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THE PRIVATELY FUNDED LEGAL AID OFFICE: THE MALDEF EXPERIENCE

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The argument that the present legal system adequately protects the rights and services the needs of the community is often urged by persons within that system when new approaches are proposed.

In the criminal law field, for example, what is now universally considered a fundamental right—the right to counsel—was only a few years ago opposed as unnecessary. In *Betts v. Brady*,¹ the Supreme Court said, “. . . in the great majority of the states, it has been the considered judgment of the people, their representatives and their courts that appointment of counsel is not a fundamental right essential to a fair trial.”²

That case stated the prevailing law until as recently as the 1963 *Gideon*³ decision. The reasoning behind *Betts* is the same as that offered to deny the need for new or additional legal services: first, that the present system is adequate; second, that suggesting a need for new programs somehow implies that the present system is operating unjustly. The Supreme Court in *Betts* felt that the trial court was in a position to see impartial justice done, and quoted a trial judge in support of this point:

Judge Bond adds: ‘Certainly my own experience in criminal trials over which I have presided (over 2,000 or I estimate it), has demonstrated to me that there are fair trials without counsel employed for the prisoner.’⁴

The Court seemed to feel that to suggest otherwise was to impugn either the competence or the integrity of the trial judge.

There also was (and still is) opposition to legal services funded by the federal government, similarly based on the grounds that the existing legal system already offered adequate services.

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1. 316 U.S. 455 (1942).

2. *Id.* at 471.

3. *Gideon v. Wainwright*, 372 U.S. 335.

4. *Betts*, *supra* note 1, at 472, footnote 31.

However public defenders are now routine in federal criminal cases, and it appears that federally funded legal aid offices for civil matters are also here to stay.

But in addition to these agencies, privately funded legal service offices have emerged to fill what are felt to be gaps in the pattern of existing services. One such agency is the Los Angeles Office of the Mexican-American Legal Defense and Educational Fund, Inc., (hereinafter MALDEF).

Some privately funded offices, such as the Santa Barbara Legal Center (California) operate as general legal aid services, involving themselves in all types of legal actions. Most, however, take only certain types of cases. In general, the most popular case with these offices, be they "old", such as the American Civil Liberties Union, or "new", such as the Beverly Hills (California) Bar Foundation, appears to be the class action, precedent setting, law reform type case. With limited resources, these agencies can often be most effective by restricting themselves to actions affecting large numbers of people.

MALDEF, founded as a nationwide organization in 1968, had as its main purpose the protection of the Constitutional rights of Mexican-Americans. As with other offices, class action and precedent setting cases were envisioned as our major tools.

Shortly after our doors opened, it became apparent beyond question that a large gap indeed existed in legal aid services available to the poor. The large staffs of the Public Defenders' Office, and those of the government funded legal aid offices, did not meet all the legal needs of the Mexican-American Community.

Our most frequent requests for representation established themselves into two broad categories: the "police brutality" case, and the "political" case. We found that most defendants we spoke with felt, rightly or not, that the Public Defender would take an inadequate approach to such cases by viewing the broader issues involved within the too-narrow frame of reference of isolated actions. We did not always agree, but there were cases where the defendant's claim had merit.

For example, an early MALDEF case concerned a demonstration at a political rally that resulted in the arrest and conviction (for disturbing a meeting) of four Chicano activists. After their convictions, and the unsuccessful appeal, their attorneys advised the defendants—each sentenced to 120 days in jail—that little more could be done. Because this case involved First Amendment rights of Chicanos active in seeking better representation for the barrio, MALDEF took on the "hopeless" task

of carrying it into further appeal. The California Supreme Court subsequently reversed the convictions.⁵

Our police brutality actions have met with less success. The usual case involves a complaint by the client that the police physically attacked him, often after being handcuffed. This is normally countered by a report from the police that the client in truth attacked them, and that considerable force was required to restrain him. The client is then charged with resisting arrest if the incident is minor, or assault on a police officer (a felony in California) if it is more serious. Therefore, the client who has raised a complaint against the police, must first defend the ensuing criminal charges against him.

Theoretically, the Public Defender could represent the client in the criminal action, and a local legal aid attorney (or appointed private attorney) could handle the complaint against the police. In practice, the Public Defender does handle the defense of the criminal charges, but whether the client is acquitted, or "cops out" to a lesser plea (by far the more common procedure), the claim against the police is rarely pursued. If the claim is one on which a suit for money damages could be filed, it cannot be handled by a legal aid office because of its status as a "fee generating" case, which can be taken on a contingency retainer basis by a private attorney. But, precisely because such cases boil down to the citizen's word against that of the police, they are rarely considered acceptable by private attorneys.

Therefore, victims of alleged police brutality seek representation from privately funded legal aid offices such as MALDEF, which can defend the criminal charge, or file a civil damage suit, or both. We also confer with police officials concerned with preventing such incidents, file formal complaints with the police or the agency governing them, file complaints with the U.S. Justice Department, or the State Attorney General's Office. Admittedly, these actions have not yet reduced the number of complaints, but they are first steps which make clear to our clients that they will receive full and forceful representation.

The area in which privately funded groups serve most crucially may be in the representation of specialized interests. Ethnic and common-interest groups are increasingly being represented by private agencies. With MALDEF, the special interest involves the rights of the Mexican-American. Legal offices to fight pollution or consumer fraud also seek private funding. Others wish to represent women's rights, prisoners, or youth groups.

When MALDEF came into existence in 1968, there was al-

5. In Re Kay, 1 Cal. 3rd 930 (1970).

most no legal literature on the Mexican-American, and very little hard case law concerned with Chicano rights. Two notable exceptions were *Mendez v. Westminster School District*,⁶ and *Hernandez v. Texas*.⁷

The *Mendez* case involved school segregation in Orange County, California. In that case the segregation of Mexican-American school children was held to be in violation of the U.S. Constitution. In *Hernandez*, which challenged as ethnically biased the selection policies for the grand jury, the Supreme Court for the first time classified Mexican-Americans as a readily identifiable ethnic group.⁸

MALDEF, also, tries to involve itself in various issues important to the Mexican-American community, such as reapportionment designs, the continued use of English language intelligence test to pupils speaking only Spanish, and the devastating effect of prejudgement garnishment in the barrio. With a staff concentrating primarily on the social, political, and economic problems of Chicanos, MALDEF is able to bring suits directed toward many of the basic problems of the community.

Prior to 1968 there had never been an organized staff of attorneys committed especially to the barrio. Though we emphasize involvement in law reform type cases, MALDEF has received requests for many other kinds of legal services. One of our major functions has become that of providing a referral service to various legal and nonlegal agencies appropriate to the person's complaint. Another has been to provide legal advice not only to individuals, but to the emerging activist organizations of the barrio. This means everything, from drawing up Articles of Incorporation, to explaining how to conduct a lawful picket line.

In school confrontation cases, for example, the requests for change often were made by students. The attorney did not tell the students what to seek, but did suggest a written format for their grievances, and the forum to which they should be presented. If they were denied a hearing, he explained the procedure for administrative appeal. Once negotiations were under way, the attorney might help draft the agreement desired by the group in proper language. By such service, MALDEF attorneys continue to help many community groups achieve their goals.

And requests for our services did not come only from the barrio. Newspaper and television reporters asked MALDEF how the Mexican-American felt about this or that major issue of

6. 64 F. Supp. 544 (1946).

7. 347 U.S. 475 (1954).

8. For other well known cases, see *Miranda v. State of Arizona*, 384 U.S. 436 (1966); *Escobedo v. Illinois*, 378 U.S. 478 (1964); *Lucero v. Donovan*, 354 F.2d 16 (1965).

the day; legislators sought our views on the effect of pending legislation on the barrio. Taking care to make clear that MALDEF speaks mainly in its own behalf, rather than as the authorized voice of all Mexican-Americans, our attorneys testify before various committees and groups on such topics as population control, legal and illegal immigration, political gerrymandering, and discrimination in education.

CONCLUSION

The MALDEF experience demonstrates the need, both in the barrio and in the larger society, for the privately funded legal aid service. More and more, reform minded special interest groups are seeking their share of political influence. The MALDEF approach provides an enormously effective tool in furthering such reform, and, in doing so, aids in the development of a healthier society.