OFFICE OF LEGAL SERVICES

REBUTTAL

OF

THE GAO REPORT

June 1, 1973
On March 21, 1973, the GAO issued a report on the Legal Services program, stating that legal services attorneys were not adequately involved in law reform because they were devoting themselves to individual casework. Many persons have used the GAO report as conclusive proof of the lack of law reform activity and I have observed that those who have criticized the Legal Services program for excessive law reform activities, have been confronted with the GAO report as proof that their charges are unfounded.

When this report was issued, I had been Acting Associate Director for Legal Services for a few days and was not able to contradict factually the interpretation placed on the GAO Report. * Such proof is now available, thanks to an exhaustive study by the staff at OLS. That study "Law Reform and The GAO Report" is attached for your information. It is my opinion that the GAO report does not sustain the conclusion that legal services attorneys are not actively involved in law reform. Rather, emphasis on law reform has been a hallmark of the Legal Services program.

I call your attention, in particular, to the following points in the study:

A. GAO pointed out that OLS had a miserable management information system and that adequate data on law reform was not available at Headquarters OLS. It follows, obviously, that there was no evidence available at a central place to prove or disprove any point about the adequacy or inadequacy of law reform. (I have, incidentally, actively promoted an excellent MIS system to meet this objection.)

* In fairness to the GAO they never intended to pass any judgment on the adequacy or legitimacy of the Office of Legal Services' entire law reform effort. They were concerned rather with pointing to certain improvements that could be made in individual grantee operations, given the desire of the national office to emphasize law reform. The improvements recommended by GAO were a more precise definition of goals and priorities and more specific plans for implementing these goals. Neither did GAO intend their report to present an up-to-date picture of the status of law reform among the line projects. They were simply flagging what appeared to be a problem in 1970-71 and suggesting that the national office address it now, if it had not already done so.
B. To gather data, GAO visited only seven projects out of a total of 265. No inference of any kind can be drawn from such a sampling. Any conclusion based on the experience of seven out of 265 is logically invalid and must be dismissed by those who care about the reasoning process.

C. The Seven Projects Studied by GAO:

The data produced by the GAO concerning three of the projects was stale. Specifically, GAO considered evaluations in 1969 and 1970, to support its conclusion of March 1973, that there was inadequate involvement in law reform. Later independent evaluations of these three projects---done in 1970, 71, and 72---established a significant involvement by them in law reform activities. Therefore, more contemporary data flatly contradict GAO's conclusion and support a finding of significant law reform activity in three projects where GAO found inadequate involvement.

GAO found law reform being actively pursued in three other projects, a conclusion supported by independent evaluations. The seventh project, it is agreed by all, did not engage in much, if any law reform.

The facts require the conclusion that six of the seven projects studied by GAO, were and are engaged in active law reform activities.

D. GAO also looked at nineteen project evaluation reports which are on file at Headquarters OLS and found ten of the projects adequately involved in law reform. The only conclusion warranted from this GAO review of the nineteen evaluations, is that more than 50% of them were active in law reform activities. The GAO report in the area does not support the position that law reform is an insignificant aspect of legal services work.

E. The OLS has analyzed 93 other evaluation reports on file and finds, by the criteria applied by GAO, one-half are "adequately" involved in law reform and one-third are "heavily" involved. It is my considered opinion that had time permitted an analysis of all legal services projects, the additional data would yield the inescapable conclusion that the vast majority of these projects are extensively involved in law reform activity.

F. The GAO Report did not evaluate back-up centers. Those who argue that there is no emphasis on law reform in the legal services program omit reference to the twelve national back-up centers and eight state back-up centers, spending over six-million dollars a year. The back-up centers are almost exclusively involved in law reform activities. Any conclusion drawn about law reform in the legal services program which omits the back-up center activity must be dismissed as patently invalid.
I bring this study and my comments to your attention in the hope that it will correct the record in important matters and contribute to an accurate and constructive discussion of the legal services program.

Respectfully submitted,

[Signature]

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LAW REFORM AND THE GAO REPORT

A Report of a Study Group Chaired by Marshall Boarman, Director of Evaluation, Office of Legal Services, OEO

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JUNE 1, 1973
LAW REFORM AND THE GAO REPORT

On March 21, 1973, the General Accounting Office (GAO) issued a Report on the Legal Services Program which has been grossly misused in a number of ways by critics of the current effort to restructure the Program. The portion of the Report which has been exploited the most is the finding that Legal Services line attorneys---those working in the 900 neighborhood law offices---were by and large not adequately involved in law reform. A principal reason for this"failure", according to GAO, is the decision on the part of many projects (the 900 neighborhood law offices feed into 265 projects) to give priority in allocating their scarce resources to individual casework. The GAO assessment has been greeted by the Program's liberal sympathizers as a conclusive refutation of the charge that law reform was being overemphasized to the detriment of service to individual clients.

A typical reaction to the GAO Report is that of Rep. William Steiger, who is reported to have said that the Report "certainly buries the charge that Legal Services lawyers pay more attention to causes and test cases than they do to their individual clients".

In similar vein, Rep. Edward Biester stated in April: "Critics of the Program have tried to picture legal services as a politicized * operation fighting causes at the expense of the simple and fundamental needs of the indigent. The General Accounting Office study and report of legal services performance issued March 21, refuted these charges and demonstrated how legal services attorneys have effectively and admirably represented the poor on behalf of those commonplace legal problems so many other persons---who know their rights and can afford the necessary legal fees---take for granted."

* This paper distinguishes between the law reform activities of Legal Services attorneys and their political activities. Politicization of the Legal Services operation, in the narrower and proper sense of the term "political", the sense intended by the Hatch Act, refers to attorney and project involvement in activity on behalf of or against the candidacy of persons running for elective office. Such involvement raises a number of serious issues. The documentation of the charge of improper political activity by legal services projects will be treated in a separate paper. The GAO Report does not touch on the problem of political activity in the sense just indicated.
A somewhat different view is that expressed by Frank Jones, executive director of the National Legal Aid and Defenders Association (NLADA) who is reported to have said that the most significant finding in the GAO Report was that the legal services lawyers "were fully occupied with meeting individuals day-to-day needs and needed to devote more time to law reform" (emphasis added).

The difference in reactions turns on the fact that the lack of emphasis on law reform in the line projects is regarded by some as a deficiency while by others it is seen as something quite acceptable, if not an accomplishment. The GAO Report, in labelling the paucity of law reform a deficiency, was simply following the standards furnished them by the people running the Legal Services Program at the time the GAO team began their study. Consequently, even if it should turn out to be true that the average line lawyer was slighting law reform, this would not exculpate the national Office from possibly having set law reform standards too high.

Those who are using the GAO Report to attack the present leadership at Legal Services cannot have it both ways: either they deplore the low level of law reform, in which case they have accepted the previous standards and goals established by Legal Services and used by the GAO evaluating team, or they approve the attorneys' devotion to their individual clients, in which case they must reject the goals and standards employed by GAO and must range themselves, on this point at least, with the present leadership in the Office of Legal Services and against Frank Jones and others who share his passion for more and ever more law reform. Those who are gratified by the GAO finding of inadequate law reform should, if they are consistent, applaud the efforts of the present leadership to develop new guidelines which, in reducing the disproportionate emphasis on law reform at the policy-making level, will ease pressure on attorneys and enable future GAO teams to see accomplishments where they now see deficiencies. *

* The first of these guidelines, eliminating law reform as a separate and primary goal of the Legal Services Program, but retaining it as a tool of the attorney representing an individual client, was published in the Federal Register recently.
Both Congressmen Biester and Steiger on the one hand and Frank Jones on the other agree on one thing however: the GAO Report has shattered once and for all the myth of excessive law reform activity in the Legal Services Program, whatever about the glorification of law reform in the rhetoric of those who have directed the Program in the past. Against this view, fashionable among a number of law reform zealots, this paper contends that (a) excessive involvement in law reform on the operational level of the Legal Services Program is no myth but a disturbing reality and (b) the GAO evaluation is not only inconclusive in respect to this factual issue but has been repeatedly misused in support of certain inferences that were never intended by GAO and cannot be sustained by the Report.

The Report defines law reform as "seeking reform of statutes, regulations and administrative practices that unfairly affect the poor" (p. 11). The Report accepts law reform as a principal if not primary goal of the Program:

"One of the principal missions of OEO's Legal Program is to have Program grantees challenge --by class action or test case--that portion of the statutory, regulatory and administrative base of the existing order considered to discriminate against the poor; to research conflicting and discriminating applications or laws or administrative rules; and to propose administrative and legislative changes."

The Report's finding on the extent to which the law reform goal was being realized reads as follows:

"There were indications that most program grantees had not been adequately involved in the program area...of law reform " (p. 10, GAO Report).
The question which occurs immediately, of course, is: what was GAO's criterion for adequate involvement? In the words of a member of the GAO team which evaluated the Legal Services Program: "We talked with the people at the Office of Legal Services and they told us they had no criterion for adequacy. They said they had never really attempted to define how much was enough in each goal area." This shortcoming on the part of the Office of Legal Services was covered by GAO in its general criticism that the Office had "neither clearly defined program objectives and priorities nor provided the essential direction and guidance to program grantees on how to engage in activities directed toward law reform" (p.17, GAO Report).

Although GAO was unable to obtain a criterion of adequacy from the Office of Legal Services, it is obvious that some criterion however crude must have been used by GAO to arrive at its finding of inadequate involvement. The best source for such a criterion is the series of project evaluations performed for the Office of Legal Services by various outside firms, evaluations on which GAO relied heavily in forming its own conclusions. A recent review of 112 such evaluations yielded the following rule of thumb: all things being equal, law reform involvement, from the point of view of quantity at least, can be considered adequate if roughly 25% of the project's resources are allocated to law reform. For example, in a typical medium-sized project manned by four attorneys, adequate involvement might mean one attorney assigned full-time to law reform. Alternatively each of the four attorneys might devote several hours a day to law reform.
The next question is: what was the criterion for settling on this particular criterion of adequacy? How were the evaluators able to determine that 25% of the total available attorney time was not too much or too little to consecrate to law reform? The GAO Report furnishes a clue to a partial answer when it notes that in the projects which were deficient in law reform, "attorneys were fully occupied with meeting individuals day-to-day needs and that they were therefore unable to devote more time to law reform."

In other words the attorney's (or project director's) gauge for fixing the limits of his law reform investment was based partly at least on his personal judgment on the extent to which he could, in conscience and in prudence, resist the pressures from potential clients for individual service. He might decide a 10% investment of his time would be sufficient while a team evaluating his project might think 50% to be optimal but 25% sufficient, given the inexorable individual caseload. In short, although opinions as to what is sufficient differ considerably, it seems indisputable that client satisfaction/dissatisfaction is one of the arbiters of adequacy when it comes to law reform.

It is curious therefore that the Office of Legal Services, in developing procedures and criteria for evaluating its projects in the past, never provided for a meaningful client input. Evaluators have been warned away from clients on the grounds that interviewing them might impinge on the attorney-client relationship, although effective procedures for interviewing clients have been worked out elsewhere within the limits of the ethical canons. * Possibly the reason for the Office of Legal Services' reluctance in the past to sound out client opinion is the fact that the average client is likely to be much more interested in the satisfaction of his immediate legal needs than in the establishment of a legal principle. If this is the case, the heavier the contribution of clients to the assessment of projects, the lower the adequacy index for law reform involvement could be expected to be.

GAO, it is true, did interview 115 clients of the seven projects to which on-site visits were made (see p. below). According to the Report: "Most of the 115...stated that they were satisfied with the services they had received." But this can hardly be ci-

* The Office of Legal Services is presently attempting to overhaul evaluation procedures so as to insure a much greater client role in the construction of a formula for the right mix of law reform and individual service.
ted as evidence that clients are pleased with the emphasis on law reform. For one thing, by GAO's own count, four of the seven projects visited were deficient in law reform activity. GAO was told that the reason for this was that the projects were paying more attention to individual clients than to law reform. Hence one would expect the clients to be satisfied. On the other hand, some of the 115 clients who were satisfied must have patronized the three projects which were given high marks for law reform. Unfortunately, the GAO Report does not break down client reaction by projects, nor are we given a glimpse of the interview format, the kinds of questions asked and the manner in which the clients interviewed were selected.

However, even if the clients served by the law-reform-oriented projects were happy, this tells us nothing about the feelings of potential clients who were turned away. As the GAO Report points out elsewhere: "If a grantee is concentrating on law reform, the MIS reports would probably show a decreasing caseload" (p. 27, GAO Report). A project in Connecticut, for example, recently decided to take no more cases involving divorce and other family matters so that it could carry on a more extensive program of law reform. It stands to reason that a poor person whose plea for help in obtaining a divorce was turned down would have quite a different opinion of the project than a client who was successfully defended in a landlord-tenant case. One surmises that the GAO sampling of client opinions did not cover those indigent persons who were never allowed to become clients.

It should be noted by the way that discontent over attorney preoccupation with law reform surfaces from time to time even among those persons who have received service. A reference to this problem is found in article in the Yale Law Journal in December 1971 by a staunch defender of the Legal Services Program. He wrote:

"Legal Services attorneys have been known to place a higher priority on some issues...that are of less consequence to the client community. Moreover on certain issues the interests of the poor and the attorneys may be in direct conflict...Recently for example there have been increasing complaints from clients about attorneys who 'exploit' clients to launch sweeping law reform ac-
tions when the individuals may be seeking much more limited solutions to their problems within existing laws. The clients accuse the attorneys of taking law reform 'ego trips' at their expense. The National Clients Council has begun compiling documentation on this problem and plans to make it a major issue". *

The argument is frequently exhumed, of course, that service to clients cannot be separated from law reform since the time and money spent on a test case or class action may pay rich dividends in terms of benefits to many more hundreds of individual indigent persons and at far less cost than would have been the case had the project been restricted to serving clients on a one-by-one basis. There are signs that this facile argument---the short-circuit justification for law reform---is beginning to grow a little threadbare. A number of observers have begun to underline a little-recognized point: that the alleged benefits of so-called "impact litigation" are frequently illusory. **

According to one of these observers, Harry Brill, former Director of Research for the San Francisco Neighborhood Legal Assistance Foundation, a very large part of the Foundation's litigative activity---class action suits---produced not only "hollow victories" with no real social or economic gains but were even harmful in diverting scarce resources away from the direct needs of the poor. Brill's article suggests that the time has come for thorough longitudinal research by the Office of Legal Services into the alleged economic benefits of many of the "landmark" decisions resulting from test cases brought by poverty lawyers in the past. Such research ought to greatly facilitate the effort to develop a criterion for "adequate" law reform involvement.

Finally, the question "When is law reform excessive?" requires that the catch-all expression "law reform" be broken down into its various components (i.e. legislative advocacy, administrative advocacy and high impact litigative advocacy), and that each be subjected not only to a cost-benefit analysis but equally important, each be weighed in the scales of poli-

* See "Social Justice through Civil Justice" by Geoffrey Hazard, 36 U of Chic LR 707, and "The Uses and Abuses of Legal Assistance" by Harry Brill, p. 38, The Public Interest
** "The Legal Services Corporation: Curtailing Political Influence" by Richard Blumenthal, 81 Yale LJ 245 note 49
tical costs in the highest sense of the word "political", the sense in which the term is associated with constitutional issues and questions of public policy. Some elements of law reform (for example lobbying by a special interest group at public expense) have become extremely controversial. Consequently any judgment on a criterion for adequate involvement by legal services attorneys in law reform must take into account the resolution of the issue of the propriety of the various kinds of law reform.

The point of the above digression is simply this: the GAO evaluation of the Legal Services Program was severely hampered by the fact that an acceptable criterion of adequacy in respect to the law reform goal of the Program was nowhere to be found, and that GAO was therefore, in order to make any judgments at all, forced to rely on the fluctuating and subjective perspectives of OEO's contract evaluators who in turn depended, for their view of adequacy, on the personal views of officials who were operating the Program. What was "too little" for these officials, might be criticized as "too much" by others, on grounds equally solid (or equally weak).

To make matters worse, not only are GAO's findings based largely on a kind of hearsay, but, by GAO's own admission, there was no possibility of substantiating the findings with any hard data. For one thing, GAO found the Office of Legal Services' Management Information System (MIS)---the source of hard data---to be in disastrous shape. Not only were many grantees not adhering to reporting requirements (according to one source less than 75% of the grantees were submitting regular reports) but much of the data in the reports that were submitted was incomplete and inaccurate. Secondly, the MIS report format contained, incredibly, no provisions to show the accumulation of grantee accomplishments in law reform! According to the GAO Report:

"The MIS report does not reflect the amount of effort and results obtained by grantees in law reform (p. 27) ... (Therefore) adequate data was not available ... to measure achievements in law reform ... and to compute the average cost for cases handled" (p. 10, GAO Report).

* See Geoffrey Hazard's four articles on poverty law (26 Jour Soc Issues 48; 36 U of Chic LR 699; 37 U of Chic LR 242 and 8 Jour of Law & Econ 1) and Marshall Boarman's two papers "Issues Concerning Legal Services" (Cong Rec March 1 1973 H1269) and "The Problem of the Backup Centers" (Cong Rec April 3 1973. S 6463)
The non-existence of a system for reporting hard data in the area of law reform, combined with the non-existence of any generally acceptable criterion for determining when law reform involvement was adequate should cool the ardor of those who think the GAO Report has settled the factual issue of the degree of law reform in the Legal Services Program. Nonetheless GAO did come up with an estimate based on what it called "indications". These indications consisted of (a) opinions found in previous OEO evaluations of 26 out of a total of 265 Legal Services line projects and (b) opinions elicited directly by GAO from attorneys and project directors working at the seven sites visited.

Of these seven projects, four were found by GAO to be insufficiently engaged in law reform. The following excerpts from the GAO Report cite the "indications" on which GAO based its judgment in each of the four cases:

1. Project A: "A 1970 evaluation reported that law reform activities needed strengthening. A grantee official informed us that a heavy caseload in the area of individual services precluded the grantee from emphasizing law reform" (p.13, GAO Report).

Comment: As noted above, GAO is relying here not on hard data (statistics, records etc.) but on a 1970 evaluation and on the subjective assessment of a grantee official. It is not unthinkable that a grantee official's self-evaluation might be motivated in part by a desire for increased funding. More importantly, a later evaluation of this same project conducted in March 1971 mentions "considerable law reform work", estimating that about 25% of the project's time is given over to law reform. The GAO assessment is simply obsolete.

2. Project B: "A 1969 OEO evaluation reported that grantee corporations had not markedly implemented the national goal. As of October 1971, only four of the eight law reform units required under its grant were in operation." (p. 15, GAO Report).
Comment: Again, how relevant is a 1969 evaluation to a Report issued in March 1973? An evaluation of Project B conducted for OEO by an outside firm in November 1970 indicated that staff attorneys "were heavily involved in community organizing, often at the expense of their caseloads". Community organizing is an activity which is central to such law reform activities as grassroots lobbying. To be sure, in October 1971 someone found that only 4 out of 8 law reform units required by the national Office were operational. But by what yardstick was GAO able to determine that 8 would not have been excessive? Not only is the question of the propriety of law reform begged, but the question of how much is enough. Besides, if it is possible that 4 vigorous and activist units could accomplish more than 8 mediocre ones, ought not a judgment on the effectiveness of law reform to focus on the quality and extent of the activity of the 4 units? No description of Project B's law reform activity is provided, and so the issue is resolved mechanically by the number of law reform units in operation.

3. Project C: "The grantee's 1970 self-evaluation report stated that a substantial, effective and organized law reform program was lacking. The grantee's executive director reported in May and August 1971 that the law reform unit was in a state of flux and not able to produce as much as had been anticipated."

Comment: Again (a) a self-evaluation can either exaggerate law reform activity to win praise or underestimate it to win dollars and (b) self-evaluations conducted in 1970 and in August 1971 could hardly be expected to be current as of March 1973, the date of the GAO Report. In December 1972, OEO had an evaluation of a significant portion of Project C performed by an outside evaluator who found that fully one fourth of the attorney staff (3 out of 12 attorneys) were devoting themselves full-time to law reform, with a caseload of approximately 45 current open cases. In addition the project was active in organizing the local Welfare Right Organization and was serving as house counsel for the National Tenants Union. These latter activities are characteristic of projects which are activist and law-reform oriented.
4. Project D: "A grantee official informed us that the project had not been involved in any significant law reform activities."

Comment: Here again there is no reference to a mutually agreed upon criterion of what constitutes "significant" law reform activity, and there is no indication GAO used any additional information, such as an OEO evaluation, as a check on the grantee official's opinion. It happens that an OEO evaluation conducted in November 1970 agrees with what GAO was told: there was little or no law reform. The reason given by OEO's evaluators is that the director wished to run his program like a regular law office with service to indigent clients being the top priority.

The GAO Report concedes that each of the three remaining programs was adequately involved in law reform, and this judgment is borne out by self evaluations and by evaluations conducted by outsiders for OEO.

Project E, the Legal Services Program's second largest, was not only adequately involved in law reform but heavily involved, so heavily that the Project was recently the subject of an article in a national journal of opinion faulting it for excessive involvement.

Project F is credited by a 1971 OEO evaluation with devoting at least 20% of its resources to law reform, in addition to serving as group organizer and house counsel to such organizations as the National Welfare Rights Organization.

Finally the seventh program, Project G, is lauded in an OEO evaluation dated June 1971 as follows: "Law reform is the most impressive aspect of the project. The number and variety of the cases mounted by this project in its short life is exceptional. The ways in which the Director has developed class actions and legislative reform shows an imaginative approach to poverty law. The project director and the director of litigation provided the basis for their reform program by inviting a number of statewide poverty groups to take permanent seats on the project's board. This has enabled the project to develop cases cooperatively with these groups on broad issues and has provided a feed-in mechanism whenever clients have been needed
to bring clients action. It has also greatly facilitated legislative activity and the results to date are documented in the case summary".*

In sum, an independent review of the seven projects visited by GAO shows that three were not only adequately but in some cases rather deeply involved in law reform (thus far the GAO Report is accurate), while of the remaining four, only one was clearly lagging, Project D. The GAO judgment on Project A is rendered obsolete by a later OEO evaluation which shows, by GAO standards, adequate involvement. The GAO judgments on the remaining two projects, Projects B and C, are at best equivocal in view of contrary "indications" provided by OEO evaluations.

If GAO's evaluation of the seven programs were intended to serve as a basis for making a generalization about the whole Program, one could infer that 57% of the 265 projects were not doing enough law reform. This would mean that a healthy 43% were meeting the test of adequacy (whatever that is) in the area of law reform. However, due to the limited and ambivalent nature of the evidence, any generalization about the whole program, even apart from the problem of a valid criterion of adequacy, would be unwarranted. I.e GAO finding, originally put forward as a tentative conclusion, that "there were indications that most programs had not been adequately involved in ... law reform", has been undermined to a point where it is totally unable to support the inferences drawn from the Report by Mssrs. Biester, Steiger and Jones.

In respect to the 19 grantees (of the 27 evaluated by GAO) which were looked at by GAO second hand, i.e. through the medium of evaluations conducted in the past by OEO's contract evaluators, GAO wrote as follows:

"Our analysis of 19 grantee evaluation reports showed that only 10 grantees were reportedly adequately engaged in law reform activities and that 8 grantees were deficient in this goal area. We were unable to determine the extent to which one grantee was involved in law reform because of the limited information in the evaluation report."

* The reference to the "feed-in mechanism" is illuminating. The evaluators do not view this as carrying law reform to an excess but there is an Informal Opinion of the ABA's Committee on Ethics (Opinion 1234 dated July 19, 1972) which specifically prohibits the seeking out of potential litigants for the purpose of establishing a point of law.
If this assessment is accurate and can support a generalisation, then "most" program grantees, that is more than 50% of them, contrary to the GAO finding based on their evaluation of the seven grantees discussed previously, are adequately involved in law reform. This is a far cry from the inferences the GAO Report has given rise to that only an insignificant portion of the activity of legal services attorneys is devoted to law reform. The same evaluation reports used by the GAO team in judging the 19 grantees were recently reviewed by the Office of Legal Services and a similar conclusion was reached: more than 50% of the projects were engaged in "adequate" and in many instances, extensive law reform activity.*

In addition to surveying the 19 evaluations used by GAO, the Office of Legal Services, employing roughly the same rule of thumb used by evaluators in the past reviewed two other sets of evaluation reports. The first set, evaluations of 29 projects in Region IX, were analysed to determine the number of projects found to be heavily engaged in law reform—"heavy engagement" defined as an investment of well over 25% of one's resources. Fully one third of the projects were found to be so engaged. A review of the second set of evaluations showed that of 64 randomly selected projects, 33—or approximately 52% of the number reviewed—were involved in law reform and related activities (e.g., group repre-

* It should be remarked that the GAO Report is seriously vitiated by the fact that it offers a picture of what was happening on the law reform front in 1970 and 1971, but tells us nothing of project activity in 1972. Yet involvement in law reform has been moving on a sharply ascending curve ever since the Legal Services Program was initiated. The GAO Report notes that "in our August 7, 1969 report... (on the Legal Services Program) we reported there was little activity in law reform...(and that) apparently...only 6 out of the 34 grantees evaluated were effectively engaged in law reform activities" (p. 17, GAO Report). The Report adds: "We recognize that OEO has increased the degree of grantee involvement in ...law reform since our 1969 review" (p. 18, GAO Report). As a matter of fact the involvement increased from 6 out of 34 to 3 out of 7 (if one accepts GAO's estimate) and 10 out of 19. If this rate of increase were sustained through February 1973 (the month the new Director, Mr. J. Laurence Mc Carty took over), from 2/3 to 3/4 of all projects would now be adequately involved in terms of standards used by GAO.
sentation and group organizing) to a degree ranging from adequate to very heavy. The following comments taken from the reviewers' summaries are suggestive:

Project A: "42 of 62 cases of impact litigation had been initiated by the specialist involved rather than by the neighborhood attorney or his clients. 'Aggressive, committed and experienced' attorneys spend 25 to 60% of their effort on law reform and representation of poverty groups."

Project B: "This is not a typical legal services program... No individual representation is provided except in those few cases where it will have some impact beyond the individual parties involved, i.e. test cases or class actions. This program, then, is exclusively devoted to law reform and the other Office of Legal Services goals are not applicable."

Project C: "The project has a strong law reform unit and acts as house counsel to the Welfare Rights Organization. The project has drawn up a packet of proposed legislation for the state legislature."

Project D: "Seven attorneys are assigned full-time to impact litigation and four are assigned to service work. However 20% of the time of each of the four is to be devoted to impact litigation. The priorities for impact work are: appellate litigation, legislative change, innovative actions at the trial level, group representation and development, and economic development."

Project E: "Approximately 25% of this program's time is devoted to law reform activity. One staff attorney lobbied for two full months to get a bill passed...The program organizes lobbying groups and serves as their house counsel."
Project F: "Our law reform activity is so extensive that a full description is difficult. Evaluators report that almost every attorney participates in law reform. The project even has a Deputy Director for Law Reform."

Project G: "This project is heavily involved in organizing welfare rights groups and tenant unions. Out of 3 lawyers, one devotes himself full-time to law reform."

Project H: "The emphasis on law reform and other impact activity is very heavy and is considered at least as important as individual casework. The program has a law reform unit of two attorneys, while several others consider impact litigation their specialty...The project has an ongoing legislative advocacy program and organizes many tenant unions and welfare groups."

Project I: "This project is wholly devoted to law reform activities."

Project J: "The project has allied itself with the ACLU and the NAACP to test various law reform issues...The project director has assigned one attorney as a full-time law reform specialist."

Project K: "This program has concentrated its efforts on group representation and applied law reform (i.e. ensuring that results of prior test case litigation are enforced)."

Project L: "This program has a specialised law reform unit, known as the Law Research Unit because of fear of adverse criticism of law reform...It feels law reform is the proper approach for a legal services project."

Project M: "Of 5 attorneys, one specialises in law reform and handles no individual casework..."

Project N: "This project has engaged in a consistent program of drafting legislative reforms and testifying on same before the state legislature."
The results of all of the above analyses can be summarized as follows:

(1) Given the defective character of the data supplied to GAO and the failure of the national Office to produce any evaluation criteria, the finding by GAO that "there were indications that most program grantees had not been adequately involved in law reform" hardly justifies the inference by Rep. Steiger that the GAO Report "buries the charge that Legal Services lawyers pay more attention to causes and test cases than they do to their individual clients." GAO never intended its "finding" to be the basis for a firm generalisation about all Legal Services line projects. The Report, relying as it does on mere "indications" is at best suggestive only, inviting further research based on harder data and sharper criteria. In fact the real message of the Report is that the Office of Legal Services has been inexcusably remiss in the past and should undertake without delay (a) the development of a system to provide comprehensive and reliable data and (b) the construction of a set of clearly defined criteria for measuring project performance. The Office of Legal Services has finally accepted the challenge, aware that GAO could not care less what goals are selected so long as these goals are in conformity with the Statute, are clearly enunciated and are accompanied by usable performance yardsticks.

(2) In view of the critique which has been made above of GAO's seven on-site evaluations, and in view of the Office of Legal Services' own survey of 93 evaluations over and above the 19 used by GAO, the latter's "finding" is rendered even less capable of sustaining the generalisation that most line projects are not adequately involved in law reform. As a matter of fact the evidence points in the other direction: while nearly all of the Legal Services Program's 265 line pro-
jects are involved in law reform to some degree, at least one-half are "adequately" involved (i.e. they devote at least 25% of their resources to law reform) and at least one-third are "heavily" involved (i.e. they devote 50% or more of their resources to law reform).

(3) To infer from the GAO Report, as many have done, that there is inadequate involvement in law reform not only among the line projects but throughout the Program as a whole is to commit a flagrant non sequitur. For one thing, the GAO Report dealt only with line projects and did not touch on any of the other components of the Legal Services Program. Secondly, one of these components is the network of twelve national "backup centers" each specialising in some area of poverty law and each providing (in theory at least) research and litigative help to the Program's 265 line projects and 900 neighborhood law offices. In addition, the Office of Legal Services funds eight State backup centers. The backup center component alone has generated more poverty law reform during the six years this component has been active than all of the nation's legal aid programs combined during the past 50 years. The role of the backup centers was summarized succinctly by David Kirp who wrote in the Christian Science Monitor recently: "The heart of the Legal Services law reform efforts is in the backup center program." Hence to talk about law reform in the Legal Services Program without adverting to the scope and intensity of law reform activity in the backup centers is simply absurd (This is no reflection on GAO).

Anyone who takes the time to study the evaluations and work statements of the backup centers is forced to the following conclusions:
1. Backup centers collectively spend the majority of their time and resources in areas properly defined as "law reform" areas.

2. The centers, in general, do very little work for line attorneys which is outside the scope of law reform.

3. There has been a distinct trend among the backup center taken as a group to provide less and less backup service to line attorneys and to engage more and more in self-generated activity or activity which is in response to private and public individuals and institutions outside the Legal Services Program. In respect to their self-generated litigating and lobbying, the backup centers have become, in varying degrees and imperceptibly to the public at large, federally-subsidized public interest law firms which, as such, have no Congressional mandate.

4. The backup centers public interest law firm activity is not only in the area of litigation and amicus briefs. They also are heavily involved in legislative advocacy, i.e. in drafting and lobbying legislation at the state and federal level. Such advocacy is in most cases not initiated in response to requests from line attorneys but is usually self-generated and then offered to whomsoever might be interested, e.g. local, state and federal legislators who, of course, often request such help.

5. A good portion of the activity of backup centers is only indirectly related to the Legal Services Program. For example, many of the backup centers' publications and projects are poverty-related but not relevant to the legal component of the anti-poverty program. Conversely, many other backup center activities, though related to legal programs, are not poverty-related.

The Office of Legal Services is spending approximately $73 million a year on all of its programs: line projects, backup centers and research, technical assistance, evaluation and training activities. Just what portion of the annual budget goes for
law reform and related activities carried on by the line projects is difficult to estimate. As the GAO Report notes, not only were no records kept of the performance in any of the major goal areas including law reform, but there is no data available through the Management Information System to compute costs. Assuming that at least one-half of the line projects devote at least one fourth of their effort to law reform, the price tag for law reform activities in the line projects alone must be considerable. In the case of the backup centers, whose activity is almost entirely law-reform oriented, it may be possible to arrive at a fairly reliable dollar figure. The eight state backup centers are currently spending around $2 million a year while the fifteen national support units (including 12 backup centers properly so-called) are spending $4.2 million. Inferences drawn from the GAO Report to the contrary, the above figures indicate that law reform, from the point of view of both the allocation of resources and the potential impact of this allocation on the nation's institutions, is unquestionably a very major feature of the present Legal Services Program.

The case has been made elsewhere that much of the law reform activity in the Program is either excessive and counterproductive *, improper or at least very questionable * and beyond the limits of the Congressional mandate (see p. 24 below). Let it be noted, however, that to maintain that there has been a disproportionate emphasis on law reform (especially of the non-client-initiated variety) in the Program in general and in the backup centers in particular, is not to impugn the motives or integrity of any of the attorneys engaged in law reform, nor is it to overlook the labors of those hundreds of line attorneys for whom the needs and desires of their clients takes precedence over the attorneys' ideological prepossessions. The involvement of these attorneys in law reform has been permitted and even encouraged ("required" might be a better word; see p. 19 below) by previous directors of the Legal Services Program.

Secondly, the opposition of the incumbent leadership in the national Office to excessive or improper law reform should not be construed as a rejection of the need for some law reform activity. As the Acting Director of Legal Services, J. Laurence McCarty, in his reply to the GAO Report, stated:
"Lest my position be misconstrued, let me say immediately that I am not in principle opposed to class actions, suits against the government, test case litigation, legislative advocacy or any other kind of law reform. Properly considered, they are simply some of the tools which the conscientious attorney must employ on occasion in serving a particular client. What I do strongly object to, however, is the elevation of these tools to the status of ends, separated from the goal of service to individual clients and subordinated in turn to some transcendent goal such as "social change".

In the same reply, McCarty raised an issue quite separate from the theoretical issue of the propriety of law reform, or the factual issue of the degree to which law reform is carried on by line attorneys. The new issue is a distinctly ethical one, ethical in the sense that it relates to some of the American Bar Association's canons of ethics. The issue is relevant to a discussion of the GAO Report inasmuch as one might be tempted to conclude from GAO's complaint over the failure of the national Office to spell out its policies that the Office was permissive on the amount of law reform attorneys ought to engage in. The facts are quite otherwise. Wrote McCarty:

Equally as objectionable as the separation made in the past between the goal of "service to individual clients" and the goal of "law reform" is the pressure which has been brought to bear on attorneys to divide their time between these two goals and indeed to treat law reform as the primary goal. I happen to believe, as do many others in and outside the legal profession, that it is bad public policy to pressure legal services attorneys to engage in non-client-initiated advocacy on behalf of legislative proposals which may run counter to the preferences of large numbers (and in many cases the majority) of those whose taxes are being used to pay the attorney salaries. I also believe that it is not only bad public policy but a violation of the Canons of Ethics to push an attorney who is representing a client to do something in the way of law reform which he might not otherwise have done. This is just as bad, it seems to me, as an attempt to inhibit the attorney from doing what his professional judgment tells him ought to be done once he is engaged with his client. In both cases, there is an unwarranted interference with the attorney-client relationship. Yet some of the material (grant conditions, evaluation handbooks etc.) which I have read since assuming my new duties has convinced me that the application of such pressure on attorneys has been a studied policy of the Office of Legal Services for a number of years.
This issue cannot be dismissed by anyone who examines the documents McCarty refers to: the conditions attached to grants, the project evaluation reports and the guidelines issued to evaluators in the past by the Office of Legal Services. There is also some reason to suspect a correlation between a project's record in law reform and the degree to which it was underfunded or overfunded in relation to other projects. There are of course other factors to be considered in accounting for variations in the funding pattern, but the subject merits further study. For the present suffice it to say that there appears to have been a concerted effort on the part of the Office of Legal Services to upgrade law reform activity to a point where the only reasonable interpretation is that law reform had become the principal goal of the program with no amount of law reform being too much. This is perfectly consistent with the rhetoric of some of the past directors such as Earl Johnson who assigned, in no uncertain terms, primacy to law reform.

One of the ways in which this primacy was inculcated was through the use of a point system in rating projects and project attorneys. A project was rated on the amount and intensity of its law reform efforts, as contrasted with its involvement in "routine" or "conventional" legal work, i.e. work (to put it in less sneering terms) which focussed on the immediate and pressing problems of individual poor persons. Under the present evaluation procedure, the point system has been abandoned but the pressure is still there---or was until recently.

A prime device for exerting this pressure was the Law Reform Issues List—a checklist devised by the backup centers for each of the areas of poverty law and furnished routinely by the Office of Legal Services to members of evaluating teams. The following is a sampling of some of the questions on the list (N.B. The comments in parentheses have been added):

**Has the Legal Services Program been active in utilizing class actions for consumer relief?** (What if a lawyer like Harry Brill had his doubts about overuse of class actions? This would be a point against him.)

**Have any of the attorneys in the Program drafted legislation or offered testimony in support of reform legislation?** (What if the attorney were too busy trying to do right by his individual clients? What if he were trying to abide by the statutory requirements of Section 501(c)(3) of the Internal Revenue Code? Again it would be a point against him.)
Is the program challenging the segregation of children between and within schools on the basis of race? (What if the attorney deemed this to be a civil rights rather than a poverty issue? Will he be marked down?)

Is the program bringing litigation to compel non-discriminatory employment practices? (Same question as above. Also, suppose the attorney's philosophy is: litigate only as a last resort?)

Is the program working on dismissal of employees for exercise of political rights? (What if the attorney does not want to trespass on the area monitored by the Equal Employment Opportunity Commission or by the Department of Justice? What if he wants to remain within the limits of the statute he is operating under?)

Is the program working on litigation of constitutional questions of compulsory work requirements? (Again, what if the attorney wants to keep litigation to a minimum—which is the purpose by the way of preventive education so often and so piously invoked in legal services rhetoric? What if the attorney wants to abide by the statutes dealing with work requirements? Are work requirements per se—no matter how defined and no matter what the circumstances—to be deemed always unconstitutional? What if the attorney has a different view of their constitutionality? Must he align himself with the views of the person or persons who drafted the Law Reform Issues List under pain of receiving a demerit?)

Is the program working on litigation to insure that training is actually provided in manpower training programs? (Again, the push for litigation, and a demerit for the lawyer who tries to follow the ethical tradition of keeping litigation to a minimum.)

Has a special unit been established to implement impact strategies on housing? (Suppose the attorney believes this is not a problem in the area he serves, or suppose he believes there are other ways of addressing the problem without establishing a special law reform unit for this one problem? Will this mean a point against him for lack of commitment?)
Are the program attorneys assisting in the formation and development of local tenants organizations and unions? (What if the lawyer should follow the more traditional view that it is not the lawyer's function to organize groups, except for doing such things as assisting a credit union or small business to file papers of incorporation, etc. Why should a legal services attorney who is more traditionally oriented be forced into the activist role in respect to group organizing? Why isn't the lawyer allowed to exercise his own professional judgment on these matters?)

Are the Legal Services attorneys aware of the National Tenants Organization and the possible help he can provide? (Suppose he disagrees with the tactics espoused by the NTO and the NWRO? Reasonable men can differ on these matters. Why should he be forced to get in step with the author of the Law Reform Issues List on things of this nature?)

Are the attorneys familiar with the leadership of the local welfare rights organization (WRO)...and with legal issues which should be brought to the attention of the WRO as useful for organizing? (What if the attorney thinks it improper to become the house counsel for an organization which can hire secretaries, accountants and other staff? What if he views this--his free services as house counsel--as a diversion of resources? Another demerit?)

Are the attorneys familiar with the procedures for challenging welfare agency action in court? How many cases have they brought? (Suppose an attorney is able to obtain satisfaction for his clients through negotiation? Suppose he doesn't believe the welfare bureaucracy is always wrong in a dispute? Is his competence to be gauged by the number of suits he brings against the government? Surely a legal services attorney ought to be able to bring such suits when his professional judgment dictates. But is it good public policy to urge the attorney to bring as many such suits as he possibly can? Is it fair to assign him demerits if he resists this questionable policy?)

Are the attorneys seeking to correct such problems as (a) requirements that recipients pick up their checks at state employment offices and (b) denial of welfare rights groups access to welfare offices for advocacy and organization? (Suppose the
attorney sees nothing wrong with welfare recipients picking up their checks in person? Suppose he has experience with local welfare rights groups which engage regularly in destructive sit-ins and trashings? Is he not to be allowed to exercise his own discretion in these matters? Must he align his judgment with that of the person who wrote the checklist? What if he doesn’t? What if he asserts his lawyer’s right to consult his own lights on these things?

The above are but a few of some 200 questions used by evaluators in the past to assess the quality of a legal services project and the competence of its attorneys. Many of the questions are as slanted and as packed with value-judgments as are those just quoted. Woe the poor attorney who has a different point of view and who believes there are better ways to serve the poor than to stir up litigation and encourage militancy and hostility. Clearly there is a serious ethical problem here. According to Ethical Canons 5-21 and 5-23:

"The obligation of a lawyer to exercise professional judgment solely on behalf of his client requires that he disregard the desires of others that might impair his free judgment. The desires of a third person will seldom adversely affect a lawyer unless that person is in a position to exert strong economic, political or social pressures upon the lawyer... A person or organization that pays or furnishes lawyers to represent others possesses a potential power to exert strong pressures against the independent judgment of those lawyers. Some employers may be interested in furthering their own economic, political or social goals without regard to the professional responsibility of the lawyer to his individual client. Others may be far more concerned with the establishment or extension of legal principles than in the immediate protection of the rights of the lawyer’s individual client (Emphasis added)."

The underlined sentences in particular would seem to be applicable to the case at hand: the use of the Law Reform Issues List by the Office of Legal Services’ evaluators. It was for expressing, in the ABA Journal, sentiments similar to those found in the above-quoted canons that Vice President Agnew was derided. Wrote Agnew:
The law reform aspect of legal services, however, threatens to turn the relationship upside down. If a client with a problem comes to a legal services lawyer who is imbued with law reforming zeal, the lawyer sees a great deal more than the client's problem in the matter and often expands the case into the broadest legal principle supportive to his social philosophy it will sustain—a sort of Parkinsonian corollary. Instead of resolving the case at the lowest level and earliest opportunity satisfactory to the client, this legal services lawyer is inclined to take it to the highest level possible to win the legal issue and implant the empathic legal principle he has perceived to be involved. In certain circumstances, this zeal is not only acceptable but commendable. However, it is naïve not to consider the attendant consequences of this practice.

If it is objectionable for an attorney to put his own agenda ahead of the needs of his clients, it is doubly objectionable for the organization which pays the attorney's salary to pressure him to manipulate clients in order to carry out the organization's agenda. The Canons are a double-edged sword. They strike at those who would prohibit suits against the government but they also strike at those in the national Office of Legal Services who have in the past goaded attorneys to engage in law reform.

Finally there is another way (alluded to at the beginning of this paper) in which the GAO Report has been misused. The argument runs as follows: GAO, in conducting its evaluation of the Legal Services Program, accepted as one of the criteria for evaluation the law reform goal of the Program. But GAO is an arm of the Congress. Therefore the GAO's acceptance of the law reform goal—or rather the primacy and separateness of that goal as reflected in the GAO finding of inadequacy—implies that Congress has accepted and approved same. This puerile argument has been seriously advanced by a number of law reform advocates. The fallacy should be obvious. GAO, as an arm of Congress, could be expected to approve any statutory goals set by Congress. But in
the case of goals set by the administrative agency carrying out the statute, GAO simply accepts these as a given and evaluates accordingly. If the administrative agency subsequently changes the goals, GAO, in its next evaluation will "accept" these changed goals as readily as it accepted the previous goals, unless of course they are in conflict with the broader statutory goals. Consequently, GAO's acceptance of the law reform goal and other goals---in addition to the priority assigned these goals by the Legal Services Program---cannot possibly be construed to imply Congressional sanction and intent.

Another text frequently adduced by those who claim a Congressional mandate for law reform is the following passage from a 1970 report of the Senate Committee on Labor and Public Welfare:

"Yet, the legal services program can scarcely keep up with the volume of cases in the communities where it is active, not to speak of places waiting for funds to start the program. The committee concludes, therefore, that more attention should be given to test cases and law reform."

(Emphasis added.)

Now the present leadership at the Office of Legal Services has no difficulty in accepting the proposition that there is a significant place for law reform in the Legal Services Program, nor that more attention should be given to law reform by projects that habitually engage in little or no law reform when representing individual clients. A lawyer who is in principle opposed to any kind of law reform activity on behalf of an individual client is as wrong-headed as a lawyer who systematically seeks opportunities to engage in law reform even if it means reducing his caseload and turning away clients with little law reform potential. The present leadership at the national Office does not agree, however, that "paying more attention to law reform" entails or justifies any of the following:

(a) The primacy of law reform (and of related activities such as group representation) as a goal separate and distinct from the goal of service to individual clients.
(b) The carrying on of non-client-initiated and non-client-centered law reform activities by Federally-subsidized public interest law firms (misnamed "backup centers").

(c) The pressure exerted on line attorneys, through the backup center network but in particular by the national Office through its policies and funding preferences, to put law reform ahead of service to individual clients.

Whatever about the propriety or impropriety of the activity mentioned in (b) above whether considered in itself or in the context of Federal funding, there is as yet no Congressional "mandate" for it. The impasse in the 92nd Congress over the issue of the powers to be assigned the proposed Consumer Protection Agency is proof positive that the concept of a Federally-subsidized public interest law firm is an innovation which has not yet been sanctioned by Congress. If Congress could not agree on an agency which would litigate and lobby on behalf of such a large and politically potent interest group as consumers, how can it be asserted that Congress has already mandated the existence of 20 public interest law firms (the 12 national and 8 State backup centers) for the smaller class of the poor?

To claim that the Economic Opportunity Act authorizes such entities is really to twist that much-abused piece of legislation to the point of absurdity. The terms "law reform" and "backup centers" appear nowhere in the Act, nor, with the one exception noted above, do they occur in any of the documents comprising the legislative history of the Act. The terms were first introduced (as were the activities they describe) by the early directors of the Legal Services Program. Curiously neither term ever found its way into an OEO Instruction or into the Code of Federal Regulations. The fact that the whole case for holding that law reform, in the full-blown sense, has been"mandated" by Congress rests on the single, almost casual reference which appeared in the Senate report is a sign of the extreme weakness of the law reform rationale. When the sentence in the Senate report and the GAO Report of March 1973 are so desperately seized upon to bolster the case for Congressional intent, one can be forgiven for suspecting that there is no case at all and that Philip Hannon was entirely right when he wrote:
"Congress as yet has not been forced to face the kind of law reform oriented program which OEO now envisions. Some liberal members of Congress have spoken out in favor of this more liberal approach but Congress as a whole has not yet spoken".

*"Legal Services and the Local Bars: How Strong is the Bond" by Philip Hannon, Cal West Law Review 51