mexican-American migrants travel a stream beginning in Texas, moving through New Mexico, and ending primarily in Malheur County, in Eastern Oregon.³² In addition, approximately 40,000-45,000 Mexican-Americans have become permanent residents of Oregon. The situation of Oregon's migrants is serious. They are part of the broader national problem which Senator Harrison

²⁸ State of Oregon, *Comprehensive Health Plan*, p. 307, (1970).

²⁹ *Ibid.*, p. 308.

³⁰ *Ibid.*, p. 306.

³¹ *Ibid.*, pp. 195-197. See also President's Advisory Commission on Rural Poverty, *Rural Poverty in the United States*, p. 311 ff. (1968).

³² Hearings before the Subcommittee on Migratory Labor, Committee on Labor and Public Welfare, United States Senate, *Farmworker Legal Problems*, Part 4B, p. 1521 (1969); President's Advisory Commission on Rural Poverty, *Rural Poverty in the United States*, p. 424 (1968).

Williams has called a "gross violation of human law."³³ The Governor's Task Force on Seasonal Agricultural Labor in Oregon described the plight of the migrant in 1969 as one in which there was little education, low income, considerable unemployment, inadequate housing and virtually no legal counsel.³⁴ In fact, the wages for agricultural work are the lowest for any occupation — the average in Oregon is \$1.34 per hour excluding negligible fringe benefits.³⁵ The Senate Subcommittee on Migratory Labor determined that in 1967 the migrant worked an average of only 85 days per year for average annual wages of \$922.³⁶ Most of Oregon's farm labor camps lack adequate toilet facilities and many lack fundamental health facilities of any kind despite legislation on the books requiring such facilities.³⁷ One statistic demonstrating truly destitute living is that in 1969 there were 30.8 infant deaths among Oregon migrants for every 1,000 live births, while the average in Oregon was 17.5 per 1,000 and nationally, 20.7.³⁸ Lack of coverage by basic federal legislation,³⁹ constant relocation, and discrimination aggravate the migrant's lot.

Indians: The above figures, bleak as they are, do not begin to describe the situation of the American Indian. While infant mortality is very high for migrants, it was nearly double for Indians living on reservations in the United States: 53.7 per 1,000 births.⁴⁰ The Senate Subcommittee on Indian Education reported in 1969 that Indian income was \$1,500, 75% below the national average; unemployment was 40%, ten times the national average; and the average age of death was 44, while the national average was approaching 70.⁴¹ In 1969, two-thirds of all housing on the reserva-

³³ 1969 Annual Report of the Committee on Labor and Public Welfare, Subcommittee on Migratory Labor, United States Senate, Report No. 91-83, p. VII.

³⁴ "Governor's Task Force Report on Seasonal Agricultural Labor in Oregon," p. 4 (1969).

³⁵ Friel, Michael, "Willamette Valley Rural Legal Services Proposal," p. 2 (1970).

³⁶ 1969 Annual Report of the Committee on Labor and Public Welfare, Subcommittee on Migratory Labor, United States Senate, Report No. 91-83, p. VII.

³⁷ "Governor's Task Force Report on Seasonal Agricultural Labor in Oregon," pp. 26 ff. (1969); Friel, "Willamette Valley Rural Legal Services Proposal," p. 2 (1970); Glick, "Need for Legal Services in Oregon's Willamette Valley," (mimeo, Consultant's Report to the Office of Economic Opportunity, 1970); and O.R.S. 446.510 *et. seq.*

³⁸ Friel, *idem.*; Glick, *idem.*; and the Oregon State Board of Health, "Statistical Report for 1969," p. 103.

³⁹ E.g., National Labor Relations Act and Fair Labor Standards Act.

⁴⁰ Steiner, Stan, *The New Indians*, p. 197 (1968). National statistics are used to approximate the situation of Oregon Indians, as there are few current statistics available on Indians in Oregon.

⁴¹ 1969 Report of the Special Subcommittee on Indian Education, Committee on Labor and Public Welfare, United States Senate, Report No. 91-501.

tions was rated as substandard.⁴² Although Indians on the Warm Springs Reservation are comparatively better off, Governor McCall reported to the 55th Oregon Legislature in 1969 that, "The proportion of Indian families living in poverty is far greater than other groups in the state. . . ." ⁴³

H. Conclusion

Although often hidden from view, poverty in Oregon is substantial. It is even more prevalent in small communities and rural areas than in urban centers. Each indicator looked to — income, housing, employment, public assistance, health and minority problems — demonstrates the existence of a "culture of poverty" in Oregon as in other parts of the nation. Numerous legal problems are generated from these recurring difficulties which confront the poor. Let us turn now to an examination of these legal problems.

III. LEGAL PROBLEMS OF THE POOR

Low income persons in Oregon have numerous legal problems, some of which are being adequately taken care of at the present time, many of which are not. Many problems which are in fact legal problems are not recognized as legal problems by low income persons.⁴⁴ Yet they are considered very real and important to the person burdened by them. In one small Oregon community a woman bought a new freezer which shortly thereafter would not function properly. Unable to work the problem out, she went to an attorney who said that it would cost her \$500 in order for him to win the case. She therefore did nothing. In another town, a Mexican-American was parked well off the road and was hit by a drunken driver from behind. His car was so severely damaged that he lost it, yet he is still paying the finance company. The police would not take a report, and he lost his driver's license because he had no insurance — he still cannot obtain an attorney to advise him of his rights in the matter. In yet another rural area, an elderly woman had unwisely signed a long-term contract for a burial plot plan and also a contract for a hearing aid which was not needed. She had no idea what was going on and has been unable to find any legal help. In one county, the common domestic problem can best be summarized by the case of a welfare mother

⁴² Rural Housing Alliance, "Low Income Housing Bulletin," p. 1 (May, 1970), from Bureau of Indian Affairs, *Consolidated Fiscal Year 1969 Housing Inventory*.

⁴³ Office of the Governor, State of Oregon, "Special Message to the 55th Legislative Assembly on the Problems of the Poor," p. 2 (April 9, 1969); The Senate Subcommittee on Indian Education at p. 17 states also that, "The termination of the Klamath Reservation . . . has led to extreme social disorganization of that tribal group."

⁴⁴ See discussion below at p. 36, and Appendix I.

with two children. Her husband was beating and threatening her and the children and paying no support. She sought immediate help through a private attorney. He indicated that she would need to pay the full fee, which she was unable to pay. She went to the volunteer Legal Aid Office, and was told that she would have to obtain "independent evidence of physical harm by her husband." She thus had to obtain a doctor's report, and again talked to the attorney who indicated that he would have to refer the matter for approval through the Legal Aid Committee. Because of the length of time involved she and many other women receiving ADC formed a group and with the help of a retired private attorney have been preparing and taking their own divorce cases to court.

In order to document and discuss these and other legal problems of the poor, it is especially important to consider what low income persons feel their legal problems to be. It is also useful to consider the experience of Community Action Programs, County Welfare officials, other city and county officials, and local attorneys with legal problems of the poor. Problems particularly common to various geographical areas of the state and special problems of low income Indians, Mexican-Americans and senior citizens will also be examined. The data for documenting the basic legal problems of low income persons in Oregon, as well as for many other facets of this study, come from the following sources:

1. Discussions with most of the state's bar associations and numerous attorneys. These meetings are continuing.
2. Discussions with 47 groups of low income persons in 31 counties in Oregon, with approximately 725 low income persons present. The representatives at these meetings represent many thousands of other low income Oregonians. Our method of contacting low income people took several forms. Meetings were organized by Community Action Programs in all areas where this was possible. All persons from the Poor Peoples Conference list in the vicinity were invited to attend. The CAP's were urged to ask any other interested parties to take part and often welfare staff, social workers, VISTA's (Domestic Peace Corps), and others who work daily with the poor participated. Meetings ranged from 10 people to about 70. Many low income families were contacted and interviewed personally in their homes.
3. Interviews with other individuals with knowledge of low income legal problems: directors of Housing Authorities, Community Action Program staff, Welfare caseworkers, county and city officials (including Juvenile Court, Employment Division, and Division of Vocational Rehabilitation officials, etc.), board members and staff of the present Legal Aid Programs in the state, and representatives of Senior Citizens groups, Blacks, Mexican-Americans, and American Indians.

4. Fifty in-depth interviews with a randomly selected group of low income citizens.⁴⁵
5. A questionnaire sent to the Welfare administrator of each county and to each Community Action Program in Oregon.⁴⁶
6. Various articles and Congressional reports, law reviews, other studies, etc.⁴⁷

A. General Legal Problems

The major legal problems confronting the poor throughout the state can be grouped and discussed under the following headings:

Consumer: Low income persons' lack of knowledge of their rights as consumers and their lack of recognition of many of their problems as legal contribute to difficulties in this area. The tactics of high pressure salesmen often result in unfair and unneeded contracts being signed. When the product is found to be less than satisfactory or unneeded, relief is necessary. Enforcement of warranty terms is often difficult. If payments are not continued, then harassment by creditors or collection companies may follow, and repossessions, liens, and deficiency judgments may result. Garnishments are a major problem causing loss of jobs and continuing the welfare cycle where, if the low income person obtains a job, he will not be able to support his family due to garnished wages. Bankruptcies often are a need, although programs such as Consumer Credit Services can help solve this problem in many cases.

Housing: Problems in this area are acute in most parts of Oregon, largely due to a lack of adequate housing for low income persons. There is a great deal of substandard housing⁴⁸ and city, county, and state codes are either nonexistent or not enforced. Because of the scarcity of housing it is a landlord's market and a common attitude is "if you don't like it, move." Proper notice and repairs are often not provided by landlords and, as in other areas, tenants have little knowledge of their rights. Public housing in many parts of the state has helped provide satisfactory housing for low rentals, but waiting lists are long in each Housing Au-

⁴⁵ Discussed fully below.

⁴⁶ *Idem.*

⁴⁷ For this section, the primary secondary sources were as follows: Gibson, "Rural Poverty in the Northeast," 15 U. of Kan. L.R. 469 (1967); Duke Law Journal, "The Legal Problems of the Rural Poor," 1969 Duke L.J. 495; Widiss, et. al., "Legal Assistance for the Rural Poor: An Iowa Study," 56 Iowa L. R. 100 (1970); Denver Law Journal, "Rural Poverty and the Law in Southern Colorado," 47 Denver L.J. 82 (1970); Special Committee on Aging, United States Senate, "Legal Problems Affecting Older Americans, A Working Paper," (1970); Grim, "Laws and Legislation Providing for the Housing of Migrant Agricultural Workers," 6 Willamette L.J. 111 (1970); Hearings before the Subcommittee on Migratory Labor, Committee on Labor and Public Welfare, United States Senate, *Farmworker Legal Problems*, Parts 4A and 4B (1969).

⁴⁸ See Map 3, page 8, *supra*.

thority project.

On the other hand, there are complaints by low-income landowners (mostly elderly people dependent on limited rental income) about the difficulty in collecting rent from tenants and problems with taxes, codes, liens and foreclosures.

Administrative: Although in many areas the local representatives of the administrative agencies were considered very helpful to low-income persons, there is some feeling of a lack of responsiveness on the part of the agencies. Welfare recipients often felt they were the victims of arbitrary and unfair treatment by local Welfare offices and even by the community. The fair hearing process was considered helpful, but often very unsatisfactory if no attorney were present to represent the recipient. Welfare fraud investigations without search warrants and harassment through threats of cutting off benefits were often mentioned. Additional help was needed in dealing with the Department of Motor Vehicles, Veterans Administration, Social Security, Unemployment, Public Housing, Workmen's Compensation, Medicare, etc.

Family: In almost every area of Oregon, except among minority groups, the desire for divorces was considered to be a major problem. This is tied in with the need for obtaining restraining orders, child support orders, and straightening out custody and paternity matters. The inability to obtain a divorce often resulted in physical harm to mother and children, as District and City Attorney offices often would not accept complaints for assault and battery unless a divorce complaint had been filed. This also resulted in confusion as to contractual matters and benefits through Social Security, Veterans Administration and Welfare. There was also a need for assistance in adoptions and guardianships.

Criminal: Criminal problems are of concern to low income persons. Many feel that court appointed lawyers are often inexperienced, too busy and sometimes not as sympathetic with their problems as they could be. Others felt, however, that the court appointment system was adequate. Specific complaints were that attorneys were not appointed soon enough in the process, that the pressure was usually for guilty pleas, and that attorneys did not appear to have enough time to investigate thoroughly. There was a definite need for additional legal representation in the Juvenile Courts, although many low income persons were fairly satisfied with the court appointment system there. Other complaints concentrated on jail conditions, bail abuse, and police harassment. There is a basic feeling that low income persons do not understand the criminal process in which they find themselves entangled.

Miscellaneous: Adequate legal representation was considered badly needed in commitment and sanity hearings. Problems involving minor property transactions particularly relating to the elderly poor included needs for wills, deeds, contracts, etc. Minority groups mentioned school problems and discrimination in em-

ployment, housing, and law enforcement. Some minor business, estate and probate and wage claims advice and assistance were also mentioned.

B. Legal Problems of the Poor as seen by Social Service Agencies

The questionnaire sent to Welfare administrators and Community Action Program directors asked for major legal problems affecting low income persons in each area. In addition, numerous individual caseworkers and CAP personnel were interviewed.

Probably because of their dealing with large numbers of Aid to Dependent Children cases, nearly all Welfare offices felt that domestic relations problems were the most pressing. Specifically, the inability to obtain divorces, and the obtaining and enforcement of temporary restraining and child support orders were most frequently mentioned. Other needs included representation in adoptions, paternity suits and custody matters. Guardianships and conservatorships were considered to be a need for many low income persons, especially older citizens.

Regular and adequate representation was needed in commitment and sanity hearings and adequate juvenile court representation was considered essential.

Housing problems were considered substantial. General landlord-tenant problems involving proper notice, evictions and collection of rent were listed, as was the general failure of landlords to repair substandard rental housing throughout the state.

Creditor-debtor problems included garnishments, creditor's harassment, need for bankruptcies, and advice and help on contracts, deeds and wills. Liens, foreclosures and repossessions were considered to be problems of many low income debtors, and wage collections help was needed for employees.

Administrative problems were broken down into help needed in dealing with various agencies such as Social Security, Department of Motor Vehicles, Workmens Compensation, Veterans Administration and even Welfare itself through the fair hearing process.

C. Legal Problems of the Poor as seen by Local Bar Associations

For the most part, lawyers delineated the specific legal problems confronting the poor in approximately the same manner as did the poor and social service agencies. Some lawyers indicated that aside from domestic relations matters, they did not have much familiarity with legal problems of the poor. Based on the experience of volunteer legal aid programs and discussions with bar associations, the major legal problems that were mentioned fell in the following areas, roughly in the order presented:

1. Domestic relations — divorces, child support, custody, etc.
2. Landlord-tenant problems.
3. Debtor-creditor, including bankruptcy.

4. Wage issues.
5. Consumer protection.
6. Problems with administrative agencies (Welfare, Veterans Administration, Social Security, Department of Motor Vehicles, etc.).

D. *Legal Problems in Specific Geographical Areas*

*Eastern and Central Oregon (Regions 10-14):*⁴⁹ The biggest problem throughout this region appeared to be difficulties with conventional housing. The whole range of housing problems discussed above are present in this area. In addition, there is general lack of adequate low income housing with complaints of codes not being enforced. There is no public housing in the Klamath Falls area, Baker County or in Hood River-Wasco-Sherman counties, although efforts are being made to obtain such housing.

There was a need for divorces, but not the big demand of Western Oregon. There was basic satisfaction with the administrative agencies, as the representatives of the agencies seemed to have time to explain and help work out problems. There was also fairly general satisfaction with court appointed juvenile and criminal representation. There is a special emphasis on problems relating to land and property transactions in the region—hence help needed on contracts, deeds, mortgages, etc.

Most of the Indians in Oregon and many Mexican-Americans live in this region. Their legal problems are dealt with separately below.

*Southwestern Oregon (Regions 7-9):*⁵⁰ In addition to most of the more common legal problems found throughout the state, certain specific problems encountered deserve mention.

There were numerous complaints in Douglas and Coos-Curry counties concerning administration of County Welfare Departments. It was felt that policy was often arbitrary and unfair, and peculiarly "local" in character. Welfare Recovery Division investigations were considered very high-powered, with lack of consideration of recipients' dignity or rights.

Although tenants in the low income public housing projects in Jackson, Douglas, Lane and Coos-Curry counties were basically grateful to be in the projects, there were specific complaints about the lack of adequate fair hearing procedures in Douglas and Jackson counties, and the arbitrary shuffling of the tenants' waiting lists. There was also concern about the high deposits required before occupancy in Coos-Curry counties, and the leases which must be signed waiving notice of Housing Authority official's entry, and rules regulating visitors, etc. There was also concern over a separate and higher rent schedule for welfare tenants.

Divorces were considered the major unmet need. One ADC

⁴⁹ See Map No. 6, p. 53, *infra*.

⁵⁰ *Idem*.

Mother's Group has begun preparing and obtaining their own divorces with the help of a retired private attorney.

It was generally felt that juvenile court representation by court appointed attorneys was adequate, although appointments were not made early enough in the process. In Douglas County, concern was expressed about jail conditions and regulations, and bail abuse. Dissatisfaction was expressed with court appointment systems in Jackson and Lane counties because of attorneys' lack of interest, and occasional charging of fees despite court appointment. In Douglas and Josephine counties, it was mentioned that attorneys did not make contact with clients soon enough in the criminal process.

There were some complaints of discrimination in employment and police conduct in Jackson, Josephine and Coos-Curry, and welfare recipients in Douglas County complained of discrimination in housing, medical care, deposits required by utility companies, and inadequate notice about eligibility for Abundant Food Programs.

*Northwestern Oregon (Regions 1-6, excluding Multnomah County):*⁵¹ Consumers and debtors had numerous complaints. In several communities, it was mentioned that loan companies actually posted the names of poor credit risks in local stores. Much difficulty existed in enforcing guarantees in repair and service contracts.

In Clackamas County, tenants of the local Housing Authority complained of arbitrary administration policy, and in Columbia County there appeared to be some difficulty with arbitrary treatment by city and county officials.

Divorces were uniformly declared to be a major need. Low income persons had mixed reactions about the court appointment system in criminal cases, but did express concern about District Attorney and City Attorney offices which were reluctant to prosecute bad check charges, and enforce child support, contempt and temporary restraining orders.

Multnomah County (Region 3): The low income persons in the Multnomah County area are presently served by the Multnomah County Legal Aid Service. It is composed of three separate offices (Downtown, Southeast and Northeast), including 20 full-time attorneys. Because of time limitations and available statistics, low income persons were not extensively canvassed in Multnomah County. The best present statistics on the legal problems of low income persons come from a breakdown of the problems the Multnomah County Legal Aid Service has handled. Due to the fact that the largest minority group in the county (the Black population) receives services almost exclusively through the Northeast office, figures are given separately for the Northeast office.

⁵¹ See Map No. 6, p. 53, *infra*.

Approximate percentage figures, based on first quarter statistics for 1970 and 1971 for the whole program, and for the first and second quarters of 1971 for the Northeast office, are as follows:

	Whole Program	Northeast Office
<i>Consumer:</i>		
Includes problems involving: sales contracts, garnishments or attachment, wage claims, bankruptcy, loan problems, etc.	20%	20%
<i>Administrative:</i>		
Includes problems involving: state and local welfare, Social Security, Workmen's Compensation, Veterans' Administration, Unemployment, Department of Motor Vehicles, etc.	10%	10%
<i>Housing:</i>		
Includes problems involving: landlord-tenant, housing code violations, public housing, foreclosure, liens, etc.	10%	15%
<i>Family:</i>		
Includes problems involving: divorce and annulment, separation, non-support, custody, guardianship, paternity, adoption, etc.	40%	35%
<i>Miscellaneous:</i>		
Includes problems involving: torts, juvenile school problems, criminal misdemeanors, sanity hearings, estates and probate, replevin, conversion, bailment, business, etc.	20%	20%

Thus, figures are approximately the same for the whole Portland area as for the Northeast office, with more housing problems in the Northeast area (due to more public housing, code violations, and absentee landlords), more advice and referrals given on criminal matters, and fewer on domestic relations problems. The problems handled by Multnomah County Legal Aid tend to be those found to be of primary concern throughout the remainder of the state.

*E. Legal Problems of Special Groups*⁵²

American Indians: Many of the legal problems of low income Indians are conventional problems, affecting the low income population generally. Divorces, however, are seldom of major concern.

⁵² The problems of the Black population are indicated above under the Northeast office of Multnomah County Legal Aid.

Tribal courts can be used to handle divorces by Indians who live on the Warm Springs or Umatilla Reservations. A basic distrust of and a need for representation in dealing with the Bureau of Indian Affairs was seen as a major problem. Conventional landlord-tenant problems exist as well as a great deal of substandard housing throughout reservation areas. Concern was expressed by Indians about the lack of adequate representation of Indian juveniles in county juvenile courts and in their dealing with the administrative agencies, particularly Welfare, Social Security and the Department of Motor Vehicles.

Indians in the Klamath Falls and Pendleton areas felt there was serious discrimination against them in employment, housing and the schools, as well as by the police and law enforcement officers, and by merchants who have a second standard "price" for Indians especially on days they receive allotment checks. Concern was expressed over contractual problems and repossessions involving cars, appliances, loans, etc. Bankruptcies were needed infrequently.

The Umatilla Indians expressed a need for legal assistance in a number of specific areas:

1. Environmental health problems — due to industrial waste in the Umatilla River which interferes with Indian fishing and health.
2. Legal dispute concerning the title to much of the Indian water, and the irrigation questions in regard to the Umatilla Basin Development Plan.
3. Contractual leasing of Indian's lands, which is a problem due to the fact that many long-term unfair contracts apparently still exist.
4. Inheritance and beneficiary rights under various trusts set up for the Indians.
5. The Pendleton Roundup — This includes bad sanitation conditions, low wages and degrading atmosphere for Indian representatives.
6. The availability and proper administration of the commodity food and school lunch programs in the area for Indian children.

Many of the legal problems which Indians experience derive from a lack of understanding of their legal rights, basic cultural differences with the predominately white society, and a nearly complete lack of participation in the making of decisions which affect their lives.

Mexican-Americans: Mexican-Americans have all the standard legal problems of the poor. In addition, there are many unique problems which they face largely because of special language and cultural barriers and discrimination. In hearings held in 1969 before the Subcommittee on Migratory Labor of the United

States Senate entitled *Farmworker Legal Problems*,⁵³ the major areas of difficulty cited throughout the testimony were:

1. Problems caused by abuse of or discrimination against farm workers by private individuals, law enforcement agencies, or other governmental bodies — resulting from either community hostility toward farm workers, over zealous law enforcement, or lack of enforcement of laws intended to benefit farm workers.

In Oregon, Mexican-American feelings of discrimination were widely expressed. There were complaints of police harassment, arbitrary juvenile court treatment, arbitrary action by immigration and draft officials, and subtle discrimination in the schools where independent culture and language were discouraged and little help given to solving the big problem of drop-outs. In Malheur County, concern was expressed by many Mexican-Americans over the attitude of schools, welfare officials, and employers toward those involved in union organization.

2. Inadequacies in laws designed to deal with farmworker problems or outright exclusion of farm workers from the benefits of basic legislation. Despite the fact that the new welfare "residency" requirements have beneficially affected many Mexican-Americans unable to find full-time employment, outright exclusion of migrant agricultural workers from the Workmen's Compensation laws (involving on-the-job accidents) and unemployment compensation laws is considered a major problem. There is also a need for effective coverage under the Fair Labor Standards Act (involving minimum wage rates), and effective collective bargaining power under the National Labor Relations Act.

Among Mexican-Americans in Oregon there is a strong feeling that legal help is needed to enforce fair wages and benefits and to oversee employer-farmers in accounting for their withholding of taxes and Social Security (FICA) from farmworker wages. There are often false promises by contractors and growers (about housing, wages, and conditions) to induce migrants to come to work.⁵⁴

Housing problems were also crucial, including conventional landlord-tenant problems for many permanent Mexican-American residents and deplorable conditions of migrant labor camps for seasonal workers.⁵⁵ It was felt in the Willamette Valley and in Wasco and Malheur areas that health and sanitary standards were not enforced by county and state officials and in some places that notification of unenforced codes by Mexican-Americans would only result in evictions.

Many other legal problems of Mexican-Americans resulted from difficulty in communicating effectively with administrative

⁵³ Senate Committee on Labor and Public Welfare, Subcommittee on Migratory Labor, Parts 4A and 4B (1969).

⁵⁴ See *Moreno v. Tankersley*, U. S. District Court, Oregon, 69-481.

⁵⁵ Grim, "Laws and Legislation Providing for the Housing of Migrant Agricultural Workers," 6 *Willamette L.J.* 111 (1970).

agencies, courts, and with non-Spanish speaking attorneys. Mexican-Americans lack sophistication in dealing with creditors, often resulting in advantage being taken of them. There are threats and harassment, garnishments, repossessions and victimization by "sharkies": car and real estate salesmen and contractors. Divorces were not considered to be of major importance, but adequate and responsive juvenile and criminal representation was mentioned by many as being essential.

Senior Citizens: Approximately 11% of Oregon's population, or some 210,000 persons, are 65 or over, and some 60% of Oregon's elderly are poor.⁵⁶ Senior citizens have many of the same legal problems as other low income persons, but also have special problems due to their age and the fact that they generally have a fixed income, whatever its source.

In August, 1970, the United States Senate Committee on Aging published a working paper on the legal problems affecting older Americans. This paper summarized the problems in three areas:

1. "The right to federal benefit programs" — dealing with the senior citizens' inability to cope effectively with agencies that have crucial impact on their lives such as Social Security, Welfare, Veterans Administration and the Department of Motor Vehicles (transportation is a central problem of old age), etc. These basic problems were also mentioned throughout Oregon by older citizens who felt a need for attorneys in effective dealings with these agencies.
2. "The Right to High Quality Health Care" — including adequate service through medicare and medicaid and fair and proper procedures in the involuntary commitment of the aged. Many Oregon senior citizens expressed a need for legal representation at sanity and commitment hearings and in the setting up of various types of guardianships.
3. "Adequate shelter" — legal problems here are abundant because of the lack of adequate low cost housing, both in cities and in rural areas. Older tenants complained of the landlords' failure to make repairs, and older landlords complained of an inability to collect rent from tenants. Small land holders expressed a need for legal advice on income and property taxes.

Settling of small estates is considered an important need as are wills, advice on contracts, deeds and other small property transactions. As consumers, senior citizens complained of being defrauded in various dealings, particularly with respect to burial plots and hearing aid contracts and about an inability to recover on their medical and life insurance policies.

⁵⁶ Office of the Governor, State of Oregon, "Special Message to the 55th Legislative Assembly on the Problems of the Poor," p. 3, (April 9, 1969).

F. Conclusion

The legal problems described above are fundamental, seriously affecting the lives of a substantial portion of Oregon's population. It is clear that basic steps must be taken to assure access to the courts and "equal justice under the law" for Oregon's poor. As recently asserted by Chief Justice Burger in his State of the Judiciary Message:

"A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people, and three things could destroy that confidence and do incalculable damage to society:

That people come to believe that inefficiency and delay will drain even a just judgment of its value;

That people who have long been exploited in the smaller transactions of daily life come to believe that courts cannot vindicate their legal rights from fraud and over-reaching;

That people come to believe the law — in the larger sense — cannot fulfill its primary function to protect them and their families in their homes, at their work and on the public streets.

I have great confidence in our basic system and its foundations, in the dedicated judges and others in the judicial system, and in the lawyers of America. Continuity with change is the genius of the American system, and both are essential to fulfill the promise of equal justice under law.

If we want to maintain these crucial values we must make some changes in our methods, our procedure and our machinery, and I ask your help to make sure this is done."

An attempt to provide equal justice is the motivation behind Oregon's local Bar Association Legal Aid program to which we now turn.

IV. THE CURRENT AVAILABILITY OF LEGAL SERVICES TO THE POOR

In Oregon today, the availability of legal services to the poor people varies widely. Offices staffed by paid, full-time Legal Services Program lawyers function only in the four most densely populated regions of the state: Multnomah County, Lane County, Marion-Polk Counties, and Clackamas County. These programs are financed by federal funds, but they also receive local support (required by O.E.O. to be at least 20% of their funding) in the form of "in kind" contributions, including professional time volunteered by privately practicing lawyers.

In fifteen counties (see Table I, following page) county bar associations sponsor programs which are much smaller in scale.⁵⁷

⁵⁷ Information obtained about those programs was provided through comprehensive questionnaires completed by attorneys representing each bar association.

All involve periodic contributions of professional time by volunteer attorneys. None employ lawyers either full time or part time.

In the remaining sixteen counties (see Table I), no formal programs exist for the furnishing of legal services to the poor. Individual lawyers provide free legal services on occasions when they are consulted at their offices by persons who are unable to afford payment.

Comparatively little "hard data" is obtainable about the availability of legal services to indigents in the sixteen counties that

TABLE I

Counties Having Formal Volunteer Legal Aid Program*	Counties Lacking Formal Volunteer Legal Aid Program*
Benton	Baker
Columbia	Clatsop
Coos	Douglas
Crook	Gilliam
Curry	Grant
Deschutes	Harney
Jackson	Hood River
Jefferson	Lake
Josephine	Lincoln
Klamath	Sherman
Linn	Tillamook
Malheur	Union
Morrow	Wallowa
Umatilla	Wasco
Washington	Wheeler
	Yamhill

* As of May 1, 1971

have no formal programs. Records are not kept and individual experiences vary. In the fifteen counties that have volunteer programs, the availability of legal services, both qualitatively and quantitatively, is at least partly a function of the following objectively measurable factors:

1. Physical and staff facilities.
2. Investment of time and money.
3. Program's communication with the poor.
4. Activities and limitations of the program.
5. Eligibility standards.

A. Physical and Staff Facilities (see Table 2, following page)

Among the eleven county bar associations that have volunteer type legal aid programs (covering fifteen counties) all but two either have no office or have an office that is open from two to four hours per week. Typically, the office is open on an afternoon each week.

Most of the programs are without someone to answer the tele-

Bar Assoc.	Maintains Office	Office in Courthouse	Office Open (Hrs./Wk. Days)	Phone Answered When Office Closed	Atty.	Staff Other
Benton	Yes	Yes	1¼ Sat. a.m.	No	Yes	No
Columbia	No	—	—	—	—	—
Coos-Curry	Yes	No	3 Varies	Yes	Yes	Yes
Cent. Ore.	Yes	Yes	2½ Wed. p.m.	Yes	No	Yes
Jackson	Yes	Yes	25 Daily p.m.	No	Yes (15 hrs.)	Yes
Josephine	Yes	Yes	3½ One—p.m.	No	Yes	No
Klamath	Yes	Yes	2 Wed. p.m.	No	Yes	No
Linn	Yes	Yes	4 Fri. p.m.	No	Yes	No
Malheur	Yes	Yes	4 Thurs. a.m., p.m.	Yes	Yes	Yes
6th Jud. Dist.	No	—	—	—	—	—
Washington	Yes	No	35 Daily	Yes	Yes (3½ hrs.)	Yes

phone when the office is not open. All but two of the offices are located in the County Courthouse. When the offices are open, they are usually staffed by a volunteer attorney; in some instances they are also staffed by a secretary or other non-lawyer volunteers.

B. Investment of Time and Money

The best estimates of our contacts in the local bar associations indicate that most of the legal aid programs operated by the associations involved an investment of approximately 10 to 20 hours of time spent on all aspects of the program per month by the participating lawyers as a group. By comparison, the Marion-Polk County Legal Services office, which utilizes both paid and volunteer lawyers,⁵⁸ and is generally typical of the OEO supported programs, involves a monthly investment of approximately 500 hours of staff lawyers' time and 50 hours of volunteer lawyer time, and is now obtaining an additional staff lawyer as it cannot meet the demand for legal assistance. Relating these figures to the poverty population to be served, Marion-Polk legal aid attorneys spend approximately 1.2 hours per hundred poor persons while the average time spent by volunteer programs is 10 minutes per hundred poor.⁵⁹ The national standard established by the Office of Economic Opportunity for legal assistance programs is 1.6 hours per hundred poor persons.⁶⁰

With the exceptions of Jackson and Washington counties, in which more substantial services are offered, the approximate amount of money spent on the operation of the volunteer-type programs is about \$10 per month.

None of the programs sponsored by the local bar associations reported handling more than approximately 12 cases in court for poor people in 1970. A number of programs either did not know or handled no court cases during the year.

C. Communication with the Poor.

Six of the eleven locally sponsored programs use some kind of publicity to acquaint the poor with the availability of their legal services, although this publicity is usually minimal, such as a listing in the yellow pages or an advertisement in the newspaper.

Two of the eleven programs have carried on informal activities designed to educate low income people with respect to their legal rights.

D. Activities and Limitations

The great majority of locally sponsored legal aid offices have

⁵⁸ Private attorneys volunteer time in assisting the OEO Legal Aid Office which helps to provide the necessary 20% non-federal, in-kind share.

⁵⁹ See Map 1, p. 3, *supra*, for poverty population statistics.

⁶⁰ This figure is based on the standard of one lawyer (working 40 hours per week) for 6,000 poor persons. Office of Economic Opportunity, *How to Apply for a Legal Services Program*, p. 4.

placed severe restrictions on the types of domestic relations problems that will be handled. Most of them decline to take domestic relations cases for indigents unless there is an imminent threat of physical violence to wife or children.

Many of the programs exclude the handling of bankruptcy matters from the legal services which they offer.

Several exclude problems involving juveniles. Some refuse to represent clients at administrative hearings.

None of the programs handle criminal or fee generating cases.

In spite of the quite restrictive policies which most have adopted concerning domestic relations problems, volunteer attorneys still experience the greatest demand for assistance in this field. When volunteer programs do not assist women who desire a divorce, the women generally have no recourse and do not obtain a divorce although in a few counties, poor women are now seeking their own uncontested divorces. Other fields of law in which volunteer attorneys find themselves counseling clients are debtor-creditor, landlord-tenant, property, driver's licenses, juveniles, and welfare benefits.

None of the programs has undertaken to handle cases of broader significance to the poor than the representation of individual clients. Locally sponsored legal aid offices have not become much involved in litigation of any kind. The legal services which are offered, except in divorce matters, consist primarily of advising clients, writing letters for them, and otherwise representing them outside of court.

E. Eligibility Standards

Most of the volunteer-staffed legal aid offices have adopted an income eligibility standard which permits a family to qualify if they have gross incomes of \$3,000 per year or less for two, and up to \$500 per year additional for each dependent. Several programs have substantially lower standards, reaching as low as \$1,200 per year plus dependents in one program. Others leave eligibility to the individual attorney's discretion. The eligibility standards are generally viewed merely as a guideline. Attorneys are encouraged to consider the client's assets, liabilities and special circumstances.

F. Court Appointments in Criminal Cases

None of the legal aid offices handle criminal cases. Attorneys in most counties outside the large metropolitan areas are appointed by the court on a rotational basis to represent indigents accused of crime. Except in Multnomah County, a high percentage of the members of the bar receive court appointments in criminal cases. In some localities the attorneys average two appointments per month, in others about one per month. In most regions the attorneys feel more or less overburdened by the volume of appointments and from mildly to keenly dissatisfied with the rate of compensation for such work.

Most attorneys state the opinion that clients are being ade-

quately represented under the appointment system, but some express a contrary view. The minority think that the quality of representation is variable, and some believe that insufficient dedication and expertise are the reasons.

G. Conclusion

Bar association programs have provided a beginning in meeting the sorts of legal problems springing from poverty described in preceding sections. But they are only a beginning. Lane County OEO supported Legal Services handled during the last three months of 1970 alone, 508 legal problems for poor clients and had to turn others away because of insufficient staff.⁶¹ It is clear that a volunteer program with an office open only a few hours a week cannot begin to cope with the legal needs of the poor. Many low income persons do not come to local programs for a variety of reasons discussed in the following section.⁶² In addition, the restrictions which most of the locally sponsored programs have imposed upon themselves have the effect of denying poor people the type of legal assistance that they feel they most need. The disinclination of volunteer attorneys to go to court with their indigent clients necessarily means that legal aid is less than equivalent to the legal representation available to those of means. Volunteer attorneys are often unfamiliar with fast growing areas of poverty law such as welfare fair hearing requirements and consumer fraud and seldom have available essential tools such as the *Poverty Law Reporter*. There is also little coordination between volunteer programs, one beginning what another has recently discovered to be a negative direction.

Of course, inadequate sources of funds hamper the development of bar association programs and local attorneys who have often given generous amounts of time to the programs cannot be expected to put the success of their private practice in peril. The reasons for the inadequacy of local programs are understandable; nonetheless, the bar has a fundamental responsibility to the public and under its own Canons of Ethics to see that "every person in our society [has] ready access to . . . a lawyer of integrity and competence."⁶³ Before proposing a program to fulfill that responsibility, it will be helpful to explore the attitudes of attorneys, the poor, and social service agencies toward legal assistance that is currently available to the poor.

⁶¹ See CAP form 58a, Lane County Human Resources, Inc., Oct. 1, 1970-Dec. 31, 1970.

⁶² See also Appendix I, reporting the results of the in-depth survey of randomly selected low income persons.

⁶³ Canon I, EC 1-1.

V. THE VIEW OF LAWYERS, THE POOR, AND SOCIAL SERVICE AGENCIES TOWARD EXISTING LEGAL SERVICES

A. *The Bar's Assessment*

The attorneys who were surveyed are not entirely in agreement on their appraisal of how well existing legal aid programs are serving the needs of the poor. Almost all would agree that existing programs are not satisfying the need as it is felt by low income people themselves. Some, however, take the view that legal services in such matters as divorce are luxuries which the poor have no moral right to receive without payment. A number of lawyers believe that many people who are eligible for legal aid and who have legal problems are simply not coming to the legal aid offices and are, therefore, not being seen by the volunteer attorneys.

Nonetheless, the relatively small number of poor clients seen by local programs, together with criminal court appointments, do impose a considerable burden on private lawyers. Nearly all lawyers consulted made this clear, many feeling that full-time legal aid lawyers would be welcome in that they would relieve private practitioners of the time they lose assisting those who cannot pay. Furthermore, attorneys outside of major urban areas indicated that this situation is aggravated for them, as there are fewer private attorneys in relation to population so that the bulk of legal aid must be shouldered by a smaller number of lawyers.⁶⁴ Most lawyers are proud of local bar association efforts to aid the poor but at the same time realize that they are not sufficient to meet the needs.⁶⁵

B. *The View of the Poor*

In addition to the many meetings with low income groups and individuals throughout the state which allowed for maximum participation and interchange of opinion, the study team organized an in-depth survey of a randomly selected group of low income persons. The purpose of this survey was to make certain that we were obtaining the views of ordinary poor persons in addition to the more

⁶⁴ An examination of the number of lawyers practicing in each county indicates that there are greater concentrations where wealthier clients are located, oftentimes causing disproportion with respect to population to be served. For instance, Multnomah County had approximately one quarter of the state's population according to the 1970 Census and more than one half of the state's lawyers.

⁶⁵ Bernard Segal, President of the American Bar Association in 1970 stated that even with OEO legal services programs, "We have scarcely scratched the surface. There is still a vast unfilled need for legal services for the poor, a need that is less than one-fifth served at the present time." Address to the Bar Association of the District of Columbia, 28 *Briefcase* 157 (April 1970).

sophisticated groups which represent them, and also to obtain quantifiable data on these views. Law students, VISTA's (Domestic Peace Corps) and other community workers were engaged as volunteers to conduct the interviews. Questions were formulated with the assistance of a specialist in data gathering techniques. These questions were aimed at determining:

- (1) Do low income people recognize legal problems when they have them?
- (2) Do low income people get to see a lawyer when they need one?

Over 50 in-depth interviews were conducted in and around the following towns: Corvallis, Newport, Hillsboro, McMinnville, Eugene, and North Plains. People were contacted in Welfare offices, Social Security offices, on the street and in their homes.

The responses received by the interviewers indicated strongly that the answers to the above two questions are "no". Material obtained in group meetings as well as the results of this study will be reported in the following pages. The questions asked in the survey and a tabulation of the answers received is attached as Appendix I to this report.

Volunteer Legal Aid Programs: The local bar association programs established to give free legal advice are much appreciated by Oregon's poor. These programs were often described as "so much more than we ever had before." Many low income people we spoke with expressed deep appreciation to the members of the bar who have donated time and sacrificed a great deal to establish and maintain these services.

Regardless of this gratitude, however, the poor have recognized that these programs are simply not sufficient to meet their needs. While many have been effectively assisted by these programs, more have not—and many have been turned away. The primary concerns expressed by the poor about existing volunteer services may be outlined as follows:

1. Some of the attorneys who serve them have shown a lack of sincere concern for their problems. Attorneys who view divorce as a "luxury" for those who cannot afford it have often turned a deaf ear to real legal needs of the poor. But, perhaps more importantly, they have conveyed a message that "Your divorce simply isn't as important as that of someone who can pay for it." For the person who has summoned up the courage to visit an attorney to request free legal help, that problem is extremely important.⁶⁶

⁶⁶ Indeed, the United States Supreme Court, in *Boddie v. Connecticut*, 91 S.Ct. 780 (1971) has recognized that divorce is not a luxury and that courts cannot, through filing fees, preclude the poor from divorce relief. The court reasoned that, in view of the basic position of the marriage relationship in society and the state monopolization of the means for dissolving that relationship, due process prohibits a state from denying, because of inability to pay court fees and costs, access to its courts to indigents who, in good faith, seek judicial dissolution of their marriages. Attorney's fees should likewise pose no similar obstacle.

In addition to the "luxury" attitude towards legal advice many attorneys presently convey to legal aid clients, they also convey the idea that they are "too busy" and that to help a person without remuneration would be a tremendous imposition. The poor recognize that most attorneys are already overworked with paying cases and that many attorneys consider legal aid to be a necessary *evil* that must be tolerated grudgingly. Thus, the poor (and social agency people as well) feel guilty in asking help from bar members (especially when they ask one of the few lawyers who seem to carry the brunt of most legal aid work). As a result, people who do have legal problems and who know of the existing legal aid offices simply fail to use them.

2. Evidence of a lack of concern was also found by the poor in the lack of visibility of many programs. Where the program had little or no publicity or advertising (not even flyers in the welfare office) no phone listing (or the wrong phone listing in one case), and no public information program, it seems clear to the low income person that this program is not very anxious to help him. In this regard, many poor had no view of the existing legal services program. They simply didn't know it existed. This is especially true of minorities—most notably migrants.

3. Program guidelines met with vociferous disapproval of the poor in many areas. Many programs severely limited the types of cases handled. Most guidelines, however, were usually not very unrealistic, given the limited resources available to the program; nevertheless, the necessity of "physical harm" to receive domestic relations help or, as in several cases, a family income eligibility requirement of \$1,500 or lower, seem to the poor to unnecessarily restrict service to them. In one instance there was a report of a person inflicting physical injury to herself simply to be eligible for a divorce appointment, i.e., to help show she was in danger of "immediate physical harm."

Guidelines restricting bankruptcy cases were also resented. Even after people had been turned away from numerous private attorneys because of a lack of funds, there were instances where programs refused bankruptcies. It should be noted that assistance in this area can be one of the most critical in breaking the cycle of poverty for an individual.

Another complaint regarding guidelines involved the unequal application thereof—both between programs and within the same program. Occasionally a person would be refused service by one attorney but another client in substantially identical circumstances would be accepted. There were also instances of people traveling from one county to another to become eligible under less rigid guidelines or to consult with attorneys who were more sympathetic.

Guidelines were often very nebulous and difficult for the low income person to comprehend. Some programs have no published guideline. A client would much rather determine whether or not he thinks he is eligible before he requests free help rather than suffer

the embarrassment of being turned away. The guidelines of some programs make such a preliminary determination impossible: e.g., is one's case worthy?"

In sum, the poor often viewed existing guidelines as wrongfully depriving them of legal services (access to the legal system) even though such services are available to those who can afford them.

4. Office hours presented serious problems to many low income people. Nearly all programs have extremely short office hours and some programs had no office hours—requiring referral to a private attorney from a social agency. Further, few offices were staffed with attorneys during office hours; people were interviewed for eligibility only and an appointment was arranged for another time. Some programs require that a board determine whether or not a case will be accepted by Legal Aid. Board acceptance can take up to one month.

The poor view this limited office time available to them again with mixed emotions. They are grateful for the time and it is not uncommon to have between five and ten people waiting to see an attorney on a Friday afternoon in many county volunteer programs. Yet, the poor have very limited access to the legal system if their problem cannot wait until Friday afternoon.

To be sure, most programs have established some procedure for someone to handle emergency cases—evictions or summonses, etc. However, few know how to get such emergency service. Sometimes the welfare office must be contacted or some other community worker. Such information, however, was not well known.

5. A small but not insignificant number of those contacted distrusted attorneys and the local volunteer service. The distrust of attorneys, the legal system, and society as a whole, was not supported by solid evidence of corrupt, illegal or unethical conduct, but, whether or not such fear and distrust is justified, its very existence makes it significant.

Attorneys are generally feared by the poor. The poor feel that they represent the landlord, the merchant and the state. Often attorneys themselves were alleged to be landlords of substandard property. Attorneys are viewed—especially in less populated areas—as being inextricably involved with the local power structure. In response to the question "What do you feel are the most important reasons people don't go to see a lawyer when they need one?", 8% of the answers received expressed doubt as to the integrity of the legal system.

We were further told that members of minority groups (Mexican-Americans and Indians) in some areas never used the local Legal Aid office. People expressed the view that because local practicing attorneys who staffed the Legal Aid office also represent the local establishment, the poor simply would not receive effective assistance from the service. Few local programs encouraged any participation of poor people on the board or in office administration. The poor were seldom given a voice in the decisions affecting

these local programs, simply increasing their skepticism and distrust.

This problem of distrust is not unique to volunteer legal aid offices. Existing full-time O.E.O. supported legal service programs have often experienced difficulty in gaining the trust and confidence of the client community. Indeed, nearly all programs which provide effective service to the poor require extensive "outreach" operations, educational programs, and sympathetic personnel to overcome the fear and distrust of the target population. The existing legal aid offices, operating part time with revolving personnel, simply have not been equipped to do this.

6. The lack of substantial results achieved by local volunteer programs also was a source of much of the distrust of some of these programs. One person stated of the local programs, "They never got results—there were no accomplishments." Another person described the local legal aid service as "One big run around." Still another said, "The attorneys are overworked, there is too much time to wait and the people are not getting the service."

The waiting lists for the use of some programs are tremendous. Waits of over three months were reported. Additional time was taken in some areas to determine if the Legal Aid Board would accept the case. The poor felt that "justice delayed was often justice denied."

Most of these programs run on a referral type basis. Unskilled interviewers are used who often make improper determinations of eligibility. Thus, a client might be referred from the welfare office to the legal aid office and after a substantial waiting period be referred by the legal aid office to the office of a private attorney who then informs the client he is not eligible. It was not uncommon to find even another referral, i.e., from one private attorney to another.

Further, it was reported that legal aid referrals were sometimes charged for services by attorneys. This practice was deeply resented by many and added to the fear and distrust of lawyers and the law.

The poor also expressed the attitude that it was a lot easier to get a legal aid attorney to give you advice than to actually do something concrete on your case. They stated you have to "sell" your case to the attorney. Some stated that money was required if the attorney was to do more than give advice. In several areas, lawyers had never taken a case to court in behalf of a legal aid client.

7. Use of existing volunteer legal aid offices by minority groups was practically non-existent. Cultural and language barriers are of significant impact here. Yet, everything which has been said of the poor generally is magnified for the Mexican-American and the Indian. They are generally less informed about what services are available and how to go about obtaining them; they fear and distrust the system more. They have received fewer results through

it, and they feel more distant and alien from the legal profession. As one observer noted, "They do not feel respect for the law or the system because of the lack of justice which they have received."

Stereotypes of Lawyers and the Law: Volunteer legal programs as well as OEO Legal Services are relatively new developments. The poor, however, have developed basic attitudes about law and lawyers over a long period of time. There is, of course, no monolithic view the poor have of the legal system. As with persons of all economic strata, each individual's perception varies according to his experience and each is riddled with misunderstanding, prejudice, and ignorance. It is nevertheless safe to make certain broad generalizations of the views of the poor which this and other studies have found to have substance in fact.

First, it seems clear that the low income person (and perhaps the average citizen) makes a rather significant distinction between the "social system" in which we live and the legal system. The law and the courts are viewed as specialized and separate from the social fabric of the nation — to be dealt with only when essential and only within certain narrow and rigid guidelines. Thus, the low income person fails to perceive that a landlord's refusal to repair substandard conditions can actually be a legal problem or that an unscrupulous merchant could be effectively dealt with in court. The results of the in-depth interviews indicate that over two-thirds of those surveyed failed to recognize serious landlord-tenant problems, consumer problems, or arbitrary administrative decisions as having legal implications. Such problems are apparently viewed as socially oriented and few believe that the legal system might be used to achieve social justice. Thus, many of the poor are simply buffeted about at will by a society too complex to be understood and too powerful to be challenged.

Second, fear of the law and the courts is rampant among the poor. Their most probable contact with these institutions has been as a defendant in a quasi-criminal or criminal proceeding or in an eviction action or garnishment proceeding. The "lawyer" is seldom considered to be the friend of the poor but more often the representative of the landlord, the bill collector, or the state, and a person to be studiously avoided.

Indeed, the entire atmosphere of the legal situation is intimidating to the unsophisticated. Lawyers' offices are found in buildings in city centers. They are generally richly furnished and the etiquette of the situation is foreign to the poor. Can they bring their children to the lawyer's office? Will they be embarrassed by old or dirty clothing? Worst of all, will they be humiliated by their ignorance of the basic principles which govern this society? And, lastly, will they be told "I can begin work as soon as you give me \$250."? To be informed that you do have a good case (or defense) but in no way will it be economically possible for you to assert it is one of the most frustrating encounters the poor have with the law. Several instances such as this, especially with

regard to consumer fraud, were reported by low income people around the state.

Beyond the lawyer's office, the courtroom presents an even more formidable obstacle to the low income individual's quest for justice. Through the eyes of an untrained participant, the formality of the courtroom is awesome. When to stand and sit, when to speak and where to walk become momentous decisions. Latin phrases are lost on the observer. Objections as to "relevancy," "hearsay," and other rules of evidence and procedure are confusing.

Further, on a personal level, lawyers and the poor have little in common. Lawyers are viewed as an exclusive, powerful, and privileged fraternity. There is little interchange of ideas between these two groups and neither group has a very profound understanding of the problems confronting the other.

In sum, the entire "legal atmosphere" is alien to and feared by the poor of Oregon. Each embarrassing encounter with the law — each time the system fails to respond — reluctance to work with the law is again reinforced.

Third, the poor have themselves to a large extent retained the antiquated attitude that lawyers are a "luxury" and that if they cannot afford one, they simply don't deserve one. Many feel shame that they cannot afford legal help and the Bar often seems to feel this shame is justified.

The whole aura surrounding "attorney's fees" has seemed to strengthen this attitude. The general feeling is that the fees charged by the Bar are "outrageous," making legal advice simply unattainable for the poor. Fears of being charged more than one can pay make many reluctant to even see an attorney. A low income person might consider himself fortunate to find a job with a take-home pay of between \$60 to \$70 per week. Yet this is what an attorney might charge him for a *morning* in court. Ignorance regarding attorney's fees was widespread. Few knew what the minimum fee schedule was and many persons were unaware of the availability of the "contingent fee" arrangement. Others believed "You can't even talk to a lawyer for less than \$100," and some felt that they had been overcharged in the past. They resented this.

In the in-depth interviews, 36% of those surveyed indicated they had not sought legal help even when they knew they needed it. Thirteen of these eighteen persons had not done so because of the cost involved. In addition, 20% of those surveyed indicated that they had been unable to get an attorney to help them when they needed one. Sixty percent of those surveyed stated their failure to get an attorney was because they had no money. Perhaps more importantly, fully 80% of those surveyed indicated that one of the most important reasons that people presently fail to see an attorney when they need one is because of the expense involved.

Fourth, the law and the legal system have traditionally been

viewed as "a sort of hocus-pocus science."⁶⁷ The poor of Oregon share the view of Reginald Heber Smith that the legal system "requires the services of trained attorneys for its effective use."⁶⁸ Mr. Smith wrote:

"The machinery of justice can be operated only through attorneys. . . . Attorneys must be paid for their services . . . and the poor are unable to pay for such services. This is the great, the inherent and fundamental difficulty—inherent because our legal institutions were framed with the intention that trained advocates should be employed, and fundamental in the sense that no amount of reorganization or simplification, . . . can entirely remove the necessity for the attorney."⁶⁹

While it is clear that equal justice requires equal access to lawyers' services, it is also clear that such equal access is not available to the poor. Recent statistics indicate that the "use of lawyers is considerably less prevalent among lower than upper classes in the United States . . . about two-thirds of lower class families have *never* employed a lawyer compared to about one-third of upper class families."⁷⁰ While these particular statistics were not derived directly from Oregon, there is no reason to believe they are not applicable here as well, at least with regard to areas not presently served by OEO supported Legal Services programs.

It should finally be noted that while the poor generally do respect the capability of the Bar and the impartiality and competence of judges, they nevertheless do not feel fairly treated by a system in which they cannot get adequate representation to make their case heard. This one-sided administration of justice brings to mind the statement, "Where law ends, tyranny begins."⁷¹ Where the poor cannot gain effective access to the legal system—there begins the tyranny of the absentee urban or rural slumlord, the fly-by-night or local fast buck operator and the arbitrary bureaucrat.

The Discrepancy between the Bar and the Poor: Traditionally, the Bar has viewed its legal aid efforts in a far more favorable light than have the poor. The Bar has generally underestimated the need for legal aid and further underestimated the number of people who fail to use attorneys when they need them. A study conducted in Iowa indicated that 15% of those surveyed didn't seek legal help when they needed it.⁷² Our study indicates that

⁶⁷ Macklin, Charles, *Love a la Mode*, Act II, Scene I (1759).

⁶⁸ Carlin and Howard, "Legal Representation and Class Justice," 12 UCLA L.R. 381 (1965).

⁶⁹ Smith, *Justice and the Poor*, p. 8 (1919) as quoted in Carlin and Howard, *ibid.*

⁷⁰ Carlin and Howard, *ibid.*, note 2, p. 382.

⁷¹ William Pitt, Earl of Chatham.

⁷² Widiss, et.al., "Legal Assistance for the Rural Poor: An Iowa Study," 56 Iowa L.R. 100, 114 (1970).

20% of those surveyed in Oregon had not sought legal help they felt they needed. The members of the Iowa Bar stated that in their opinion only 7% of Iowans could not afford legal advice,⁷³ while welfare administrators believed 22% were unable to pay attorney's fees for needed services.⁷⁴ In Oregon, county Welfare administrators and Community Action Program directors feel that 20.3% and 25% of the poor in their areas, respectively, cannot afford a private lawyer.⁷⁵

The poor of Oregon recognize that the legal system has not been responsive to their legal needs. They view with great respect the few attorneys who through nearly heroic efforts have established and maintained many of the volunteer programs. Yet these programs have not been able to dispel distrust and satisfy the well of need that the poor have for legal service.

The attitude of the poor toward this study was often one of distrust, hopelessness and futility. People expressed the idea that whatever we found it wouldn't do any good. At the same time, however, they voiced strong support for the establishment of a statewide program. People drove sixty to seventy miles simply to attend a meeting with a member of the study team. Virtually everyone surveyed by the in-depth study felt it was important that free legal services be made available to the poor of Oregon. Many retain a hope that they will gain access to the legal system and some semblance of equal justice in Oregon soon.

C. *The Opinion of Social Service Agencies*

Questionnaires were sent to all county Welfare administrators (36) and to all Community Action Program (CAP) directors (14) in Oregon. The questionnaires attempt to document from these independent agency sources — not the poor themselves or attorneys — the legal needs of low income people and the extent to which these needs are being met. Although the figures reported cannot be considered statistically precise, they provide a strong indication of current patterns. Thirty-three of thirty-six welfare offices and ten of fourteen CAP's (representing 18 counties) responded to the questionnaire.

Question 1: Could you please estimate the percent of your county's population that cannot afford private legal assistance?

	Welfare	CAP 76
Under 10%	3	0
10 - 20%	13	11
21 - 30%	8	3
31 - 40%	4	2
89%	0	1
Average	20.3%	25%
(No estimate)	(5)	(1)

⁷³ *Ibid.*, p. 119. (See next page for footnotes 74, 75 and 76).

Question 2: Could you please also estimate the number and percent of your clients who in addition to their welfare (CAP) needs appear to have some type of legal problem?

	Welfare	CAP	Absolute Numbers (Average per county)	
			Welfare ⁷⁷	CAP ⁷⁸
Under 10%	0	2	778	1,072
10 - 20%	12	1		
21 - 30%	3	1		
31 - 40%	6	2		
41 - 50%	5	2		
Over 50%	2	0		
Average	31.8%	28.7%		
(No estimate)	(5)	(10)		

It is clear from these figures that county Welfare offices and CAP's, which have direct official contact with Oregon's poor, feel that their clients — approximately one in every three — have numerous legal problems and that a significant portion of the population in each county, 20 - 25%, cannot afford legal assistance.

Question 3: Does the local bar or do local attorneys regularly handle the legal problems that confront the poor without charging fees?

	Welfare		CAP	
	Number	Percent	Number	Percent
No	21	64%	12	67%
Yes (conditional) ⁷⁹	6	18%	1	5%
Yes (unconditional)	6	18%	5	28%

Question 4: In your judgment would you say that *most*, *many*, or *few* of the poor in your county go without sufficient legal assistance?

	Welfare		CAP	
	Number	Percent	Number	Percent
Most	13	39%	14	88%
Many	17	52%	2	12%
Few	3	9%	0	0%
(No estimate)	(0)		(2)	

In 64% of Oregon's counties according to Welfare responses and 67% according to CAP, lawyers do not regularly handle

⁷⁴ *Ibid.*, p. 114.

⁷⁵ See Question 1, page 39.

⁷⁶ Figures for each of the 18 counties covered by the 10 responding CAP's are reported.

⁷⁷ Based on estimates from 5 counties.

⁷⁸ Based on estimates from 26 counties.

⁷⁹ Conditioned by phrases such as "but the present program is inadequate" or "but on a very small scale."

the problems of the poor without remuneration. And even in those counties where Welfare and CAP said that lawyers do handle such problems regularly, 13 responses for these counties nonetheless indicated in answer to Question 4 that "most" or "many" of the poor went without legal assistance, while only two reported that "few" needed legal assistance.⁸⁰ This would indicate that there are not enough lawyers to carry the burden of assisting the poor as most or many of the poor, even in those counties where lawyers regularly handle problems for low income persons, do not receive sufficient legal assistance.

Only 9% of responding Welfare officers and CAP's indicate that few of the poor in their county go without sufficient legal assistance; 91% state that most or many do not receive sufficient assistance. In the 15 counties where the 11 local bar associations have programs of legal aid for the poor, Welfare indicates that in 12, most or many of the poor still go without sufficient legal assistance and CAP reports that in 9 of the 11 counties they serve in these areas, most or many do not get adequate assistance. This is independent evidence indicating that bar association programs are not capable of coping with the needs of the poor for legal help.⁸¹

Finally, this question was asked: "Do you believe that there is a need for organized legal aid to assist the poor in your county or area?"

	Welfare		CAP	
	Number	Percent	Number	Percent
Yes	33	100%	18	100%
No	0	0%	0	0%

The response was 100% on behalf of a need for organized legal aid. Most respondents were concerned with a type of legal service that will meet the needs of their county's poor, not now being met according to responses discussed above. It is significant, indeed, that Welfare offices, often the target of legal aid suits, themselves, uniformly felt that organized legal aid was imperative.

D. Conclusion

What emerges from our examination of the legal situation of Oregon's poor is the following:

1. There is substantial poverty throughout Oregon. This conclusion is based on the analysis in Section 1 of major poverty indicators: income, housing, employment, public assistance, health and minority problems.

⁸⁰ The welfare responses for Multnomah, Marion and Lane counties which presently have government supported legal services programs all said yes to Question 3, and Multnomah and Marion indicated "many" and Lane, "few" to Question 4. There is no experience yet in Clackamas county where an O.E.O. Legal Services Program began in 1971.

⁸¹ See *supra*, at p. 30 for analysis of these programs and the reasons they are not adequate.

2. The poor are confronted by numerous legal problems primarily involving domestic relations, consumer, housing, administrative, juvenile and criminal matters.
3. Current efforts by local bar associations to provide volunteer legal assistance to the poor are inadequate. This is the opinion of a number of lawyers, nearly all county Welfare offices and Community Action Programs and clearly the poor themselves. Outside of the three major urban areas which now have full-time legal services programs, only a small fraction of the poor have access to the legal system.

There is no intention to assess blame for this situation, certainly not to place it on the legal profession which has expended considerable effort in trying to provide legal assistance to the poor. It is evident that a broader community supported program of legal services for the poor is necessary if this fundamental aspect of poverty is to be attacked in Oregon, if, in President Nixon's words, "This Nation's commitment to the concept of equal justice," is to be fulfilled.⁸² The Bar must provide leadership to such a program, but it is the community, the public at large, which must bear primary responsibility for its support.

VI. OUTLINE OF A PROGRAM TO MEET THE NEED —OREGON LEGAL SERVICES CORPORATION

A. Summary of Recommendations

1. A unified ,statewide program incorporating current government assisted legal services programs should be established.
2. A statewide Board of Trustees having a majority of lawyers appointed from geographical areas should have primary policy making authority over the program.
3. A full range of legal services should be delivered by full-time legal aid attorneys serving eligible low income clients rather than through volunteer private attorneys, as is now the case, or judicare.
4. One legal aid office and a circuit riding system to outlying satellite offices should be established in each of fourteen delineated regions. A regional board composed of local attorneys and other interested persons will guide the affairs of the legal aid office in each region.
5. A central office will administer and provide research and other back-up resources to the program.
6. Eligibility standards will be established by regional boards

⁸² Richard Nixon, "Message to the Congress of the United States on Legal Services," Press Release (May 5, 1971).

within guidelines set by the statewide board of Trustees to assure service only to those who cannot afford private counsel.

7. The Oregon Legal Services Corporation should be organized as an independent, non-profit corporation.

B. *A Unified, Statewide Program*

Issue: Should a new program designed to meet the legal needs of low income citizens incorporate current government assisted legal services programs in Multnomah, Marion-Polk, Lane and Clackamas counties under a statewide director and policy making board with primary power? The alternative is that the new program serve the remaining 31 counties and not concern itself with current programs or create a statewide director and board with minimal coordinating powers.⁸³

Recommendations: The study team recommends that current government assisted programs be incorporated within a statewide system under a statewide director and board.

Discussion: A statewide program with unified direction will maximize economic use of limited resources. The central office administrative, research, training and educational capacity can be utilized throughout the state rather than duplicated in current programs if they are not incorporated within a statewide system. Most importantly, the experience developed by the current programs over their several years of operation will be made fully available to the fledgling statewide organization. Unhealthy rivalries, such as recruitment and fund raising competition, will be minimized by a single program for the state. In short, resources can be best utilized in one statewide program designed to efficiently meet the needs of low income persons for legal assistance.

A unified, statewide program can, in addition, provide a forceful, unified voice to make known the legal needs and interests of Oregon's low income citizens. As alluded to before, discussions with individuals and groups representing low income persons often indicated that the poor felt they had little or no impact in decision making and very little control over their lives. It is hoped that a strong statewide legal service program can help to give the poor a sense of involvement and control over their destiny as well as a stake in our common future.

Most attorneys spoken to by the team as well as nearly all professionals involved with the Office of Economic Opportunity and Legal Services tended to favor incorporating current programs into a statewide system. The primary reason given was efficient use of resources. On the other hand, many low income groups leaned toward a separate program fearing that if the major urban

⁸³ This section deals only with the incorporation of current government supported programs into a statewide system. For discussion of recommendations on delivery of legal services, i.e., judicare, volunteer attorneys or full-time offices, see p. 49, *intra*.

areas were included, rural Oregon would, in their view, be "short-changed." This is a serious problem which we have tried to meet with a plan for regionalization discussed below. A group representing a spectrum of poverty organizations in Multnomah County felt that a statewide program would probably not add a great deal to the Portland program, but Portland, because of substantial experience, could be of assistance to the statewide program and should, therefore, be included.

One key factor with respect to financing a program was also considered. The Department of Health, Education and Welfare, which is one of the major sources of funds for legal services programs, requires a legal aid program to be "statewide" in scope to be eligible for HEW funding.⁸⁴

The strongest reason militating against inclusion of the current programs was the concern that a new unified authority might disturb the present good delivery of legal services by these programs. We have sought to limit this possibility. The regional offices — which Multnomah, Clackamas, Marion-Yamhill-Polk and Lane-Douglas would become — would retain considerable autonomy, the regional director having control over regional staff and generally running the regional program within broad guidelines established by the statewide board and director. In addition, regional offices would be guided by local boards established in each region. The study team recommends that in no case should a current program be cut below its present funding and staffing level. In fact, the regional plan outlined below would substantially expand the Marion-Yamhill-Polk and Lane-Douglas offices to cover broadened jurisdictions.

There was also concern that a unified program might entail some loss of local initiative and control. We have tried to protect against this. Local areas served by the statewide program will have full representation on the statewide policy making board. Attorneys will control a majority of seats on the board and will have both geographical and at large representation. Moreover, each area having a legal aid office will have a regional board, organized locally, and with the authority to consider local legal aid staff, eligibility standards, referral of ineligible clients to the private bar, etc. (See Sect. C below for a full discussion of board structures.)

Nearby states have varied in their solution of this issue: California and Colorado opted for separate rural aid programs and Alaska and Montana developed unified programs. Little evaluative material is available, but the regional Office of Economic Opportunity which has on-going contact with these programs has indicated that the Alaska pattern of strong statewide direction is more economical and proficient in providing quality legal serv-

⁸⁴ See 1968 Pov. L. Rep. 10.217 (Para. 9118).

ices for the poor.⁸⁵

C. Policy Making Boards

1. Statewide Board of Trustees

RECOMMENDATION

a. Composition

Attorney representatives will be appointed by the Oregon State Bar with the following geographical representation:⁸⁶

Regions 1 and 2	1 representative
Region 3	3 representatives
Region 5	1 representative
Region 6	1 representative
Region 7	1 representative
Regions 8 and 9	1 representative
Regions 4, 10 and 11	1 representative
Regions 12, 13 and 14	1 representative

10 representatives

Attorney representatives will be replaced in the same manner as initially chosen. In multi-region districts, representation among various regions should be rotated. It is recommended that during the transition period from current operation of government supported legal services programs to a unified system that strong consideration be given to appointment of a current board member from Multnomah, Marion-Polk, Lane and Clackamas county programs.

Low income representatives will be elected by democratic process and with the same geographic representation as attorney representatives. Elections should be coordinated by local Community Action Programs working with low income groups. If there is no CAP, organized low income groups, with the assistance of the statewide program, may organize the election process.

At large representatives:

1. President, Oregon State Bar, or his representative.
2. Legal Advisor to the Governor.
3. The Deans of the University of Oregon School of Law, Willamette University College of Law and Northwestern College of Law of Lewis and Clark College, or their representatives.
4. One representative at large of an organized statewide group representing the interests of low income persons.
5. One representative of Albina Citizens Together (ACT).

⁸⁵ Interview with Barbara Fisher, Regional Director of Legal Services, Seattle, Washington, Office of Economic Opportunity, March 9, 1971 and letter from Barbara Fisher to Steven Lowenstein, Co-chairman of study team, March 10, 1971.

⁸⁶ See Section D for regionalization and Map No. 6, p. 53, *infra*.

6. One representative of the Centro Chicano Cultural Center (Mexican-American Cultural Center).
7. One representative of major Oregon Indian tribes on a rotating basis (Warm Springs, Umatilla, Klamath).

The Board of Trustees is, therefore, composed of 29 members—at least 15 lawyers and up to 14 non-lawyers.

Terms of board members will be three years. Initial terms will be staggered: ten members with one year terms, ten members with two year terms, and nine members with three year terms. The board may establish committees that it deems necessary to carrying out its functions. Regular meetings of the board will be held quarterly, but special meetings may be called when the need arises. Meetings should be open to the public. The site of meetings will rotate to various regional offices of the program. Transportation and expenses will be paid to members of the board.

b. *Powers of the Board of Trustees*

The board has the power to set broad guidelines for the program, hire and dismiss the statewide director, receive grant(s), exercise final budgetary authority, do whatever regional boards fail to do, and generally exercise primary policy making authority for the program, but the board may not interfere with the traditional independence of the attorney-client relationship.

DISCUSSION

a. *Composition*

Attorney representatives: One area in which nearly unanimous opinion was found among attorneys canvassed throughout the state was the manner in which attorney representatives should be chosen for the Board of Trustees. Attorneys felt strongly that their geographical areas should be represented and that attorney representatives should be appointed by the Oregon State Bar. It was the general opinion that an electoral process would be costly, time consuming and cumbersome in regions that would generally include more than one bar association and in certain instances counties without an association.

The study team recommendation provides for geographical representation based upon population of low income persons to be served by the program, one representative for every 40,000 - 55,000 persons eligible for service. Care was taken that representatives should come from contiguous regions and that representation rotate in multi-region districts. The possibility of providing for more representation from smaller population bases was considered, but not adopted as it would require an extremely large board which would be both unwieldy and ineffective in giving direction to the program. Balance was sought by providing both for maximum local representation and for a functional board.

Low income representatives: The Economic Opportunity Act of 1964, as amended, under which most legal services programs receive funds, requires that a policy-making board "have at least

one-third of its members chosen in accordance with democratic selection procedures adequate to assure that they are representative of the poor in the area served." (Sect. 211(F)(2)). On the board recommended above, low income representatives would number ten of twenty-nine or slightly over one-third. They would be chosen on the same geographical basis as lawyer representatives, but would be elected as required by law. Community Action Programs and organized low income groups would be responsible for organizing the election process. All ten Community Action Programs responding to our questionnaire indicated a favorable response to the question asking whether they would be willing to organize such an election in their area.

At large representatives: The nine at large representatives each provide a special perspective to the board. The Oregon State Bar as an institution, the Governor, and Oregon's three law schools deserve representation as they will play key roles in implementation of the program. An at large representative of a statewide group representing low income persons is provided for. Consideration was given to naming the Committee for Progress through Law (CPL), the Federation of Aid to Dependent Children (ADC) Associations or the Oregon Council of the Poor, but it was felt that the Board of Trustees could best identify such a group at the outset of the program. Representation is also provided for three representatives from specific minority groups of significant population and importance in Oregon. The ordinary electoral process in each district might not result in minority group representation. It was thought that the legal problems and concerns of Blacks, Mexican-Americans and Indians are each unique and require an assured voice on the board. The groups specified were felt to be the most representative that are presently functioning. These specific groups should be subject to change by vote of the Board of Trustees pursuant to adopted by-laws.

The Board of Trustees is controlled by a majority of lawyers as required by the Office of Economic Opportunity, yet allows for substantial representation from low income persons and groups. This pattern is widely followed in legal aid programs across the country: lawyers have a majority of representatives, low income groups slightly more than one-third and the remainder of the board is constituted by statewide and minority-group organizations. This board composition will, we believe, produce a board sensitive to the interests and needs of both lawyers and low income persons from the various regions of the state.

Broadly stated operating procedures are described for the board to ensure that it will be able to carry out its functions. Care must be taken to provide for all expenses of board members, particularly those of low income representatives, including travel, overnight expenses and child care when necessary.

b. *Powers of the Board*

The board will have primary policy making authority for the program. It is important, however, that this authority not interfere with the traditional independence of the lawyer-client relationship. The Economic Opportunity Act requires that:

"Projects involving legal advice and representation shall be carried on in a way that assures maintenance of a lawyer-client relationship consistent with the best standards of the legal profession."⁸⁷

Further, the American Bar Association Professional Ethics Opinion 324 (August 9, 1970) states that:

"The governing board or body of a legal aid society has the right and obligation to establish and enforce broad policy regarding the operation of the agency, but beyond this function the board must scrupulously guard against unreasonable interference with the handling of specific cases or the representation of specific clients by staff attorneys."⁸⁸

The board has the responsibility to hire and, if necessary, dismiss the statewide director of the program. The statewide director, in turn, is responsible for hiring central office staff and regional directors and dismissing them subject to review by the Board of Trustees under grievance procedures to be established by the Board. The Board of Trustees will perform all functions necessary to carrying forth an effective and forceful program of legal services. It will generally develop guidelines within which regions will have autonomy to meet local needs.

2. *Regional Boards*

RECOMMENDATION

Boards will be established in each of the 14 legal services regions to assist in the guidance of the regional office.

A representative of the regional Bar Associations, the Community Action Programs, Welfare offices and organized low income groups working with the Regional Legal Aid Director will be responsible for organizing the regional board.

Low income persons must be represented by at least one-third of the membership on regional boards, although larger representation of the poor might be considered. Every attorney or low income representative on the statewide Board of Trustees is, *ex officio*, a member of his respective regional board.

The regional boards submit a budget for their regional office to the statewide director and Board of Trustees, establish eligibility standards and referral systems for ineligible applicants (subject to approval by the statewide board), express disapproval or endorse staff selections for the regional office, and generally assist in guiding the affairs of the regional office.

⁸⁷ Economic Opportunity Act of 1964, as amended, Sect. 222(a)(3), 42 USC 2809.

⁸⁸ Reported in 56 ABAJ 1168 (December, 1970).

DISCUSSION

Regional boards are established to further ensure a channel for local guidance of each legal aid office. Organization of the board is left to local initiative so that it can be developed to meet local conditions. All interested groups in the region should be involved in establishing the regional board. Low income persons must have one-third representation on regional boards by law as before cited, and should be encouraged to participate in the development of the program in conformity with Office of Economic Opportunity regulations requiring "maximum involvement" of the poor in the formulation of programs that affect them. To encourage maximum communication between the statewide Board of Trustees and regional boards, each district representative on the statewide board is made a member of his respective regional board.

Regional boards are given authority to help guide the affairs of the regional legal aid office. This is particularly important in matters of direct interest to the local area such as eligibility standards and a referral system satisfactory to the local bar. The statewide board has the responsibility to oversee standards set locally to assure a board statewide standard within certain established boundaries. This provides for local differences in cost of living and yet guards against a situation where disparities could be so great as to encourage legal aid office "shopping." The regional director will be expected to be responsive to the determinations of the regional board assuming they fall within the broad guidelines established by the statewide board and director.

D. *Delivery of Legal Aid Services*

1. *The Best System for Delivery: Judicare, Volunteer Programs or Full-time Offices*

RECOMMENDATION

The study team recommends that full-time legal aid attorneys serve eligible low income clients from central and satellite offices located in each of 14 regions.

DISCUSSION

Careful consideration was given to several methods of providing legal assistance to the poor: retention of the status quo, that is, primarily bar association supported programs, judicare, and the concept of local legal aid offices and staff. Bar association programs have been discussed in detail above; they have provided an extremely useful service, but due to time and resource limitation have not been able to cope with a large part of the legal needs of the poor.

Judicare is a program that provides for the payment of private lawyers for their legal services to the poor from a fund administered in a central office. The Office of Economic Opportunity has provided funds for judicare projects in four localities: Washington

Township, Alameda County, California; five rural counties in Montana; New Haven, Connecticut; and 28 rural counties in northern Wisconsin. There are several distinct advantages of judicare. The program makes use of the private bar with their large reservoir of legal experience and knowledge of the communities they serve. Also the program permits a low income individual to select his own attorney and makes legal service accessible to him, particularly in some outlying areas.

Recent evaluations of the four current judicare programs by the Kettelle Corporation have uncovered a number of serious problems causing the Office of Economic Opportunity to restrict further funding of present judicare projects and refuse to consider new applications for judicare.⁸⁹ Kettelle is an independent corporation chosen by the Office of Economic Opportunity's Planning, Research and Evaluation Division to objectively evaluate current judicare programs; Kettelle's primary contracts involve evaluation and research analysis for the Air Force, the Naval Air Development Center, the Chief of Naval Operations, Burroughs Corporation, the University of Pennsylvania and Radio Corporation of America (RCA).

A major problem uncovered is the immense cost of providing legal service through judicare. The cost-per-case figures for Wisconsin judicare in the 28 rural counties for fiscal 1970 was \$196.39 (This figure excludes initial \$5.00 interviews and also does not cover the costs of the central administrative office in Madison). A comparative figure for two comparable rural legal service programs operating with full-time attorney staff from regional offices for fiscal year 1970 is as follows: California Rural Legal Assistance—\$80.42 and Pine Tree Legal Assistance (statewide program for Maine)—\$66.66. An overall Office of Economic Opportunity cost-per-case figure for fiscal year 1970 is \$59.00, which covers 1,990 full-time staff attorneys who handled 900,000 cases across the country.⁹⁰ It can readily be seen that judicare is very costly, indeed.

Other important problems have also been encountered. In each of the judicare programs, numbers of attorneys do not want to participate as fees are substantially lower than minimum bar rates. Wisconsin, for instance, the basic judicare fee is \$16.00 per hour and a number of attorneys have indicated that they cannot accept judicare cases; often only marginal attorneys are the ones to take cases and make money from the program.⁹¹ Also, the federal gov-

⁸⁹ See Office of Economic Opportunity, "Judicare Position Paper," March 12, 1971. The New Haven judicare component was terminated in June, 1970 due to the great expense involved in its maintenance. See also Office of Economic Opportunity, Kettelle evaluation recommendation that Montana judicare be cancelled and replaced with full-time attorneys, and Kettelle Wisconsin and Washington Township evaluations.

⁹⁰ Office of Economic Opportunity, "Cost-per-case statistics," Judicare Position Paper, March 12, 1971.

⁹¹ Office of Economic Opportunity, "Kettelle Wisconsin Judicare Evaluation," pp. 2-3 (1971).

ernment, through setting judicare rates, increasingly participates in the area of private bar fees. Another problem is that divorce dominates the judicare programs. In Montana judicare, 68% of the cases concerned divorce; only 26 cases during the entire fiscal year ending on August 31, 1970 were non-domestic relations cases.⁹² Aside from uncontested divorces, few cases are ever taken to court on behalf of judicare clients; services consist primarily of advice in a brief initial interview.⁹³ In contrast, the Portland Legal Aid Service litigated 1,032 cases in 1970 on behalf of low income clients.⁹⁴

Further, conflict of interest problems occur often, especially in smaller communities, where a private attorney may be involved with the institution against which the judicare client wishes to defend his legal interests as a tenant or consumer. As pointed out in a report to the Central Oregon Bar Association in 1968 which rejected a judicare approach to legal aid, a poor person is often "reluctant to take the first step into the law office because he has been intimidated or is too proud to accept what amounts to charity."⁹⁵ The study team's discussions with many low income groups corroborate this point. An additional problem is that private attorneys, who have developed broad competence in many areas of the law, seldom have much knowledge or develop expertise in areas of vital concern to low income persons: welfare fair hearing regulations or consumer fraud problems, for instance.

Finally, a broad problem of current judicare programs is their lack of any outreach or substantial contact with the low income community. They do not try to prevent legal problems before they reach crisis proportions through community education. As stated in the evaluation of Montana judicare: "There has been little impact on factors that create and maintain poverty in the area."⁹⁶

For the above reasons, the study team has concluded that judicare would not be a suitable vehicle for assistance in Oregon. The team has adopted the regional office approach which is nearly universally used in legal aid programs in the United States. In the last fiscal year, the Office of Economic Opportunity, which provides more than 80% of all money expended on legal aid, financed

⁹² Office of Economic Opportunity, "Kettelle Montana Judicare Evaluation," pp. 4-6 (1971).

⁹³ Office of Economic Opportunity, "Cost-per-case statistics," p. 1 (1971); "Kettelle Montana Judicare Evaluation," p. 18 (1971); and "Kettelle Wisconsin Judicare Evaluation," p. 2 (1971).

⁹⁴ CAP Form 58 for each quarter, 1970. See *supra* at p. 21 for the types of cases handled by the Portland program.

⁹⁵ See letter from David Dierdorff (Chairman, Legal Aid Committee, Central Oregon Bar Association) to Messrs. Robb, Boardman, Marceau and Robinson, April 12, 1968.

⁹⁶ Office of Economic Opportunity, "Kettelle Montana Judicare Evaluation," p. 3 (1971); see also the thoughtful discussion of judicare in Schlossberg and Weinberg, "The Role of Judicare in the American Legal System," 54 ABAJ 1000 (1968).

934 local offices staffed by full-time attorneys in both urban and rural areas throughout the country. As stated recently by President Nixon:

"The legal services program began six years ago as a small experiment within the Office of Economic Opportunity. . . . No less than a million cases a year are now processed by these dedicated attorneys, with each case giving those in need new reason to believe that they too are part of 'the system'. . . . A large measure of credit is due the organized bar. Acting in accordance with the highest standards of its profession, it has given admirable and consistent support to the legal services concept.

The crux of the program, however, remains in the neighborhood law office. Here each day the old, the unemployed, the underprivileged, and the largely forgotten people of our Nation may seek help. Perhaps it is an eviction, a marital conflict, repossession of a car, or misunderstanding over a welfare check—each problem may have a legal solution. These are small claims in the Nation's eye, but they loom large in the hearts and lives of poor Americans."⁹⁷

2. *Regions*

RECOMMENDATION

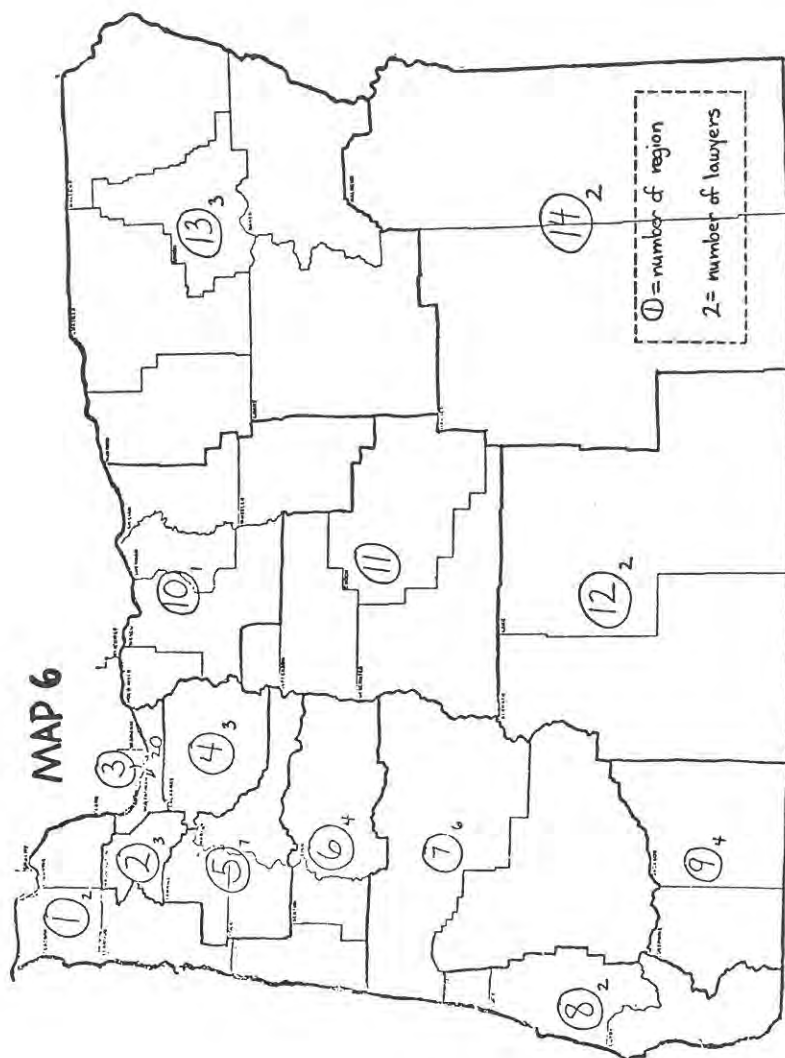
The study team recommends that the state be divided into 14 regions in accordance with Map. No. 6, following page. Each region will be served by the indicated number of attorneys working from a regional legal aid office to be located in a spot centrally convenient to the region. Satellite offices should be established in each region to serve the need in outlying cities and towns. A community worker assigned to each town with a legal need would establish client eligibility and make appointments for a legal aid lawyer who would spend as much time per week as needed to satisfy the local need.

DISCUSSION

Map No. 6 indicates regional boundaries and the number of lawyers needed to serve each region.

Regional boundaries were drawn after careful consideration of a number of factors. An attempt was made to create relatively homogenous regions with respect to basic demographic data, geography and economic activity. In this way, the legal problems of the poor tend to be grouped in common patterns; our interviews with low income representatives bear this out. Transportation routes were explored to minimize distances from any point within a region to any other point. Good roads are available within each region to facilitate communication among major towns within the region.

⁹⁷ Richard Nixon, "Message to the Congress of the United States on Legal Services," Press Release (May 5, 1971).



Recommended regional boundaries and number of lawyers needed.

Traditional relationships, such as bar associations, Community Action Programs and other social services are maintained intact by not dividing them regionally. Regional boundaries conform with single or multiple judicial districts, and do not cross judicial district lines with the minor exceptions of that part of the Warm Springs Reservation thought easier to serve as a whole through Region 11 and Western Douglas County which conforms to the local CAP boundary and is easier to serve from Region 8. The State of Oregon districting plan is generally maintained. In addition, the study team adhered to the sensitivities of lawyers and citizens in each area with respect to those counties with which they desired to relate.

Regional boundaries are not rigid. A low income person finding it easier to be served by an office outside his region can use that office.

The number of lawyers allocated to serve each region was determined primarily from population statistics contained on Map 1.⁹⁸ Office of Economic Opportunity guidelines for the establishment of legal services programs indicate that one full time attorney should serve every 6,000 individuals eligible for legal aid in the area to be served.⁹⁹ Most programs comparable with that suggested for Oregon are relatively close to this ratio. Colorado Rural Legal Services is operating in 16 counties with a combined low income population of 112,600; four regional offices are manned by 20 attorneys, slightly over one attorney for 6,000 eligible clients.¹⁰⁰ California Rural Legal Assistance and several urban legal services programs have 73 lawyers serving approximately 550,000 eligible clients in 16 California counties or somewhat less than the guideline ratio.¹⁰¹ Maine's statewide program has 18 attorneys serving 85,000 eligible clients, or approximately one attorney for every 5,000 persons.¹⁰² Lastly, Portland presently has a ratio of nearly one attorney to every 6,000 eligible clients.¹⁰³

The program projected for Oregon contemplates 60 lawyers to serve an eligible client population of 413,027.¹⁰⁴ This is one attorney for every 6,883 eligible clients. This does not include nine attorneys in the central administrative office who do not directly serve clients. If these attorneys were figured into the ratio, it would

⁹⁸ P. 3, *supra*; see Footnote (1), page 2, for an explanation of how the figures on Map 1 were derived.

⁹⁹ Office of Economic Opportunity, *How to Apply for a Legal Services Program*, p. 4.

¹⁰⁰ Colorado Rural Legal Services, Inc., "Outline of Work Program," p. 3 (1969). (These figures do not include central office staff).

¹⁰¹ See California Rural Legal Assistance, "Narrative and Budgetary Portion of Refunding Request to the Office of Economic Opportunity for Grant Year 1970," p. 7.

¹⁰² See Pine Tree Legal Assistance, Maine, "Legal Services Supplementary Work Program" and "Fact Sheet"; (These figures do not include central office staff).

¹⁰³ See Map No. 1, p. 3, *supra*.

¹⁰⁴ This figure is low as explained in Footnote (1), p. 2.

become one attorney for every 5,985 eligible clients. The total of 60 lawyers would constitute approximately 2% of the Oregon Bar, to serve more than 20% of Oregon's population. As the Multnomah, Marion-Polk, Lane and Clackamas programs presently have 26 full-time lawyers, the Oregon statewide program will require an additional 34 lawyers to staff its regional offices which will serve the remaining 31 counties in Oregon.¹⁰⁵

The number of lawyers assigned to each region conforms generally to the guideline figure. Multnomah County presently has 20 lawyers. A new East Multnomah County satellite office is to be opened shortly with assistance from the Multnomah County Community Action Agency. The number of lawyers given for Region 4 includes one already serving in Oregon City; Region 5 includes three now serving in Salem; and Region 7 includes three currently in Eugene. It is imperative that a new state-wide program not lower operating levels of current programs; on the contrary, everything possible should be done to help these programs meet the staggering needs in the counties which they now serve.

Attempts were made to avoid one-man offices wherever possible as being expensive and difficult for the single attorney, but in Regions 10 and 11, a single-man office appeared to be the only way to serve these regions.

Special attention must be given in Regions 2, 4, 5, 6 and 14 to problems of Mexican-Americans and migrants, and in Regions 3, 11, 12 and 13 to problems of Indians. There is already a legal aid office in the Albina District of Portland to serve the major Black population in the state. Consideration should be given in Region 5 to assigning certain lawyers to the Valley Migrant League in Woodburn, the major Community Action Agency dealing with migrant problems in the Willamette Valley. The Valley Migrant League desires legal help and has expressed fear that migrants cannot be well served from a city base such as Salem. Additionally in Region 5, attention must be given to the legal problems of low income inmates of penitentiaries and state hospitals.¹⁰⁶ Region 14 has been assigned to a second lawyer due to the influx of migrant population in certain months and the large Mexican-American population. Lawyers serving in areas with Mexican-American population should be bilingual if possible and special efforts should be made to recruit minority lawyers. At least one lawyer in each regional office with a substantial minority population should specialize in legal problems confronted by that minority, and coordinate with central office research and litigation staff working more broadly on special legal problems of minority groups. The study team does not wish to preclude funding of the Willamette Valley Rural Legal Services Proposal seeking assistance for Mexi-

¹⁰⁵ Several of the 34 lawyers will be used to expand services in Clackamas, Marion-Polk, and Lane counties. See Map No. 6, p. 53, *supra*.

¹⁰⁶ See e.g., Gruber, "O.R.S. 137.240 and Prisoners' Rights — Time for a Change," 6 Willamette L. J. 525 (1970).

can-Americans, previously submitted to the Office of Economic Opportunity by another agency. If this proposal were to be funded, it could easily be incorporated within the broader statewide structure. Although the statewide program does not address migrant concerns with the breadth of this proposal, it is hoped that the statewide program would serve to meet a substantial portion of migrant legal needs.

Oregon citizens at many points along its boundaries relate closely with institutions and towns in neighboring states, as those across the borders also relate to Oregon. This is particularly true for the poor who may work in one state and live in another or who are, in fact, often migratory. We would suggest that the statewide program, working through the Oregon State Bar and the Office of Economic Opportunity, attempt to work out with neighboring state bars a convenient system for providing legal services to low income persons in border areas.

Much of the poverty population of Region 14 relates closely with Idaho. Western Idaho Legal Aid, located at Caldwell, a short distance from the Oregon border, has offered to assist in the development of OEO legal services in Malheur County.¹⁰⁷ The study team recommends that the statewide program develop a relationship with Western Idaho Legal Aid whereby information and mutual back-up assistance can be provided.

Each region will be served by a permanent regional office centrally located and satellite offices in other cities and towns with legal aid needs. Outlying cities and towns will have at least one full-time community worker, responsible to the regional director, located at the Community Action Program office or another publicized location comfortably accessible to low income persons. The community worker will make appointments for the attorney, establish eligibility, refer ineligible applicants to the local lawyer referral system, contact the regional office in emergency situations and work closely with the region's education specialist. A lawyer from the regional office will spend as many hours or days in outlying cities as need requires. He will see clients for whom appointments have been made at the selected site, in an atmosphere allowing for the confidentiality of the attorney-client relationship. Both lawyers and low income groups consulted have suggested that, at times, the local courthouse is not a good location for the legal aid attorney, as it is not a comfortable setting for some low income persons. If donated space can be found, it may count toward the 20% non-federal share required for OEO supported programs. Travel arrangements and reimbursement from outlying areas to satellite offices should be worked out for low income clients. Senior citizens groups and Community Action Programs often have buses and have expressed a willingness to help provide transportation for legal aid clients.

¹⁰⁷ Letter from Walter Curnutt, Director of Western Idaho Legal Aid, to Steven Lowenstein, May 13, 1971.

The study team recommends the use of a Watts telephone system for each regional office. A low income individual, after his eligibility has been established, can then telephone free of charge to his attorney at the regional office. Many problems will be able to be handled by telephone, without the travel required by both client and attorney for an appointment. This is particularly advantageous in rural areas where clients may be dispersed over large distances. Communication would also be facilitated between the central office and regional offices. This idea has been initially explored with the Governor's Office which has indicated its tentative support. A substantial amount of non-federal contribution would be obtained from this type of state supplied telephone system.

E. Central Office

RECOMMENDATION

A central office for the statewide program should be established in Portland. It is recommended that the office be staffed by a statewide director; deputy director; research and litigation director, with a staff of five research attorneys; education and training director with a communications specialist and two community workers; and an administrative director with an assistant and a bookkeeper. The central office will administer the statewide program and provide statewide back-up resources for the 14 regional offices.

DISCUSSION

The central office would be located in Portland because of the presence of the federal court, excellent library facilities, and advantage in recruiting central office personnel.

The statewide director will be responsible for overall supervision and coordination of the legal service program throughout the state. He will see that the policies set by the statewide Board of Trustees are implemented. The director is responsible for hiring and, if necessary, dismissing central office staff and regional directors under established grievance procedures. He develops the budget, administers the finances, maintains adequate records, plans for the future and, in general, insures that a forceful, effective program of legal services meets the needs of low income clients. The statewide director shall be an attorney of demonstrated legal and administrative experience. In addition he shall have had prior involvement in and a thorough knowledge of the field of poverty law. The director's salary, as well as all other staff salaries, shall comply with Office of Economic Opportunity standards and be equivalent with other comparable legal services programs.

The deputy director will assist the director in the exercise of his responsibilities and act as director in the latter's absence. He must be an attorney of some legal experience, particularly with respect to legal problems affecting the poor.

The litigation and legislation director will supervise a staff of five research attorneys. This research unit will provide back-up assistance to staff attorneys in regional offices in dealing with major litigation and appeals. Regional staff attorneys will develop their own cases to the extent that they are able to. They may, however, ask for any degree of assistance from the central office research unit. The central office staff may also pursue issues on its own initiative. The central office research unit will identify problems common to low income clients and develop strategy to meet these problems. It may also develop and maintain a brief and pleadings bank and digests of law for key areas of poverty law in Oregon. The research staff should develop expertise in the specific legal problems confronting Oregon's minorities and work with staff attorneys in regions having minority populations. Expertise must also be developed in functional areas of Oregon poverty practice: landlord-tenant, consumer, domestic relations, juvenile, welfare and other administrative law problems. The central office research staff would also assist in drafting legislation affecting the poor and coordinating efforts in seeking its passage. The research and litigation director and staff shall all be attorneys, the director having had prior research, writing and litigation experience as well as thorough knowledge of the field of poverty law.

The education and training director (an attorney) will supervise a team composed of a communication specialist and two community workers, at least one of whom is Spanish speaking. Members of the team should have a demonstrated capacity to deal with the cultural and language problems of low income persons. This unit will attempt to achieve the following educational goals:

1. To plan and carry out a program of public information designed to increase awareness in low income people of the legal process as it affects them and of the remedies which may be available for addressing their common problems.
2. To encourage and foster a sense of confidence and respect for legal processes by increasing the accessibility of those processes and helping develop the personal skills with which to deal with them.
3. To encourage existing public agencies and private groups to develop complementary or coordinative programs which will inform the public as to their legal rights and responsibilities and rationalize legal processes.

It is clear from the Code of Professional Responsibility that the legal profession has the duty to:

. . . assist laymen to recognize legal problems because such problems may not be self revealing and often are not timely noticed. Therefore, lawyers acting under proper auspices should encourage and participate in educational and public relations programs concerning our legal system with particular

reference to legal problems that frequently arise . . . ¹⁰⁸

Poor people often do not recognize their legal problems.¹⁰⁹ Situations which signal the advisability of seeing a lawyer for the well educated are accepted by the poor as another stroke of bad luck, worse, as proof of the unfortunate common assumption that the "little man" has no chance. This is due to a lack of communications skills, to isolation from legal information, to growing complexity, and to the broader problem that the public at large has only a minimal understanding of the functioning of our legal system. A graduating high school senior, for example, generally can be expected to have been exposed to many hours of instruction in driving an automobile, throwing a football or algebraic problems, but with the exception of broad descriptions of government, little or no information is made available to him as to how the legal system operates.

Central office staff will prepare creative educational materials,¹¹⁰ provide technical assistance and training to field workers operating from regional offices, and will coordinate efforts with state agencies involved in education. Community workers in regional offices, working under the supervision of an attorney, will distribute educational materials and develop continuing educational projects, in consultation with central office staff, that meet educational needs within their region.

A second major function of this central office unit is training. In coordination with members of the Oregon State Bar and law school faculty, the education and training unit should arrange for periodic continuing legal education for legal services attorneys in important areas and developments in poverty law. Training of attorneys should include material on cultural, economic and other factors affecting low income clients with which many attorneys are unfamiliar. Training sessions may also serve to facilitate exchange of information and experience and the development of statewide strategies among attorneys from various regional offices and the central staff.

Other types of training are also needed. Training for community

¹⁰⁸ See also *Hackin v. Arizona*, 389 U.S. 143 (1967), Dissenting Opinion of Douglas, J. and the State of the Judiciary Address of Warren Burger, Chief Justice, United States Supreme Court, August, 1970.

¹⁰⁹ See p. 36 and Appendix I for interviews with random sample of low income persons. See also Duke Law Journal, "The Legal Problems of the Rural Poor," 1969 Duke L. J. 495, 510 (1969). Levine and Preston, "Community Resource Orientation among Low Income Groups," (American Bar Foundation Study Series) 80 Wisc. L. Rev. 80, 99 (1970); Denver Law Journal, "Rural Poverty and the Law in Southern Colorado," 47 Denver L.J. 82, 115 (1970).

¹¹⁰ Educational materials in other programs have included: Single-page mimeographed handouts, posters, illustrated brochures, comic books, columns in newspapers distributed in low income neighborhoods, combined with door-to-door explanation or school and club oral presentations. Short films, dramatizations, slides, TV and radio programs, and other creative devices have also been used to make the legal process more comprehensible and to instill confidence in dealing with it.

workers involved in educational and other functions is essential to their effectiveness.¹¹¹ Law students, who will be encouraged to participate in the program, should be trained in coordination with clinical programs and relevant courses at their law schools. Low income board members can be assisted in playing a significant role in policy making if they receive training in the organization and functions of the legal services program. It has also been suggested that training sessions for social workers, clergymen and others who work with the poor can make them more sensitive to legal rights and responsibilities as well as resources available to provide legal assistance. Finally, several lawyers have suggested a CLE session for the Bar, dealing with legal problems of the poor and the role that can be played in their solution by the private bar.

The administrative director, his assistant and bookkeeper will be responsible for administering program funds, keeping financial records, compiling program statistics, preparing necessary reports and purchasing supplies. These personnel need not be attorneys. An independent accounting firm should be retained to audit the program's books annually.

In sum, the central office will be staffed with nine attorneys, three educational personnel, three administrative personnel and ten secretaries. This general size and structure of central office has been adopted by most statewide and large city programs.¹¹² Whenever possible, the services of Reginald Heber Smith and VISTA lawyers should be obtained to assist in the central office and large volume regional offices.¹¹³

F. *Regional Offices*

RECOMMENDATION

The regional offices will provide legal and related services to low income clients in their areas. A regional office will be under the authority of a regional director and staffed by attorneys, community workers, law students, and secretaries.

DISCUSSION

The regional director is responsible for the execution of the program in his region within guidelines established by the statewide Board of Trustees and the statewide director. The regional director is also to be responsive to the positions of the regional

¹¹¹ See training manuals developed by the Dixwell Legal Rights Association, New Haven, Connecticut, July, 1969.

¹¹² See Colorado Rural Legal Services, "Outline of Work Program," pp. 6 ff. (1969); Pine Tree Legal Assistance, Inc., Maine Statewide Program, "Goals and Priorities," (April, 1970); Florida Rural Legal Services, Inc., "Progress Report on New Cases," (July, 1970); Indiana Legal Services, Inc., CAP Form 7b (1970); Alaska Legal Services Corporation, "Work Program," pp. 9 ff. (1970).

¹¹³ These lawyers would be provided by other national programs under the auspices of the Office of Economic Opportunity without significant expense to the statewide program.

board, as long as they are consistent with statewide guidelines. The regional director has the responsibility for hiring and dismissing regional office staff. The regional director must have legal and administrative experience and a demonstrated concern with and knowledge of legal problems of the poor.

Staff attorneys are responsible for providing the entire range of legal services contemplated by the program. A certain portion of one staff attorney's time should be assigned to help with the educational efforts being conducted by community workers at the regional office. Care should be taken to relieve staff attorneys from their duties from time to time to allow for training, research and participation in other aspects of the program.

Regional offices, depending on size and volume of business, will have several law students and community workers performing diverse functions. Third-year law students may represent clients with the guidance of a staff attorney.¹¹⁴ All three Oregon law schools have clinical programs and have indicated a willingness to participate in a statewide program. Law students can support the work of staff attorneys by performing legal research, interviewing clients, screening applicants for legal services, investigating cases, assisting in maintaining necessary records and helping in community education efforts. During summer months when the poverty population is swelling with migrant workers, selected law students can be of great assistance to the program.

Several community workers will be assigned to each regional office depending on size and geographical factors. As discussed previously, certain community workers would be assigned to outlying cities and towns to make appointments, establish client eligibility, refer ineligible clients and participate, as time allows, in community education efforts. At least one community worker in each regional office should be a regional education specialist and involved full time in implementing the regional education program. The regional education specialist will receive guidance from the central and, in turn, with a staff attorney, guide the educational efforts of outreach workers in the region. In addition, community workers can help with investigation of cases, interviewing witnesses, obtaining and preserving physical evidence, uncovering background information as needed, lay advocacy, community organization, filing and typing.¹¹⁵ Certain community workers will be hired by the office, others may volunteer services. There is no requirement of specific formal training, but aides should have community experience and considerable sensitivity to perform their function. Community workers should, if at all possible, be from the population being served by the program and

¹¹⁴ See Law Student Appearance Rule, 91 Or.Adv.Sh. 13-17 (Sept. 30, 1970).

¹¹⁵ For an excellent discussion of the various functions of community workers, see Dixwell Legal Rights Association, *Community Workers; A Manual for Lawyers* (1968).

have demonstrated prior concern with problems affecting low income persons. In certain regions, community aides must be able to speak Spanish.

Efforts should be made to hire and train as many receptionists and secretaries from the low income population as is consistent with efficient operation of the regional office. In this manner, offices will be able to fulfill the congressional requirement that "in the conduct of all component programs [e.g., Legal Services], residents of the area and members of the groups served shall be provided maximum employment opportunity. . . ." ¹¹⁶ Equipment should be rented by each office with substantial volume to enable repetitive pleadings and copy to be handled with maximum efficiency.

G. Scope of Services

RECOMMENDATION

The program will provide a full range of legal services to eligible low income clients with the exception of fee generating cases and criminal matters now restricted by the Office of Economic Opportunity. It is recommended that the statewide Board of Trustees and regional boards consider the most expeditious manner of handling domestic relations problems. The study team further recommends that a statewide public defender system, if and when adopted by the State of Oregon, be closely coordinated with statewide legal aid. Non-legal problems of clients should be referred to the relevant social agency with a system of follow-up developed to insure solution.

DISCUSSION

A basic goal of the statewide program must be to provide a broad range of quality legal assistance to its clients, both individuals and groups, in much the same manner that private attorneys serve their clientele. This would necessarily include advice, representation, litigation and appeal within the court system and before all agencies and bodies necessary to redress problems confronting clients. Only in this manner can Canon 7 of the Code of Professional Responsibility requiring that lawyers represent all clients "zealously" be fulfilled by legal aid attorneys.

Domestic relations cases present a special problem for the proposed statewide program. Many lawyers feel that divorces are a luxury. On the other hand, a significant number of low income persons desire divorces, although certain groups representing the

¹¹⁶ Sect. 223, Economic Opportunity Act of 1964, as amended, 42 USC 2810. See also Office of Economic Opportunity, *Legal Services Guidelines*, p. 4, where the broad requirement that legal services programs be "developed, conducted and administered with maximum feasible participation of residents of the areas and members of groups served" is set out.

poor felt that divorces would impose too great a burden on a legal services program when other more fundamental matters should receive priority.¹¹⁷ It was felt by the study team that rather than resolve this issue now, it would be more realistic for the state-wide Board of Trustees and regional boards to deal with it at the outset of the program. In addition, there will then be some experience under the new divorce law recently passed by the Oregon Legislature.¹¹⁸ Various ways of limiting divorce intake and routinizing handling of uncontested divorces can be explored by the boards.¹¹⁹ A family law center has been proposed to handle domestic relations cases by a special unit of Multnomah County Legal Aid Service for the tri-county metropolitan Portland area. The proposal has been made to United Good Neighbors and is designed to provide complete, prompt and dignified legal services and family counseling for the poor in the domestic relations area. Approaches might vary from region to region depending on local need. Consideration might also be given to establishing voluntary indigent divorce and conflict panels with a membership of private attorneys in regions where this was thought useful. The panel would be referred one spouse in a domestic relations matter when both spouses are eligible for assistance and the other is already the client of legal aid. The bar can also be of great assistance in other conflict of interest situations.

Legal services programs supported by the Office of Economic Opportunity are presently precluded by law from accepting criminal cases after the indictment stage unless a special waiver is received.¹²⁰ All representatives of low income groups and many lawyers canvassed thought that a single office should handle both civil and criminal matters for low income persons. It was felt that the poor would be better served by one office to which they could bring all their legal problems. Also, civil and criminal problems are often interrelated in consumer, juvenile, non-support and other areas. Legal aid attorneys in several currently operating programs in Oregon have indicated that they and others in legal aid programs would prefer to handle and obtain experience in both civil and criminal areas. For these reasons, the study team has recommended that when a public defender system is legislated for Oregon, it should be developed in close coordination with statewide legal aid. The Governor's authority over a public defender might

¹¹⁷ See, with respect to case load problems in other legal services programs due in large part to requests for divorce representation: Silver, "The Imminent Failure of Legal Services for the Poor: Why and How to Limit Case Load," 46 J. Urban L. 217 (1968); Bellow, "Reflections on Case Load Limit," 27 *Briefcase* 195 (June, 1969); Clark, "Legal Services Programs — The Case Load Problem, or How to Avoid Becoming the New Welfare Department," 47 U. Urban L. 797 (1970).

¹¹⁸ House Bill 1239.

¹¹⁹ See articles quoted above and Berkely Neighborhood Legal Services, *Domestic Relations Cases in Legal Services for the Poor*, August, 1970.

¹²⁰ See Sect. 222, Economic Opportunity Act of 1964, as amended, 42 USC 2809.

be delegated to the statewide Board of Trustees which would govern both programs.¹²¹ Each would then be cheaper to operate. Before a comprehensive public defender bill can be resubmitted to the Oregon legislature in 1973, the statewide program or specific regional offices, with concurrence of the statewide board and director, should be encouraged to seek permissive public defender funds from county commissioners in various counties or court appointment funds in order to relate public defender defense of the indigent to legal aid.¹²²

From discussions across the state, it is clear that there is substantial dissatisfaction with the current court appointment system.¹²³ Permissive public defenders are now possible and at a future date a statewide public defender system may be instituted. In either case, the study team recommends that indigent criminal defense be closely related to civil legal aid.¹²⁴

H. Eligibility for Services

RECOMMENDATION

The basic standard of eligibility for legal services is the inability to obtain assistance of private counsel. Two limitations are recommended: one concerning the financial resources of the client and the other fee productivity of the case. Financial standards for eligibility in general use by Office of Economic Opportunity supported programs,¹²⁵ i.e., those with incomes less than \$200 per month for a single individual with \$40 added for each dependent, appear to be acceptable at the present time for Oregon. Regional boards should have some flexibility to establish local eligibility standards within guidelines set by the statewide board. The regional boards should further establish systems for referral of ineligible clients that are acceptable to each local bar association. Fee generating lawsuits such as damage actions and workmen's compensation claims should not be accepted, regardless of financial circumstances, as such individuals can be expected to be able to find private attorneys willing to handle such matters.

¹²¹ Some or all criminal appeals would still be funnelled through the Appellate Defender's Office.

¹²² County public defenders are now possible under House Bill 1751, see Sect. 1.

¹²³ See p. 29, *supra*.

¹²⁴ A trial level Public Defender has recently been appointed for the five county jurisdiction of the Columbia Region Association of Governments (CRAAG) with 75% of the funds coming from the Federal Law Enforcement Assistance Administration and the remaining 25% from court-appointed lawyer budgets of local governments. Funding has also been sought for a public defender office related to Portland Legal Aid under the Model Cities Program of the Department of Housing and Urban Affairs. This office would be available only to low income residents of the model cities area in Northeast Portland.

¹²⁵ See Office of Economic Opportunity, *Guidelines for Legal Services Programs*, p. 7.

DISCUSSION

Income is the basic guideline in determining the financial resources of an applicant for legal services. Allowance must also be made for extraordinary outstanding indebtedness such as major medical expenses and, on the other hand, for significant assets not reflected in monthly income. If ineligible applicants are refused three times by private attorneys to whom the applicant was referred, the program should then also be able to handle this case. Individuals receiving public assistance are generally automatically found eligible for legal services, as standards for welfare recipients are below those for legal services.

Group eligibility is also determined on the ability of members of the group to retain private counsel. The Office of Economic Opportunity requires that a flexible standard be applied taking into consideration the size of the organization, the relative poverty of its members and the cost of the legal assistance which the organization desires.¹²⁶

Eligibility should be determined at the initial interview. Eligibility standards must be strictly adhered to and steps taken to recover the value of legal services obtained through fraudulent representation of income or assets.

I. *Formal Organization*

RECOMMENDATION

The study team recommends that the Oregon Legal Services Corporation be an independent, non-profit corporation with all powers and responsibilities accruing to such organizations under the Oregon Non-Profit Corporation Act.¹²⁷

DISCUSSION

In speaking with attorneys and low income groups, we found no disagreement with the above recommendation. Nearly all statewide legal services programs are independent, non-profit corporations.

J. *Statewide Legal Services and the Private Bar*

For generations members of the Oregon Bar have given themselves to tasks important to the public interest. In this spirit numerous bar associations have initiated legal aid programs to assist those in need. This effort, along with court appointments to represent indigents charged with crime, has placed a heavy burden on the private practitioner. It is the hope of the study team that a statewide program of legal services can help relieve some of that burden while working in closest cooperation with bar associations and the efforts they have launched to provide representation for the poor.

¹²⁶ *Idem.*

¹²⁷ ORS 61.005 et. seq.

Private practitioners have sometimes expressed the fear that legal aid programs might in some way impinge upon the flow of private clients. This fear has been demonstrated to be unfounded; to the contrary, it appears that legal aid programs have, in fact, generated business for the private bar. Through programs of education which inform the public about their legal rights and responsibilities, and the general knowledge that broader legal assistance is available, numerous clients have come to government supported legal aid offices, many of whom are found to be ineligible and are referred to the private bar. For the first quarter of 1971, 2,304 persons were seen by the Multnomah County Legal Aid Service. Of this number, 673, or approximately 25%, were found to have a legal problem but were above eligibility guidelines and, therefore, referred to private attorneys under the established referral system. Figures for the first quarter of 1970 were similar: of 1894, 463 were referred to the private bar.¹²⁸ In the Lane County Legal Services Program, referral figures are even higher. For the last two quarters of 1970, of 1,038 individuals seen by Lane County Legal Services, 412, or more than one-third, were referred to private attorneys for handling.¹²⁹

Bar associations and the legal services program can work closely together for their mutual benefit. The fledgling program can learn a great deal from the experience of the bar associations in providing legal aid in their areas and, as discussed below, bar associations can help to provide the non-federal share needed to support the legal services program. This is accomplished primarily through members of the private bar advising and giving guidance to younger legal aid attorneys in more complex matters of practice and procedure. The legal services program, on the other hand, is that arm of the modern bar which reaches out, in the highest traditions of the profession, to help those in trouble vindicate themselves under the law. The image of the bar — not always a good one — will be enhanced in the eyes of the public as it will be seen, through support of legal services, to be contributing to the solution of society's problems. Through legal services for the disadvantaged, the bar can meet its responsibility to the American public and move toward fulfillment of the First Canon in the Code of Professional Responsibility, which states that:

"A basic tenet of the professional responsibility of lawyers is that every person in our society should have ready access to the independent professional services of a lawyer of integrity and competence." (EC 1-1)

¹²⁸ CAP Forms 58f, Portland Legal Aid Society, Jan. 1, 1971-March 31, 1971 and Jan. 1, 1970-March 31, 1970.

¹²⁹ CAP Forms 58f, Lane Human Resources, Inc., July 1, 1970-September 30, 1970 and Oct. 1, 1970 - Dec. 31, 1970.

VII. FINANCING THE OREGON LEGAL SERVICES CORPORATION

A. *Source of Funds*

The primary source of funds is the federal Office of Economic Opportunity Legal Services Program under authority provided by Congress in the Economic Opportunity Act of 1964, as amended, 42 USC 2809. At least two bills are currently before Congress — the administration bill and that introduced by Senator Mondale — to give the Legal Services Program a new home in an independent national legal services corporation. The new corporation will draft its own regulations once it is established for compliance by applicant programs, but it is not anticipated that they will be fundamentally different from current OEO standards. The program recommended above for an Oregon Legal Services Corporation conforms in all particulars with present OEO regulations for receiving funds.¹³⁰ Requirements for 20% non-federal contribution to the program are discussed below.

The Office of Economic Opportunity provided a small grant to the Oregon State Bar to allow the study team to carry out its three-month study. This grant evidences considerable interest on the part of the Office of Economic Opportunity in the development of a statewide legal services program in Oregon. The Director of Legal Services in the Seattle Regional Office of OEO, which has direct authority over grants in the Northwest, has lent valuable assistance throughout this feasibility study and has indicated a desire to see the program, when approved by the Oregon Bar and Governor, financed by the Office of Economic Opportunity and other sources that may be possible.

Besides the Office of Economic Opportunity, the Department of Health, Education and Welfare (HEW) is able to finance legal services programs under Titles I, IV (A and B), X, XIV, and XVI, and Section 1115 of the Social Security Act (as amended) as social services programs. Social services programs are optional components of state welfare plans, and a legal services program is, in turn, an optional part of a social service program. In the last several years, HEW has become more interested in encouraging legal services programs, due to the fact that after July 1, 1969, the Social Security Act required legal assistance to welfare clients who desired it in public welfare agency hearings under the fair hearing requirements of that act.¹³¹ In State Letter No. 1053 (November 8, 1968), the Administrator of the HEW Social Rehabilitation Service stressed the need for legal services and set out

¹³⁰ See Office of Economic Opportunity, *Guidelines for Legal Services Programs and How to Apply for a Legal Services Program*.

¹³¹ See 1968 Pov. L. Rep. 10, 215 ff. (Para. 9118).

the following guidelines for such programs:

- legal services of high professional quality.
- complete independence of attorneys to serve the client's interest.
- representation of the client in a broad range of circumstances and actions.
- close coordination and complementary relations with the Legal Services Program of the Office of Economic Opportunity and other community legal assistance services.

Although no state has included a legal services component in its social service plan, there are currently five HEW demonstration and research grants providing funds to legal services programs.¹³²

The funds available for financing legal service programs under HEW are theoretically unlimited. Grants are made to states on a matching basis, usually requiring a match of 25% cash from non-federal public funds, with the exception that Model Cities funds may be used for matching. Grants also may be made with up to 100% financing for demonstration or research programs. There is the further requirement that legal services be made available on a statewide basis.¹³³

HEW and OEO have been exploring the possibility of mutual financing of worthy legal service programs; discussions have, however, been suspended pending congressional decision on Legal Services' future. A combined funding effort or independent HEW funds for an Oregon statewide program may be possible. The study team has consulted the regional HEW office in Seattle which indicated that it would be happy to receive a proposal for an Oregon Legal Services Corporation when approved by the Bar and Governor. Research and demonstration funds requiring less than 25% matching funds may be a possibility. In addition, if a legal services program becomes reality in Portland's Model Cities area, that program's funding can be tabulated in matching HEW financing for the statewide program. There is also a chance that HEW will alter its requirement for public matching funds and accept, as does OEO, funds from any non-federal source. It may, therefore, be possible to derive HEW financing without part or all of the 25% matching requirement having to come from state or county funds which would appear to be quite limited at the present time.

The Department of Housing and Urban Development (HUD) funds legal services programs only through its Model Cities Program.¹³⁴ Unlike OEO, Model Cities Programs do not prohibit criminal representation. Additionally, the Concentrated Employ-

¹³² In Arkansas, Connecticut, Montana, New York and Pennsylvania,

¹³³ Senate Bill 549, currently before the Oregon Legislature, would appropriate \$100,000 to match a grant three times that size from HEW to provide free legal services in civil matters to public assistance recipients.

¹³⁴ See Demonstration Cities and Metropolitan Development Act, 42 USC Sects. 3301 et. seq.

ment Program (CEP) of the Department of Labor presently provides funds under contract to the Multnomah County Legal Aid Program to represent enrollees of the CEP program. The possibility of a contract arrangement with the Department of Defense to represent indigent servicemen is now being explored.

Two other sources of funds, substantially more limited than the OEO Legal Services Program or HEW, are Community Action Programs versatile funds and United Good Neighbors. Both sources have been used to assist current legal assistance programs in Oregon. Each Community Action Program has limited unencumbered funds which can be applied to important projects in its area. Through the State Economic Opportunity Office and local CAP's funds can be sought for specific projects or offices within the statewide system. Multnomah County Legal Aid is planning to open a satellite office in East Multnomah County with this type of financial assistance from Multnomah County Community Action Agency. United Good Neighbors has provided support to legal aid programs in Multnomah, Clackamas and Washington counties. It is now considering assistance to the Family Law Center which would provide efficient legal aid in domestic relations cases in the tri-county metropolitan Portland area. United Good Neighbors in the tri-county metropolitan area has indicated that it would be interested in exploring continued funding of identifiable projects under a statewide program of legal services.

Additional potential sources of funds should be explored when the Oregon Legal Services Corporation has received final approval from the state Bar and Governor's office. Funds should be sought from the Bar itself. There is also a possibility of some foundation financing, although the major foundations, particularly Ford and Rockefeller, are providing fewer grants for legal services than they did before the OEO Legal Services Program was begun in 1964-65. Finally, direct financing can be sought from the state legislature, although current indications are not hopeful for a significant funding from this source.

B. *Non-Federal Share to Match Office of Economic Opportunity Funds*

As the Office of Economic Opportunity is the major potential source of funds for a statewide program, it would be useful to discuss various ways in which a non-federal matching share for OEO money can be raised in Oregon. The Office of Economic Opportunity requires that 20% of the amount provided by OEO be obtained either in cash or in kind from public or private non-federal contributions. All in-kind contributions are to be "fairly evaluated."¹³⁵ In addition, the non-federal contribution must involve an increase in the overall level of community effort in legal services, using as the basis for comparison the 12-month period pre-

¹³⁵ 42 USC 2812(c).

ceding application for funds. In other words, current activity cannot be counted toward non-federal share; there must be an increase in effort.

Aside from direct cash contributions which might be obtained from the Oregon Legislature, counties, the Oregon State Bar, United Good Neighbors or foundations, the following are ideas developed by the study team for the statewide program to obtain needed in-kind contributions. Some of the suggestions are derived from current legal services programs in Oregon and outside the state and others from our many discussions with attorneys and groups representing the poor.

1. Contributions of office space, equipment, furnishings or library by local, county or state government or from private sources for the central, regional and satellite offices.
2. Provision by the State of Oregon of a Watts telephone hookup for the central and regional offices. The fair value of all telephone calls made on the system can be counted toward in-kind non-federal share.
3. Private attorneys' time valued at \$16 per hour to provide advice and assistance to younger staff attorneys on selected cases and problems. Additionally, one or several attorneys in each region might serve as proctors, that is, a liaison between the local bar associations and the regional office.
4. A voluntary Indigent Divorce and Conflict Panel established by the bar in each region to represent one side of those cases in which two clients are eligible for legal aid, but both cannot be assisted by the program due to a conflict of interest. Local attorneys may also contribute time by taking other cases on behalf of the indigent.
5. Special clinics and other programs, as have been established in a number of counties and at night in Portland, staffed by private attorneys, can handle problems beyond the scope of legal aid either due to the special nature of the problem or the time during which the clinic is open. The Oregon Bar can be of great assistance in encouraging private firms to provide released time for associates interested in helping with such clinics.
6. The Oregon State Bar can provide free attendance at CLE sessions for attorneys included in the statewide program.
7. The time of law students assisting legal aid through law school clinical programs or in other ways may be counted toward in-kind share.
8. A method used successfully in California involves close cooperation between the legal services program and the law schools. Research projects of importance to low income clients are identified by the legal services program and then presented to the law schools. Within relevant courses or independent study, interested students are assigned these research projects. Both student research and

faculty guidance time on such projects can be counted toward in-kind share. Initial discussions have been held with faculty members at each of Oregon's law schools. There has been a uniform expression of interest in developing projects of this nature.

9. Community worker volunteer time to be involved in tasks outlined above also constitutes in-kind share.
10. Bar wives can contribute for filing, copying, typing, educational work, etc.
11. County and local buses should be used whenever possible to transport low income persons to regional and satellite offices.

Commitment for specific non-federal contributions will have to be obtained after final approval of a program by the Bar and Governor.

VIII. CONCLUSION

This report has attempted to document the extent of poverty in Oregon and the legal problems which confront more than a fifth of our citizenry who fall below the poverty line. Current legal aid efforts for low income persons were surveyed and evaluated. Although these volunteer programs have demonstrated a real concern for the legal problems of the poor, they are simply incapable of coping with the depth of need for legal assistance. This is the opinion of many lawyers, independent social service agencies, and certainly, the poor themselves.

A statewide program designed to meet the needs of Oregon's poor for legal services has been set out. It is based on opinions solicited throughout the state and a careful analysis of Oregon's needs and experience with similar programs in other states. Legal services programs operating from permanent offices with full-time staff have, since their beginning in 1964, received widespread support from national leaders. President Nixon stated on May 5, 1971 in a special message to Congress:

"... this program [OEO Legal Services] can provide a most effective mechanism for settling differences and securing justice within the system and not on the streets. For many of our citizens, legal services has reaffirmed faith in our government of laws . . . The nation is to be encouraged to continue giving this program the support it needs in order to become a permanent and vital part of the American system of justice."

From the outset, "the American Bar Association by action of its House of Delegates, has pledged the wholehearted support of the [nationally] organized bar to the Legal Services Program of the Office of Economic Opportunity."¹³⁶ The Oregon Legal Serv-

¹³⁶ Statement of Edward W. Kuhn, President, American Bar Association in Office of Economic Opportunity, *Legal Services Guidelines*, p. 10.

ices Corporation, proposed in this report, would put Oregon among the many states and cities which are striving to extend the ordered quest for dignity, for justice, and for opportunity to the poor.

In this quest the legal profession has both a fundamental responsibility to the public and a unique and crucial role to play. Nowhere has this "higher calling of the Bar" been better expressed than in the words of Bernard Segal, President of the American Bar Association:

"As we enter the seventies, our nation and our people face grave challenges and serious problems. For us as lawyers, there is a special challenge. For in no period in our country's history has there been so severe a testing of the legal profession, such great disillusionment as to the efficacy of law, either in preserving order or in assuring equal justice.

These conditions . . . raise fundamental questions that cry out for answers: Is it the duty of a democratic society to provide legal service to every citizen who needs it but has no funds to pay? Can an effort to provide equal rights under law be really meaningful when substantial numbers of our people are without legal representation to enforce those rights or even to have them explained? Where justice continues to be denied to whole segments of our society, where they suffer the sanctions of the law but have no access to its remedies, is it not inevitable that people will be alienated from society, and order will give way to turmoil and disorder?

These questions admit of only one answer. In a democracy, the community as a whole, but the legal profession in particular, fails in one of its most sacred obligations if it does not work unceasingly for the substantial enlargement of the legal services available to the poor."¹³⁷

¹³⁷ Address of Bernard Segal to the Bar Association of the District of Columbia, 28 *Briefcase*, 156-8 (April 1970).

APPENDIX I

Summary of In-Depth Interviews Concerning the Recognition of Legal Problems by Low Income People

The following answers were received to the following questions:

1. Imagine you were in this situation: You believe that you ought to get Social Security benefits. You go to the Social Security people and they turn you down. You try again and they will not give you the benefits. What would you do?

Why would you do that?

If that didn't work, would you do anything else?

What?

Recognized as a legal problem:	Yes — 13
	No — 37

Why wouldn't you have seen a lawyer in the Social Security problem I asked you about? (More than one reason per person recorded)

a. Didn't recognize legal problem	18
b. Too expensive, couldn't afford it	13
c. Fear of legal situations, legal system	1
d. Scarcity of attorneys	1
e. No transportation	0
f. Inconvenience, problem not too pressing, ignored problem, cost of time off work, takes too much time	0
g. Courts aren't fair, lawyers aren't honest, would be futile	7
h. Other	5
No answer	5

2. Imagine yourself in this situation: You are renting a house. The plumbing in the house will not work. You have complained to the landlord several times, he says that he does not have to make repairs and absolutely won't do anything at all. You are almost sure that you can't find anywhere else to live. If you were in this situation, what would you do?

Why would you do that?

If that didn't work, would you do anything else?

What?

Recognized as a legal problem:	Yes — 11
	No — 37
	Not Answering — 2

Why wouldn't you have seen a lawyer to help you in a problem with your landlord such as I mentioned? (More than one reason per person recorded).

a. Didn't recognize legal problem	22
b. Too expensive, couldn't afford it	12
c. Fear of legal situation, legal system	1

- | | |
|---|---|
| d. Scarcity of attorneys | 1 |
| e. No transportation | 0 |
| f. Inconvenience, problem not too pressing, ignored problem, cost of time off work, takes too much time | 0 |
| g. Courts aren't fair, lawyers aren't honest, would be futile | 8 |
| h. Other | 0 |

3. Imagine you have bought a refrigerator from a store and are paying for it on time. After the refrigerator has been used for 6 months but while you are still paying for it, it stops working. The store owner absolutely refuses to take it back or repair it. What would you do?

Why?

If that didn't work, would you do anything else? What?

Recognized as a legal problem:	Yes — 16
	No — 34

Why wouldn't you have seen a lawyer? (More than one reason per person recorded).

- | | |
|---|----|
| a. Didn't recognize legal problem | 20 |
| b. Too expensive, couldn't afford it | 12 |
| c. Fear of legal situation, legal system | 1 |
| d. Scarcity of attorneys | 1 |
| e. No transportation | 0 |
| f. Inconvenience, problem not too pressing, ignored problem, cost of time off work, takes too much time | 1 |
| g. Courts aren't fair, lawyers aren't honest, would be futile | 6 |
| h. Other | 0 |

Disposition of previous legal problems encountered by low income people

1. Have you ever purchased anything on time payments, that is, on a contract?

Yes — 36

No — 12

No Answer — 2

Did you have any problem with such a contract? Yes — 10

Do you feel you were treated unfairly? Yes — 9

No — 1

Do you think a lawyer could have helped you out?

Yes — 8

No — 2

Did you see a lawyer? Yes — 1

No — 8

(The one person who did see an attorney contacted a Legal Aid Service in California where he was living at the time.)

Reasons an attorney was not contacted:

- | | |
|-----------------------------------|---|
| a. Didn't recognize legal problem | 2 |
|-----------------------------------|---|

- b. Too expensive, couldn't afford it 5
- c.
- d.
- e.
- f.
- g. Courts aren't fair, lawyers aren't honest, would be futile 2

2. Have you ever had any problem with a government agency such as the Welfare Department, the Social Security Administration, the Department of Motor Vehicles, or any others which you felt treated you unfairly?

Yes — 13

No — 35

Did you see a lawyer?

Yes — 2

No — 11

(Of the two people who did see an attorney in this matter, one felt that the attorney did not work very hard for him and overcharged him and the other expressed indifference to these inquiries, stating he just didn't know how hard the attorney had worked for him.)

Reasons why people did not see an attorney in this situation ranged as follows: (More than one answer recorded per person)

- a. Didn't recognize legal problem 2
- b. Too expensive, couldn't afford it 4
- c.
- d.
- e.
- f. Inconvenience, problem not too pressing, ignored problem, cost of time off work, takes too much time 1
- g. Courts aren't fair, lawyers aren't honest, would be futile 1
- h. Other 4

3. Did you ever have any problem with your landlord or otherwise keeping a place for you and your family to live?

Yes — 15

No — 33

Could a lawyer have helped you out?

Yes — 7

No — 6

Don't know — 1

Did you see a lawyer?

Yes — 4

No — 9

(Of the four people who did see attorneys in this matter, three went to Legal Aid and were satisfied with the representation they received. The other worked out the matter himself after consultation.)

Of those who did not see attorneys, these were their reasons:

- a. Didn't recognize legal problem 1
- b. Too expense, couldn't afford it 3
- c.

- d.
- e.
- f.
- g.
- h. Other (self help) 2
- No Answer Recorded 3

4. Have you ever had any problem with family matters, such as divorce, separation, child custody or paternity suit or an adoption?

Yes — 14

No — 233

Could a lawyer have helped you out?

Yes — 6

No — 8

Did you see a lawyer?

Yes — 6

No — 8

(Of the six people who did see attorneys, four said they were satisfied with the advice they received, although two had difficulty in paying the fee charged and the others had Legal Aid attorneys.)

The reasons given for not seeing an attorney were as follows:

- a. Didn't recognize legal problem 1
- b. Too expensive, couldn't afford it 2
- c.
- d.
- e.
- f.
- g. Court's aren't fair, lawyers aren't honest, would be futile 1
- h. Other (self help) 2

5. Have you ever seen a lawyer for any other reason?

Yes — 21

No — 24

(Some of the reasons given for seeing an attorney were as follows: bankruptcy, personal injury (3), license suspension, workmen's compensation, military arrest on a narcotics charge, criminal charge of forgery, partnership problem, will drafting (3), drunken driving, tax problem, automobile accidents (3), and illegal fishing.

None of the people who did see an attorney in these cases had any difficulty in paying any of the court costs or fees involved.)

6. Have you ever not gone to a lawyer even though you felt you had a legal problem other than the ones we have discussed?

Yes — 18

No — 26

Not Answering — 6

Why didn't you see one?

- a.
- b. Too expensive, couldn't afford it 13
- c.
- d. Scarcity of attorneys 1

- e.
- f.
- g. Courts aren't fair, lawyers aren't honest, would be futile 1
- h. Other 1
- No Answer 2

7. Have you ever been unable to get an attorney to help you when you needed one? Yes — 10

No. — 37

Not Answering — 3

(Six of the ten stated that the reason that they could not get an attorney was because they had no money. In one case a judge refused a court appointed attorney in a criminal matter and in two cases the Legal Aid Service in the area was too busy to assist the person requesting help.)

8. Have you ever had a court appointed attorney in a criminal case? Yes — 2

No — 46

Not Answering — 2

Were you satisfied with the representation? Yes — 1

No — 1

9. Has a private attorney represented you on a paying basis in a criminal case? Yes — 3

No — 43

No Answer — 4

Were you satisfied with his representation of you? Yes — 3

10. How important do you feel that a need is for free legal help in Oregon?

Very Important 32

Quite Important 13

Somewhat Important 3

Not Very Important 0

Not Needed at All 0

Not Answering 2

11. Would you use such help yourself if it were available and you needed it? Yes — 48

No Answer — 4

12. What do you feel are the most important reasons people don't go to see a lawyer when they need one? (More than one answer given per person)

a. Didn't recognize legal problem 6

b. Too expensive, couldn't afford it 40

c. Fear of legal situation, legal system 6

d. Scarcity of attorneys 0

e.

f.

- g. Courts aren't fair, lawyers aren't honest, would
be futile 5
- h. Other 5

(Among the "others" were the following reasons: Fear regarding confidentiality of communication, a language problem of one person who could not speak English well, a doubt about the competence of existing free services.)