LAW AND SOCIETY TRUST

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OBJECTIVES

The Law and Society Trust Fortnightly Review keeps the wider Law and Society community informed about the activities of the Trust, and about important events of legal interest and personalities associated with the Trust.

COMMENT

The Fortnightly Review of October 16, 1990 carried a note by Mario Gomez entitled 'In the Regional Interest'. This note contained certain observations with regard to the judgement of the Court of Appeal in Kithsiri Guneratne vs Kotakadeniya, Commissioner of Motor Traffic, Court of Appeal application no.58/90, decided on the 30th July 1990. A reader has communicated to the Trust that the observations relating to the judicial approach of Justice Sarath Silva were mistaken and based on inadequate analysis of the reasoning of the court. In view of the important questions of law posed by the judgement, the Trust felt that it was important to draw attention to aspects of the case which are supportive of the judicial approach of the judge. In doing so, the Trust has to reiterate that articles submitted to the Trust and published in the Fortnightly reflect the views and opinions of the writer and not necessarily those of the Trust. However, the Trust has to be sensitive to any concern that may be expressed that adverse comments, made on the judicial approach adopted by the Appellate Courts in specific cases, are unfair. The judiciary is not an institution which can respond to such adverse comment publicly unlike members of the academic community. In the circumstances, the Trust feels that the Fortnightly Review is entitled to also draw attention to aspects of the case which will uphold the validity of the judicial approach which may be adversely commented upon. The publication of alternative approaches to legal questions is conducive to a more balanced and complete assessment of important judicial opinions.

The case in question involved an application by an Attorney-at- Law to quash a scheme of licensing that was introduced by the Commissioner of Motor Traffic, by which it was sought to substitute plastic license cards in place of the license books which had been previously issued to the drivers of motor vehicles. Justice Sarath Silva granted relief by issuing Writs of Certiorari and Prohibition on the ground that the Commissioner of Motor Traffic had no power or authority to require license holders to apply for the replacement of the licenses under the impugned scheme. The comment in the Fortnightly Review, noted that although the petitioner was affected by the acts of the Commissioner, he filed the application "in the greater interests of the public". It proceeded to contend that the Court should have taken note of the public interest aspect of the petitioner's claim and articulated the principles relating to public interest litigation. It should however be pointed out that the petitioner contended that he had a locus standi to institute this action as his own statutory right had been directly affected by the new licensing scheme and by the impugned acts of the Commissioner. This was not disputed by the Respondent. In the circumstances, the Court was not

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called upon to address the public interest aspect of the petitioner's application as his locus standi was not in any way an issue. Besides this was a case in which the jurisdiction of the Court to issue prerogative writs had been invoked. This was not a fundamental rights application. The courts in England and Sri Lanka have adopted a strict approach to standing in matters relating to prerogative writs. S.A.de Smith, in Judicial Review of Administrative Action (3rd edition), at p.377 states that 'a person aggrieved i.e one whose legal rights have been infringed, or who has any other substantial interest in impugning an order may be awarded a certiorari ex debito justitiae'. De Smith further observed that in no reported English case has an application brought by a mere stranger been successful.

The second observation that was made in the Fortnightly Review is that the Court failed to reach a determination on the validity of the regulations framed, although the judge was inclined to agree with the submissions of the petitioner that the regulations were invalid. In this regard, it should be noted that there were two aspects of this regulation. Firstly, they prescribed a new form of driving license. Secondly, they sought to empower the minister to make orders for the replacement of the existing driving license. The new forms were defective since they did not conform to the requirements of the Act relating to offenses that may have been committed by the licensee. The Court felt that it was not necessary to make a pronouncement on the validity of the regulation as the relief claim by the petitioner was limited to the replacement of the existing driving license. A pronouncement on the validity of the new form and the Regulations was not required to grant this relief. Such a pronouncement could have had unfortunately practical consequences. Thousands of persons who have received the new license would not have been able to drive their motor vehicles. This is a consideration which the Court was legitimately entitled to take note of in declining to determine an issue which was not directly related to the relief claimed. The court is also entitled to ensure that the judicial pronouncements on a question that has arisen before it, should not have unforseen consequence on persons who are not before the court.

The prerogative writs are discretionary remedies, and in exercising its discretion the court may "take into account other practical consequences of deciding individual cases in a particular way". (See S.A.de Smith, Judicial Review of Administrative Action, at p.377).

The comment in the Fortnightly Review has not adequately addressed these aspects of the judicial approach which the Court is required to adopt in exercising its extraordinary jurisdiction to issue writs in the nature of certiorari and prohibition.

THE "SPECIAL 301" PROVISIONS OF THE 1988 TRADE ACT: INTELLECTUAL PROPERTY, UNILATERAL RETALIATION AND INDO-US TRADE

by Jay Erstling and Jennifer Thambayah

India and "Special 301"

The 1989 NTE report, which the USTR submitted to Congress in April 1989, found that India did "not provide adequate and effective protection for US intellectual property rights" and that "Indian Government officials [had] not responded positively to repeated U.S. proposals for changes in India's patent, trademark and copyright laws."35 Specific complaints in the report concerned India's prohibition against the grant of product patents for foods, pharmaceutical and chemical substances; the relatively short duration for all other patents; stringent compulsory licensing provisions, lack of aggressive copyright enforcement; lack of protection for service marks (i.e. trademarks for services); and the difficulty of using foreign trademarks in the domestic market.36 Consequently, in placing India on the Priority Watch List, the USTR included the following in India's accelerated action plan:

- Improved and adequate patent protection for all classes of inventions
- Elimination of discrimination against use of foreign trademarks
- Registration of service marks
- Improved enforcement against piracy.37

In addition, perhaps because India had forthrightly opposed U.S. positions in the GATT Uruguay Round TRIPS negotiations as well as in inter governmental meetings of the World Intellectual Property Organization (WIPO),38 the USTR demanded "constructive participation in multilateral intellectual property negotiations".39

The USTR's announcement met with strong condemnation in India. Many lawyers, industrialists, journalists and academics attacked India's inclusion on the Priority Watch List as unjustified, unnecessary, and a distortion of long standing precepts of international law and nations sovereignty.40 A closer look at some of the USTR's allegations indicate that the Indian criticism is not without merit.

The USTR"s primary complaint concerns provisions in the Indian Patents Act that exclude from the scope of patent protection products "(a) intended for the use, or capable of being used as food or as medicine or drug, or (b) relating to substances prepared or produced by chemical processes."41 Patents for processes of manufacture are permitted, however.42 The problem, according to the USTR, is that since usually more than one process can be used to make most pharmaceutical

or chemical products, process patents alone do not adequately protect U.S. companies that have invented the product under the original process. Therefore, Indian pharmaceutical and chemical companies may locally manufacture and sell identical products without violating the Indian patent law, which, according to USTR, constitutes an unfair barrier to US trade.43 To remedy that barrier, the USTR has called upon India to amend its Patents Act in order to allow product patents for pharmaceuticals, chemicals and foods.

As cogent as the USTR's demand for product patenting may seem from the point of view of U.S. competitiveness in world markets, it lacks legitimacy from the point of view of prevailing international legal standards – an argument frequently raised by the Indian critics. Patent law is primarily regulated on an international basis by the Paris Convention for the Protection of Industrial Property, and the standards set by the treaty are generally recognized as the minimum requirements for all national industrial property legislation.44 Although India is not a member of the Paris Convention, the provisions of the Indian Patents Act on pharmaceutical and chemical product patenting do not violate the treaty, which permits each country to determine the scope of its patentable subject matter. According to the Indian critics, India needs to adopt a restricted scope of patentability in order to develop indigenous pharmaceutical and chemical industries. Thus, while the USTR may have the best interests of US commerce at heart, she is incorrectly attempting to hold India to norms higher than those currently acceptable under international law.

The same holds true for the USTR's complaints with respect to the duration of patent protection and the registration for service marks. The India Patents Act provides for a duration of five years from the date of grant (or seven from the date of filing) for process patents for foods or medicines, and fourteen years from the date of filing for all other patents.45 In contrast, patent duration in the U.S. is at least 17 years from the date of grant.46 From a US point of view, the Indian Act clearly establishes an inadequate duration; nevertheless, the Indian Act does not violate international standards since the Paris Convention sets no patent duration requirements. Instead, the Convention allows each country to make its own determination in accordance with its national needs, and the majority view in India, as flawed as that view might arguably be, is that a short patent duration is best suited to the country's level of economic and industrial development.

Similarly, the Paris Convention does not require service mark registration, but merely service mark protection.47 As with all common law countries, India permits actions to be brought for the tort of passing off, which has traditionally been deemed sufficient to meet the Paris Convention's protection standard.

In singling out India for its compulsory licensing provisions, its copyright enforcement practices, and its restrictions on the use of foreign trademarks in the local market, Indian critics maintain that the USTR has over-reacted and ignored recent national developments.48 For example, although the Patents Act permits the grant of compulsory licenses that breach the limitations set by the Paris Convention, such licenses have rarely been issued in past years.49 According to the critics, the USTR has also failed to accord sufficient credence to the recent amendments to the Indian Copyright Act, which provide stronger remedies against copyright piracy and expressly protect computer software,50 and has overlooked the growing trend towards trade liberalization, which has already resulted in permission for more extensive use of foreign trademarks.51 In view of these developments, and as the USTR may only single out countries with the "most onerous or egregious.. practices,"52 the USTR's decision to place India on the Priority Watch List seems nearsighted and insular.

Perhaps most irksome to the Indian critics is the accusation levelled by the USTR of India's failure to participate "constructively" in the GATT Uruguay Round TRIPS negotiations. Indian nationals are generally proud (with justification) of their country's position as the voice of the developing world in multilateral fora; therefore, any veiled threat or attempt to interfere with or influence that role is not taken lightly. To make matters worse, the USTR's criticism of India came only one month after the Indian delegation to the TRIPS negotiations had made an important concession to the United States by consenting to the TRIPS framework agreement. The Indian press deemed the concession a "surrender", and severely castigated the delegation for getting "caught in the TRIPS trap."53

In naming India to the Primary Watch List, the USTR failed to recognize the significance of the Indian concession and proved insensitive to the tension that the TRIPS negotiations were generating in India. At least partly in response to the USTR's action, the Indian delegation toughened its stand in the TRIPS negotiations and issued a forceful position paper denouncing the need for increased standards of intellectual property protection.54 Thus, although the USTR evidently placed India on the Priority Watch List to pressure and encourage it to fall into line with US intellectual property rights policy, the tactic has failed to achieve immediate results and may even backfire.

Conclusion

On the face of it, the "Special 301" provisions seem to have a legitimate purpose. Inadequate and ineffective protection of intellectual property rights contribute to America's burgeoning trade deficit. For example, the U.S. International Trade Commission recently estimated that U.S. business loses more than $ 40 billion a year as a result of piracy of American intellectual property.55 Viewed superficially, therefore, unilateral retaliation appears to be a natural solution.

However reasonable that position may seem, it cannot be justified from an international standpoint. As their operation in India makes clear, the "Special 301"

provisions are grounded on the presumption that "what is good for the U.S. is good for India and the developing countries and, by the same token, for the entire world."56 They further presume that the USTR may dictate to foreign nations what the content of their intellectual property laws should be, without regard to long standing notions of national autonomy and sovereignty. Both presumptions are wrong. The United States must recognize that what [it] might consider as a desirable norm may not be a right norm for another country placed in a different position, economically, socially or culturally."57 The sooner it does so, the sooner the U.S. can get down to the business of finding a lasting solution to its trade crisis.

35. 1989 National Trade Estimate Report on Foreign Trade Barriers, India Section, reproduced in Economic News from the United States, May 1989, at 9.

36. Ibid at 9–10.

37. See, supra, note 6, pp 119, at 132–133.

38. India is often chosen to speak on behalf of all developing countries in inter governmental intellectual property meetings. A recent example of India's successful opposition to US policy within WIPO was the negotiation of a treaty on intellectual property protection for the layout–designs of semi conductor chips.

39. The accelerated action plan for India also mentioned the following: "Effective protection of well–known marks: improved access and distribution for U.S. motion pictures; and conclusion of an intellectual property annex to the bilateral science and technology agreement." Supra, note 5.

40. Probably because of the then impending national elections in India, there was little official Government reaction. Although those elections resulted in the formation of a new Government, a significant change in Indian intellectual property policy is unlikely.

41. The Patents Act, 1970 (Act 39 of 1970), section 5.

42. Ibid.

43. See U.S. Seeks Improved Intellectual Property Protection in India, Economic News from the United States, July 1989, p, 2 (explanation of USTR official). As a result of India's patent policy, however, it is frequently asserted that the price of Indian pharmaceuticals is among the lowest in the world, which is in the best interest of India and all developing countries. See for example, Subramaniam, U.S. Threat and India's Options. The Hindu, June, 14 1989; and Shama, Property ties, thorn in Indo–US Ties, Times of India, April, 15, 1989.

44. With respect to the US attitude, however, see supra, note 2, pp 121.

45. The Patents Act, 1970, sections 53 and 45.

46. 35 U.S.C. 154.

47. Paris convention for the Protection of Industrial Property, Article 6 series. Although the Indian Trade and Merchandise Marks Act, 1958, as amended, provides exclusively for the registration of marks for goods, some service marks that are used also as trademarks have apparently been registered. It should also be noted that the grant of service mark registration is a relatively new trend, embraced only recently, for example, by the United Kingdom.

48. See, for example, Panagariya, India as Scapegoat, Times of India (Bombay), June 23, 1989; and Mohan, The U.S. Threat of a Trade Hegemony. The Hindu, June 7 1989.

49. Compare the Patents Act, section 97, and the Paris Convention for the Protection of Industrial Property, Article, 5A. Only two licenses were granted from 1970–1985, for example. See Bhatnagar, The role of Patents in Research and Development in India, 1985 Industrial Property at 171 (May 1985).

50. See the Copyright Act, as amended to 1984, section 2(a) and Ch.XIII.

51. An example is the recent effort to relax restrictions on the use of the COCA–COLA and PEPSI–COLA trademarks.

52. 19 U.S.C. 2242 (b)(1)(A).

53. See Malhotra, Political Commentary Caught in the Trips Trap, Times of India, April 20, 1989; and Intellectual Property Rights: The Geneva Surrender Economic and Political weekly, June 3, 1989 at 1201.

54. Standards and Principles Concerning the Availability scope and Use of Trade Related Intellectual property Rights, paper presented by A.V. Ganesan, Special Secretary to the Uruguay Round negotiations (copy on file with author). See also Prabhu, IPR: India Toughens Stand, Economic Times of India, July 28, 1989.

55. See 36 Pat.Trademark Copyright J. at 401 (1988).

56. Crowbar Still There, The Times of India (Bombay), June 21, 1989.

57. Economic and Political Weekly, supra, note 7, pp 123 at 1202.

REFORM OF UK LAWYERS?

by Jill Grime, Solicitor of the Supreme Court of the UK

The Courts and Legal Services Act 1990 (CALS) received Royal Assent in November 1990. Although much of it is not yet in force, it marks the end of nearly two years of controversy in the English and Welsh legal system.

The basic provisions of the Act can be summarized as follows:

1. Solicitors (and any other appropriately qualified professionals) will be able to acquire new or extended rights of audience through application by the appropriate professional body to the Lord Chancellor and his newly constituted Advisory Committee.

2. Existing rights of audience will remain unchanged, ie. barristers will continue to have automatic rights of audience in all Courts.

3. There will be greater control exercised over the conduct and training of lawyers by the Lord Chancellor and the Advisory Committee, and also over the legal professional associations.

4. A new office, the legal services ombudsman will investigate complaints against lawyers.

5. The Act accepts the concept both of speculative funding for cases, and of multi disciplinary and multi national practice. Both the latter two provisions are dependant on their acceptance by the relevant professional body.

6. Conveyancing services may be offered by other authorized professionals, as well as solicitors, under a controlled system.

7. Finally the procedure for allocation of work in the civil courts has been revised and there are a variety of other miscellaneous provisions including the fact that solicitors will be eligible for appointment to the High Court bench.

I propose in this article to concentrate on what have been the most controversial aspects of the new Act as it has progressed from the consultative stages to enactment, ie. points 1 – 3.

The CALS Act as it stands appears a pale reflection of the much vaunted changes to the legal profession set out in the green papers published by the Lord Chancellor in January 1989.

In what could be interpreted as a populist move the Lord Chancellor had proposed (inter alia) a total abolition of two longstanding legal monopolies; that of the barristers in advocacy, and that of the solicitors in conveyancing. In addition, he contemplated increased control over the legal professionals to be exerted by him and through a new Advisory Committee of 15 members, the majority lay.

The intention behind the green papers was said to be a wish to improve competition in the provision of legal services, and thereby improve efficiency, choice and reduce expense. The keynotes were to be an improvement in quality of service and accessibility.

The Lord Chancellor's proposals caused tumultuous opposition from the main interest groups, for example the Bar Council and the Law Society, (the professional bodies of barristers' and solicitors' respectively.)

Was there a need to reform? Certainly the popular perception of lawyers was (and is) unfavorable, with for example the trappings of the bewigged barrister being particularly misunderstood. The distinction of role between the barrister and the solicitor in the English and Welsh judicial system is equally misunderstood both at home and abroad.

Certain practices for example the Honorarium system appear to be vestiges of a time when the law was regarded as a "gentleman's" profession. (Barristers cannot enter into a contract to provide their legal services to solicitor clients, even though the elements of a contract exist, instead it is viewed as an "honorarium" with the effect that the barrister cannot sue for non payment.)

There is surely scope for the reform of a system which can produce results like the Guildford Four and the Birmingham Six. However one would question whether the initial proposals and their, in the main watered down, successors in the Act achieve their objects of increased quality and accessibility through a laissez faire market analysis of the system. Is it in any event the lawyers or the law that requires reform?

Of the areas of change considered in this article, the need for a reform of the system of advocacy was, arguably, most appropriate.

The bar were concerned at the proposed dismantling of their monopoly, arguing most forcefully that this would lead to a reduction in standards of advocacy, reduce the availability of first rate advocates to a minority of the population by abolition of the cab rank rule, and reduce the independence of advocates.

The current (pre implementation of CALS) two tier system produces an absolute division of labor between the barrister and solicitor. Solicitors as general practitioners (90% of the legal profession) have direct contact with the client, and in contentious matters undertake advocacy in the lower courts, referring more obscure legal problems to the barrister, and relying on the barrister for advocacy in the higher courts. Rights of audience are limited for solicitors, as is appointment to senior judicial office.

The effect of the use of two lawyers in any contentious case can prove extensive and time consuming, involving

a duplication of effort and quite often misunderstandings between the individuals concerned. The solicitor is responsible for preparing the case, generally with very little input from the barrister. A barrister is then expected to pick up and present the case in Court. This is often required at short notice (frequently the night before) and the barrister may then present the case with less knowledge and conviction than the solicitor who prepared it.

It is, of course important to have available a pool of instantly accessible, high quality advocates, which is the role of the bar. The cab rank rule in theory means that a barrister can be instructed on anyone's behalf and cannot refuse to act. It does not always work in practice however, eminent barristers command large fees, often beyond lay clients pockets, and the substitution of more junior colleagues at the last minute is not unknown. A revised single tier system could incorporate the obvious merits of the current bar, and mean less duplication and expense.

It could therefore be argued that the Lord Chancellor's proposals were a useful first step in producing a reformed advocacy system. However the bar's (a natural Tory constituency?) lobbying proved efficacious. Instead the two tier system remains remarkably intact, with the stage set for at best a slow if muddled evolution.

It is difficult to forecast whether rights of audience will be granted to practitioners other than barristers, the way being controlled by the Lord Chancellor, his advisory committee and the senior judiciary. On the other hand if advocacy rights are granted, eventually to a whole series of legal professionals – solicitors, paralegals etc. will that not create confusion rather than choice? How will quality be improved?

Another area of controversy within the green papers was the proposed increased control over the legal profession. It should be noted that this proposal, in contrast to those concerning advocacy survived the initial storm and remained intact in the white paper. One may question how independent the bar (and the Solicitor's profession) was before CALS, but it is surely of concern that the Lord Chancellor (a political appointment which straddles the uneasy gap between the independent judiciary and the executive) has increased his power in this way. Presumably turbulent lawyers like turbulent priests are in reality unlikely to progress far whilst the ultimate control rests with a political appointee.

It may have been this proposal which led Lord Lane (Lord Chief Justice) to describe the green papers as "...one of the most sinister documents ever to emanate from government", in which view he was supported by another senior judge, Lord Donaldson–Master of the Rolls.

Will it increase quality, was it ever intended to?

The increase of control embodied in the Act, (not only over the legal profession generally, but in the ways advocacy certificates and rights to undertake conveyancing for example will be granted) is not in accord with the market analysis apparently motivating the green papers. There would seem to be a contradiction in the idea that market forces should lead to increased competition, and the way the providers of legal services will be controlled. In any event can the provision of legal services be considered in terms of market forces? As the Bar Chairman Desmond Fennell QC said "Justice cannot be measured in terms of competence and consumerism. Justice is not a consumer durable."

The other main result of the changes was intended to be, apparently, an increase in accessibility of the law to clients. But who are the clients? In the view of those behind the Act they appear to be exclusively those who are able to pay. The emphasis on market forces and the right to consumer choice does not accord with the 50% of the population ineligible for legal aid, many of whom are thereby deprived of the ability to go to law at all, let alone of the choice of which lawyer to use. Presumably if market forces were allowed to run their course there would be no solicitors willing to undertake legal aid. This work is of its nature not profitable, and if firms wish to be truly competitive they will not be able to afford to offer a legal and service.

Legal aid received short shrift in the consultative papers. The Lord Chancellor's view was that it was being dealt with in another piece of legislation and that there was no need for it to be addressed in the CALS Act. The green paper dismissed the topic with the following "those who cannot afford to pay for the legal services they require can often get the help they need from the organizations supported by public funds, and where necessary, they can get access to lawyers through the legal aid and advice schemes."

It must be asked therefore how the new Act increases accessibility to the Law. Even those clients able to pay their legal fees do not seem much better off. The new legal services ombudsman may provide greater protection for their rights, but much will depend on funding. Clients must still pay two lawyers if they want to go to court and they are still going to have to rely in the main on expensive solicitors when buying and selling their homes.

It seems amazing that an Act trumpeted as a major reform of the legal system should ignore the most disadvantaged sections of the population, those most in need of a meaningful reform. It is perhaps less surprising that the Act which started out as a revolution to remove long standing monopolies has been reduced to a muddled compromise and an example of a missed opportunity.

ICJ/UCL PARALEGAL TRAINERS WORKSHOP FOR TRAINERS
Thailand 7 – 17 January 1991

Report by Asita Obeyesekere and Shantha Pieris

Over the past few years the International Commission of Jurists (ICJ) has been promoting seminars in South and South East Asia aimed at finding new ways of empowering the rural poor with basic legal skills and knowledge. One method which has had striking success is the use of paralegal workers for the rural communities.

The paralegal worker is someone involved in the rural community with a basic knowledge of the law. With this knowledge and other necessary skills such as communication and leadership, the paralegal can help his community with legal disputes, group conflicts, community mobilization and numerous other areas. No specific knowledge is required of a paralegal trainee; only a willingness to learn and a commitment to helping the rural community. Paralegal workers may be community leaders, NGO activists, social workers, doctors, nurses or any category of other individuals in the rural community.

While paralegalism has already become firmly established in the Philippines, Thailand and India, it is still a relatively new concept to most Asian countries. To further encourage the concept of paralegalism in Asia, the International Commission of Jurists (ICJ), in conjunction with the Bangkok Union for Civil Liberty, recently organized a "Paralegal Training Program for Trainers working with the Rural Poor" in Thailand from 7 – 17 January 1991. Conducted by D.J. Ravindran, the former ICJ Legal Officer for Asia, and D. Gnanapragasam, lawyer and coordinator of Legal Resources for Social Action in India, the workshop was designed primarily to create a training model for paralegal trainers. The participants in the seminar, upon returning to their respective countries, would become involved not only in the training of paralegals, but also the training of paralegal trainers. These programs would then be replicated throughout their countries, with the purpose of establishing a strong national network of paralegal workers.

Participants in the workshop included paralegal trainers, human rights activists, NGO representatives and social workers from India, the Philippines, Indonesia, Pakistan, Sri Lanka, Malaysia, Nepal and Thailand. Subjects covered ranged from basic practical skills as leadership, communications, and the understanding of group dynamics; to skills particular to paralegal work such as the concept of paralegalism, training methods, and a basic knowledge of the law; as well as determining a training curriculum and planning and evaluating a model training program.

An important aspect stressed throughout the workshop was the need for participatory training. Whether training paralegals or paralegal trainers, it is necessary for the participants to become involved in identifying the problems, the solutions, and the methods to be used. As paralegalism is to be an empowering strategy for the community, it must do more than merely provide the community with workers knowledgeable in the law. Paralegalism is a process of reorienting attitudes, of making the community become responsible for identifying and resolving its problems through its own efforts. The paralegal is merely a facilitator in achieving these goals. Skills used by the paralegal in the community should reinforce empowering and self help attitudes among the people.

For example, in group interactions, while it is important for the paralegal to operate as a facilitator and a catalyst, he should not be the sole person responsible for proposing, approving or finalizing decisions. The paralegal must strive to achieve an "enabling" type of leadership in an atmosphere which allows for maximum participation from the group members in an organized manner. Although he may provide his own suggestions, the ideas, solutions and resolutions must be taken by the group as a whole, and the success or failure of any given decision must ultimately rest with the group. However, it is not always possible to provide this type of "enabling leadership" immediately. The paralegal must assess the situation, the needs of the group, and act accordingly. Often the development of enabling leadership is a culmination of a process. For example, with an inexperienced group or when an emergency situation occurs, the need for an "authoritarian" type of leadership may arise. Here, while the paralegal may be forced to resort to an authoritarian leadership, it should be of a short duration.

To promote an interactive group dynamic participants were encouraged to use activities as a teaching vehicle. These activities varied from name games to introduce the participants, role plays and group discussions, to skits and puppet shows. This type of teaching vehicle, which stressed learner participation, was thought to be more effective for paralegal training than the more commonly used lecture method.

Another important component of the seminar was the sharing of the experiences, where participants related their own successes and failures in providing legal services to the rural areas. Also emphasized was the use of creative means and methods to further the community's particular interests. These "metalegal" tactics, though not necessarily sanctioned by law, are also not proscribed by it. While operating within the legal system, metalegal tactics seek to achieve the community's interests in non-traditional ways. They rely primarily on achieving their ends through the use of psychological pressures against the adversarial parties and by heightening the public consciousness of the particular problem.

Finally, participants discussed the difficulties they faced in imparting the concept of paralegalism in their own countries. One major hinderance was the lack of networking among NGOs, lawyers, and formal institutions to provide assistance to paralegal workers.

Unlike the Philippines where NGOs often organize joint activities and provide mutual support, in most other countries competition for funding tends to isolate NGOs from each other. Additionally paralegalism must have the approval of the legal profession. Without mutual coordination among NGOs, lawyers, and paralegal workers, establishing a strong paralegal network would be extremely difficult. Thus perhaps the first task would be gaining acceptance and support for the paralegal concept by these parties.

Numerous other obstacles to establishing a national paralegal network were addressed. The Indonesian delegates for instance were initially cynical about using law as an empowering tool given their country's repressive legal system. Problems facing other countries included illiteracy, court delays, and corruption. Yet it was felt that despite these conditions, law as a resource could be used for empowerment. Although the general conception of paralegalism would be the same everywhere, the particulars would have to be adapted to suit the conditions of each country. Tactics which would be effective in some countries may not be successful in others. Yet through the development of self reliance, independence, and increasing peoples' confidence in their ability to shape their own lives and resolve their own problems, the empowerment of the rural communities would have taken a major step forward.

CALENDAR OF RECENT EVENTS

Law and Society Trust Paralegal Training Conference

Venue: Piliyandala

Dates: 7 – 14 March 1991

TO OUR READERS. . .

We are pleased to find that the demand for copies of the Fortnightly Review continues to increase.

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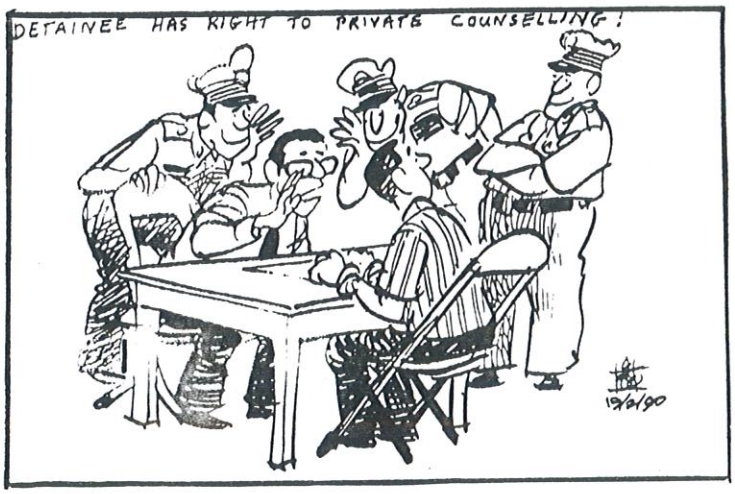

Cartoons from the poster display at the Paralegal Training Workshop, Bangkok, Thailand. (Courtesy of the Union for Civil Liberty)