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LAWYER REFERENCE PLAN

INTRODUCTION*

REGINALD HEBER SMITH†

The Lawyer Reference Plan is a method by which members of the public needing legal advice and assistance are directly and properly brought into contact with lawyers who are able and willing to perform the needed professional services.

The plan is simple, efficient, and inexpensive. It accords with all professional standards and ethical principles. It benefits all persons concerned. It is no longer an untried experiment. The experience to date indicates that its potentialities for good in the field of law are tremendous.

The Lawyer Reference Plan, if fully developed, may prove to be an outstanding contribution by the organized bar to a more perfect attainment of our American concept of democracy.

We know that the only alternative to tyranny on the one hand and to anarchy on the other is the rule of law. We know that laws are not self-enforcing and that they depend for their efficacy on an impartial administration of justice. Finally, we know that if citizens are to obtain the equal protection of the laws, they must have the advice and assistance of lawyers.

What we have not realized is that in a complex society, and especially in urban areas, many men and women have not known any lawyer to whom to turn for help. Because in our own daily practice we constantly adjust our fees to the needs of the client, we have been unaware of the fact a large part of the public fears that our charges are either excessive or too high for their purses.

This combination of fear and ignorance has kept people away from lawyers. Those who possessed greater courage or were driven by desperation and tried to find out about a lawyer could get no help even from their own local bar associations. If a person asked the secretary of a bar association for the name of a trustworthy lawyer, the secretary was forbidden to do more than hand the applicant the classified telephone book listing all lawyers in the city.

Such a situation was intolerable. An emphatic and forthright declaration of principle was made at the annual convention of the Amer-

* This article is a reprint of selected parts of a booklet by Charles O. Porter setting forth a manual for local Bar Associations on this subject, published for the Survey of the Legal Profession gratuitously by Poole Bros., Inc. of Chicago, printers of the American Bar Association Journal. The statistical charts and forms contained in the manual have been omitted, the explanatory material being retained, and any Bar Association interested in examining the plans in detail should obtain the booklet.

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ican Bar Association in 1946. The House of Delegates, representing not only the members of that Association, but also the members of every state bar association and the members of the larger county and city bar associations, unanimously voted:

Whereas, the American Bar Association believes that it is a fundamental duty of the bar to see that all persons requiring legal advice be able to obtain it, *irrespective of their economic status*, (italics supplied)

Resolved, that the Association approves and sponsors the setting up by state and local bar associations of lawyers' referral plans and low cost legal service methods for the purpose of dealing with cases of persons who might not otherwise have the benefit of legal advice.

For the operation of a Lawyer Reference Plan only one rule is imperative: The plan must be conducted by, or under the auspices of, a bar association. The organized bar must vouch for the plan, be responsible for its integrity, and must make it known to the public.

The only other rules that are appropriate are matters of common sense.

There must be a definite office, easily accessible to the public, open during usual business hours.

In the office there must be at least one person who has a sympathetic liking for human beings, who has been trained to evaluate problems, who has technical proficiency, and whose impartiality is known to the bar.

There must be a Bar Association supervising committee, with whose members the person responsible for referring clients can easily consult as to any cases rising doubts or involving questions of general policy.

It is of the highest importance that it be stated, and reiterated, that all this is being carried on by the bar *collectively*. Because individual lawyers are rightly trusted implicitly by their individual clients, it is hard for them to realize that the public as a group does not have complete trust in the legal profession as a group.

We can profit from a discovery made in connection with a survey of the medical profession. It was found that while each patient individually considered his own doctor as second only to God, all patients collectively considered doctors collectively as indifferent or hostile to matters of public health, sanitation, plans for insuring against the costs of hospitalization, and group action in the field of preventive medicine.

This is an era of danger and confusion. People are worried and look for leadership. They ask if the law is strong and wise enough to meet all the emergent problems. And, at bottom, ordinary citizens wonder if they can have direct access on self-respecting terms to lawyers

who, as they know in a general way, actually control the operations of our legal system.

In the Lawyer Reference Plan we are not dealing with a superficial matter. More is involved than simply putting deserving persons in touch with competent lawyers. What really is at stake is whether the organized bar is competent to meet the needs of a democratic society in the mid-twentieth century.

My own conviction has been fortified by a remarkable article published in the April 1949 issue of the *Michigan State Bar Journal*. As to the Lawyer Reference Plan it quotes the following words from the *Pennsylvania Bar Association Quarterly* for October 1948:

For the public it provides by a democratic method necessary and *competent* legal service for those who through timidity or misinformation have gone without it. For the bar it furnishes an opportunity to perform a valuable yet not unremunerative public service while at the same time developing both a new source of clientele and the best type of public relations.

If properly conducted—as nearly mechanically and by as unimpeachable operators as possible—it supplies a direct and emphatic answer to the communist tenet that under capitalism the law is a class weapon available only to the wealthy.

My own conclusion as to the Lawyer Reference Plan is perfectly expressed by the *Michigan State Bar Journal* in these words:

It is submitted that only the very smallest community can afford *not* to have such a Service in one form or another.

The precise form is not important. Ours is a great country with various conditions in the different areas of the nation. Each community should adapt the basic plan to its own situation according to what will best meet its own needs and the local bar association is the proper instrumentality to rely on.

The substance is vital. Our generation will not be granted the time to proceed at a leisurely pace. The enemies of our institutions are known; they are pressing the attack and our response must be swift. We know the right answers. Our resources are amply sufficient.

I call on Bar Associations to act.

There is nothing more important or more constructive that any Bar Association can do *immediately* than to set up, operate, and tell the public about its Lawyer Reference Plan.

For sound guidance in working out a practical plan, I can commend this report to every Bar Association, because I know that it has been prepared with scrupulous care. In our study we had to draw the line at the end of 1948; every Lawyer Reference Plan in existence at that time was personally visited by trusted representatives of the Survey of the Legal Profession. To the information gathered by the Survey

has been added all data in the possession of the American Bar Association's Committee on Low-Cost Legal Service, through the cooperation of its chairman, Walter T. Fisher of Chicago. After the text of the report had been prepared by Mr. Porter, it was carefully reviewed by Mr. Fisher as the Survey's Consultant in this field. It was then submitted to lawyers in various states who are familiar with the subject, so that statements of fact could be checked.

This record is as complete as we have been able to make it.

TWO CASES IN POINT

CHARLES O. PORTER

A. A Roof for the Maffini Family

Joe Maffini, who makes \$69.25 a week working for the street railway in Chicago, decided he needed a lawyer. Mr. Caprecio, his landlord, had said, "Joe, you and your family got to get out. You make too much noise. Besides, you got two more kids than when you came in."

Joe knew no lawyer and was afraid to walk into a strange office.

He went instead to the office of the Chicago Bar Association and asked for the Reference Attorney. He waited twenty minutes while three persons ahead of him had their turns. "What's your problem?" asked Charles G. Lind, the Reference Attorney. Joe told him.

"Ever had a lawyer before?" Mr. Lind queried.

"No," said Joe.

Mr. Lind consulted a card file, then dialed a number. "Let me speak to Mr. Spather. This is Mr. Lind, the Reference Attorney for the Bar Association." After a short wait, he said, "Hello, Claude, how are you. Got a Mr. Maffini here. His landlord wants to throw him and his family out. Claims nuisance and violation of lease because two children were born since they moved in. Will you handle it? Okay. Right now? Just a minute." He turned to Joe. "Can you go over right now?"

"Sure," said Joe, "sure."

"Okay by him, Claude. Good bye."

Lind wrote out Spather's name and address, and the time of appointment on a form which he gave to Joe.

"You understand that he will charge you \$3.00 for the conference if it takes less than 30 minutes or \$5.00 for an hour, and that you and he make your own arrangements as to other fees?"

"Sure," said Joe.

"And you understand that the Bar Association in referring you to Mr. Spather is not saying he'll win your case or even that he'll not make any mistakes? We have investigated all the lawyers on our list, but we don't guarantee any of them. All we do is say we believe them competent and honest and we help you get together."

"Okay," said Joe, standing up after he signed a form incorporating these matters. "And thanks a lot."

B. Food for Mother and Baby

Mrs. Henry G. Carter, 19, the mother of an eight months old infant, came to the Reference Plan offices to find a lawyer who would help her obtain a divorce. She had read about the Chicago Bar Association's service in the *Reader's Digest* several years ago.

"Why do you want a divorce?" was Mr. Lind's first question to the pale, tightlipped girl seated uncertainly in front of his desk.

"My husband left me."

"Did he mistreat you?"

"No."

"Did you mistreat him—why did he leave?"

"I didn't do anything to him. He said he was tired of living with me and the baby got on his nerves."

"Did he or does he now carry on with other women?"

"I don't think so."

"When did he leave you?"

"When did he leave you?"

"Two months ago yesterday—and I need money for me and my baby."

"In Illinois if the ground for divorce is desertion," Mr. Lind said, "the period must be at least one year. In the absence of other grounds that leaves ten months for you to wait. Does Mr. Carter own any property?"

"Only a car."

"Does he have a job?"

"Yes—a good one in a machine shop."

"Do you know where it is?"

"Yes."

"Have you asked him for money?"

"No, but he knows I need it."

"Do you think you might patch things up?"

"No."

"Would you be willing to talk to a social worker who had a good deal of experience in this sort of thing, if I arranged it for you?"

"Yes, but I can't see that it will do any good."

"You take this slip to the Family Service Bureau—the address is on there—tomorrow morning and ask to see Mrs. Jordan. She will be expecting you because I intend to call her before then.

"Did you ever use a lawyer before?" Mr. Lind asked, picking up a form and handing it to her.

"No."

"Do you know any lawyers or have any friends who might be able to recommend one to you?"

"No. We haven't been around here very long."

"Before I refer you to a lawyer, Mrs. Carter, to help you get the support money your husband should be paying, are you sure that it wouldn't do any good for you to call him or write him a letter asking that he make regular payments?"

"Oh, I am sure of it—he'd just laugh."

"Very well. Now while I see if I can reach a lawyer who lives near you, you read this form and sign at the bottom. It tells you that you are willing to pay \$3.00 or \$5.00 for the first consultation, that further fees will be arranged by you and the lawyer, and that the Chicago Bar Association takes no responsibility for the acts or omissions of the lawyer."

He consulted his geographical file, dialed a number and soon was talking to John H. Donahue, Esq., whose office was within five blocks of Mrs. Carter's house in a suburb on the edge of Chicago.

"There's a girl in here who needs your help getting support money from her husband," he said. "Has a small child. Husband left her two months ago. You might be able to persuade him to pay without going to court—she hasn't asked him but says he knows she and the baby are hard up. Can you take it? Fine. How about seeing her this afternoon?"

Mr. Lind turned to the girl. "This afternoon at 3:30 all right? He lives five blocks from your house. I'll give you his name and address."

"Yes, certainly."

"Very good, Mr. Donahue, she'll be there at 3:30." He put the telephone down. "As for the divorce, Mrs. Carter, you tell Mr. Donahue that you intend to get one when you can, but also tell him that I put you in touch with Family Service. He has handled other domestic relations cases for us and knows what he is doing."

The girl arose and handed him the slip requesting a reference and subscribing to the terms. He tore off and gave her the portion with Mr. Donahue's name and address and time of appointment. He escorted her to the door of his office.

* * * * *

That is how a Lawyer Reference Plan works. The people for whom it is designed might understand better if its name were "We'll-get-you-a-good-lawyer-who-won't-rob-you" service. It is devised to help clients find lawyers and to help lawyers find clients. Here is a more complete definition:

An agency through which a member of the general public can be referred to a competent and reliable lawyer who for a fixed, moderate fee will be willing to give a consultation on a legal

problem and then render additional legal service for a moderate fee if further legal service seems desirable and necessary.¹

A PLAN FOR YOUR CITY

It is to everyone's advantage for bar associations to establish Lawyer Reference Plans as promptly as they can. The plan is beautifully simple. It requires a minimum of machinery. It costs little to operate. It is the best type of public relations because it does something concrete for the public welfare instead of talking about it. And it brings deserving clients to deserving lawyers.²

This Chapter will be devoted to setting forth the need for bar association sponsorship; to a discussion of the four principal elements of the Plan; to the seven stages and aspects of its operation; to its financing; and, finally, to a discussion of the four main types of Plans. The last chapter takes up how the Plan developed historically.

This Chapter's purpose is to explain how a Lawyer Reference Plan can be set up and operated, in light of the experience, as ascertained by personal observation and correspondence, of the thirty-one existing Plans in the past eleven years.

A. Bar Association Sponsorship

Dealing as it does with applicants for legal services, a Lawyer Reference Plan could sink as low as court house runners if the local bar association failed to supervise it, or permitted another organization to take over by default. The impartiality and judgment of the referrer, the character and capabilities of the lawyers on the list, and all factors making for the success of the Plan in sending clients who need help to lawyers, are matters for the organized bar. There is no other organization whose members have either the background or the stake.

The need for an earnest and active Lawyer Reference Plan Committee cannot be overstressed. This Committee is the first and indispensable element of a successful Plan, for it is through its members that the bar association's sponsorship takes effect. The constituent elements of the Plan itself at the operational level, described in the next section, depend on an able committee.

B. Elements

1. REFERRER . . . He may be called the "Reference Attorney" or the Executive Director of the Lawyer Reference Plan" or perhaps nothing at all. Women secretaries or receptionists may do the referring. In

¹ William Dean Embree, "A Comparative Analysis of Lawyers' Reference Systems," *Bar Bulletin*, New York County Lawyers' Association, November, 1946, p. 6.

² Reginald Herber Smith, *Legal Service Offices for Persons of Moderate Means* (1947), p. 25; condensation in *Journal of the American Judicature Society*, August, 1947, p. 41.

Section D of this Chapter the four main types, in terms of who does the referring and where, are evaluated in detail. Someone has to meet the applicants, hear their problems, and refer them. In some Plans the referrer is required to refer the applicant, though the problem could be settled satisfactorily then and there.

A face-to-face interview is essential if the referrer is to make a sound judgment on the applicant's bona fides and on whether the case ought to be referred and to whom. Telephone and mail request for references, therefore, should be discouraged.

2. PLACE . . . The referrer must have a place of business. Usually it is an office, but a few Plans (notably, Minneapolis and Cleveland B) have attempted to carry on business entirely by telephone. The location should of course be in the near vicinity of lawyers' offices, the courts, Legal Aid, and social agencies. Frequently, as will be noted, the bar association or the Legal Aid offices are used by the Plan. The advantages of the various locations will be weighed in Section E of this Chapter.

3. LIST . . . So that the referrer may have a list better than the one in the classified advertisements section of the telephone book, a lawyer willing to accept references must fill out a questionnaire, the purpose of which is to provide a basis for including him and classifying him, and also to make certain he understands the Plan.

If the bar association decides to break down the list into specialties, their next decision is whether or not verification of these specialties by the committee is necessary.³ The burden on the committee to conduct the interviews is substantial. The implication that the registrant lawyers are not to be trusted to represent their abilities and experience accurately is distasteful. Nevertheless, if a few lawyers, perhaps in good faith, claim specialties and then fall down dismally when referrals come in those fields, the harm to the Plan might be tremendous.

For the protection of the good name of the bar association, whether or not specialty lists are made up, a committee should consider the lawyers who aspire to the list. How is this accomplished? In Chicago, lawyers are interviewed by the committee not only for specialties but

³ The Reference Plan Committee in Philadelphia does not inquire into the specialties the lawyer says he has. Their rules require that every listed lawyer be interviewed by at least one member of the Reference Plan Committee. Lawyers are held out as specialists in only three fields: patents, admiralty, immigration and naturalization; men on these lists must be generally recognized as specialists. A few panel members have excluded all but a certain type of case, but this is not encouraged by the Committee.

That the list is not broken down into specialties is one reason for the enthusiastic support of the bar, according to a founder of the Plan. Panel members are taken in alphabetical rotation, except with respect to the three fields mentioned above, and with respect to fields excluded by individuals.

for inclusion in the general list. Walter T. Fisher of the Chicago bar says:

We do not have any specific standards at all. Our method of conferring with the applicant lawyers is just about the same as any lawyer would use if he were employing a man in his own office. We do not conduct any law examination as to what his knowledge is. We just find out what he has been doing. If we think he is qualified by experience, we put him on the list. . . .⁴

A place for recently admitted lawyers is made in a special classification on some lists. In others, they are mixed in with the rest or they are excluded entirely. It is argued that the neophytes are capable of handling the smaller cases and eager to do so, and therefore they should be separately listed so this can be accomplished. It is also true that there are many cases which should not be referred to a newly-admitted lawyer.

Not every lawyer wants to be on the list. However, especially at the outset, members of the prominent firms should be encouraged to join in, perhaps on a limited basis as a Philadelphia, to demonstrate publicly their support of the Plan. On the other hand, if the list becomes encumbered with "deadwood"—men who will not or cannot accept referrals—the reference process is impeded to that extent. Moreover, once on the list, a lawyer can only be removed after considerable effort.

One final question remains: Is membership in the bar association required of all listed lawyers? Opinion 227, filed on July 12, 1941, with respect to the Los Angeles Plan, by the Committee on Professional Ethics and Grievances of the American Bar Association, approved advertising the Plan only if the primary object was "benefit to the public and not to members of the profession or any particular or selected group." (See Section D. Chapter III, p. 43)

Perhaps this language is not intended to refer to bar associations, at least where membership therein is readily achieved by any local lawyer in good standing. Many of the Plans do require that the list be restricted to members of the sponsoring bar association. The objection might arise if an intensive publicity campaign to increase the use of the Reference Plan was carried on and if many local lawyers were excluded from bar association membership directly or because of high dues. Mr. Fisher suggests that the non-members be included, but each charged his share of the expenses, that is, the same amount taken from a member's dues to support the Plan.

4. PUBLICITY . . . Enthusiastic sponsorship by the bar association, a first-rate referrer in an ideally located office and with a classified and verified

⁴ "Law and Lawyers in the Modern World" (a symposium), *University of Cincinnati Law Review*, March, 1941, p. 163.

list—all will accomplish little unless the public is told about the Lawyer Reference Plan.

The purpose and need of publicity, its propriety, wisdom and techniques, therefore, require careful appraisal. Philadelphia, alone among the major Plans, is carrying on a substantial publicity program. Misgivings and doubts forestall action of the same sort in Chicago, New York, and in many other cities.

The purpose of publicity is to tell the community that legal service is available from listed lawyers at a price known or knowable in advance. The publicity stresses that there is a fixed cost for the initial interview and that the reasonableness of subsequent cost is assured. Depending on the care taken in the making of the list, the characters and abilities in general of the lawyers thereon can be extolled—for the same reasons Professor Karl Llewellyn dreams of the success of a "Bonded Law List."⁵

After making an intensive study in the field of legal service requirements, Professor Earl L. Koos, a sociologist concluded:

Only as the legal profession comes out of its professional isolation and tells—through proper public relations—the American public what services it is prepared to render *and within what range of costs* the services may be had—then, and only then, will the doing—without of legal services be eliminated from the American scene.⁶

Further evidence of need for publicizing the availability of the Reference Plan is found in the Iowa Survey.⁷ Many people cannot name a lawyer in their community, it was discovered.

Many indications point to the fact that the man of small means deliberately avoids a law office largely because he has never been able to learn in advance what it will cost him to consult a lawyer. That situation suggests one great business lesson we can take from the doctor—the fixed fee for office consultation. Any working man consulting a physician knows that the doctor's fee for the interview will not exceed perhaps two dollars, and will certainly not exceed five dollars. But if that same working man is confronted with a legal problem, he has not the slightest idea whether the consultation will cost him nothing at all, or five or fifty dollars.⁸

Granting worthy purpose and great need, is publicity proper? Since it is unprofessional for the individual lawyer to advertise, is it also be-

⁵ See Maynard E. Pirsig, *Cases and Materials on Judicial Administration* (1946), p. 809, quoting from *Law and Contemporary Problems*, Winter, 1938, p. 104.

⁶ *The Family and the Law*, Survey of the Legal Profession (1949), p. 12.

⁷ "Survey of Iowa Opinion Toward the Law Profession," Conducted and Compiled by the Iowa Poll and the Research Department of the *Des Moines Register and Tribune*; summarized in "Lay Opinion of Iowa Lawyers, Courts and Laws," April, 1949.

⁸ William C. Mathes, "The Answer?" *Bar Bulletin*, Los Angeles Bar Association, June, 1940, p. 239.

low the profession's dignity to advertise the availability of its services and, above all, dwell on the cost aspect? These questions are settled in favor of publicity, at least by the American Bar Association, although certainly not by some local bar associations.

The American Bar association, through the Opinion 227 (1941) referred to in the preceding section and more fully in the next chapter, and in a resolution adopted by its House Delegates in 1946 implicitly approved publicity by endorsing Lawyer Reference Plans and low cost service methods.

Aside from ethical propriety, the wisdom of publicizing the fixed and moderate cost aspects has been challenged. In San Francisco publicity for their Plan was a sharply disputed issue in 1948. Many lawyers thought that the public should not be told that they can have a half hour of a lawyer's time for three or five dollars; that this would make regular clients feel that their lawyers were overcharging them. The rules of a Cleveland Plan, issued in 1941, expressly provide that the \$3.00-\$5.00 flat fees for consultation would "not be made public generally."

This kind of objection goes to the heart of the Lawyer Reference Plan, which is primarily designed to overcome the public's fear of high charges by publicizing the availability of competent legal service at fixed and moderate costs. At no time in the course of this investigation was any instance of the anticipated invidious comparison disclosed.

The methods for publicizing the service are the usual ones.

1. **NEWSPAPERS** . . The problems brought to the Lawyer Reference Plan are replete with human interest, just as in Legal Aid work. No confidences need be violated in order to place stories regularly. When the newspapers are convinced that this is a real public service, their cooperation will follow. Whether or not paid advertising is used depends on the budget of the Plan. It should not be necessary. A "free ride" in the advertisements of the banks and title companies is suggested by Judge William C. Mathes, the Plan's prime mover in Los Angeles, where paid newspaper advertisements, however, are used. Chicago has never used paid advertising, nor has Philadelphia or New York.

2. **MAGAZINES** . . The idea is still new enough to offer an opportunity for articles in magazines. An article in the *American Magazine*, January, 1947, later reprinted in the *Reader's Digest*, greatly increased the intake of the Chicago Plan. People still mention it, in New York as well as Chicago, as the source of their information about the Plan.

3. **PAMPHLET** . . An explanatory booklet is indispensable for explaining the Plan to city, county, state and federal officials, social agencies, ministers, teachers, and the public at large. Los Angeles printed a card

with the essential information. Philadelphia published a question and answer booklet.

4. SPECIAL AGENCIES . . . Particular attention is due to public officials, social agencies, ministers, teachers and others in public or quasi-public positions. They can send the Reference Plan to a good many persons who are in need of legal services. The direct mail approach, the more personal the better, is highly desirable.

5. RADIO . . . Dallas, Columbus, and Philadelphia are using regular programs. Chicago recently refused to allow a broadcast of an actual interview. It was thought that the confidential relationship between lawyer and client would be violated, at least inferentially. Since no hidden microphone was employed, this charge lacks merit if the applicant was willing to cooperate. Possibly it springs from the mistaken feeling that advertising of legal services in any way is wrong.

6. CLASSIFIED SECTION OF THE TELEPHONE BOOK . . . An advertisement in the yellow section of the telephone book, near to the list of lawyers, furnishes a convenient reference for the bemused citizen wondering how to choose from the long columns of attorneys. Cincinnati, Columbus, Dallas, and Los Angeles use these advertisements at present.

7. SPEAKERS' BUREAU . . . Volunteers to spread the word at social agencies, business men's groups and such, can help a great deal.

8. MOVING PICTURES . . . A short film showing the Plan in action would be an ideal form of promotion. It could be based on a skit the Chicago Bar Association put on in Seattle at the 1948 American Bar Association Convention and later at a general meeting of the Chicago Bar Association.

9. IN GENERAL . . . The referrer should customarily ask each applicant how he happened to learn about the Plan. A compilation of the results will be of great aid in planning a publicity program.

To do the right kind of job publicity, professional assistance is needed in a city of any size. Many such professional agencies will be cooperative. In Philadelphia the charges were one-tenth of normal. The account, from the viewpoint of the public relations firm, is a "prestige" matter. Once convinced themselves that it is a public service and not just a scheme by the legal profession to increase its income, the public relations experts find little difficulty in placing the stories and enlisting cooperation.

C. Operation

1. ASSIGNMENT CARD FILE . . . This is the "list" of available lawyers as it is organized for the referrer. The information should be transferred to 3 x 5 cards from the questionnaires unless only a few lawyers par-

ticipate. The specialists may be filed separately though they also may be allowed to stay in the general practice list.

Name, address, telephone number, types of cases not handled and specialties, and perhaps date admitted and knowledge of foreign languages, are typed on this Assignment File Card for each listed lawyer; the detail with respect to his type of practice depending on whether separate files are kept for the various specialties.

Naturally, the bar association does not wish the referrer to hand out the "money cases" to his friends. The usual provision is that the list be mechanically rotated. Every man comes up in his turn. In a few Plans this means occasionally sending an applicant to a lawyer who is not able or not disposed to help him. In the Plans with lists separated by specialties, the difficulty is less. A few Plans offer three names to the applicant and tell him to choose one. If, on learning the lawyer's name, the applicant indicates unwillingness to have a lawyer of the race or sex indicated to him by the name, there is no reason for not giving the applicant the next name on the list that does not seem to involve the objection made, provided he is not humored indefinitely.

These prejudices are deplorable, but as long as the Lawyer Reference Plan is careful not to foster them, it need not be blocked by them. The lawyer whose name is thus passed over will, of course, retain his place on the list and so receive the next reference.

Any referrer, therefore, must be left a measure of discretion.⁹ As will be explained in Part 4 of this section, the referrer keeps records of his referrals; abuses in the exercise of his discretion will be quickly observed by the bar association committee, if notice of the lapses fails to come more rapidly by another route.

A referrer comes to know his listed lawyers and his judgment, in absence of positive evidence of favoritism, deserves great weight. While the rotation system is an important safeguard (cf. p. 37), the bar association is well advised not to install in the Reference Plan a rotation rule that is so strictly mechanical as to permit of no exceptions.

2. REFERRAL REQUESTED . . . After he reads this, the client signs it. Besides asking for a reference to a lawyer, it is an agreement to pay the prescribed consultation fee, a statement that no other lawyer has been retained for the matter, and releases the bar association from all liability for what the lawyer might do or fail to do.

3. APPOINTMENT . . . Once the referrer has decided that the matter should be referred, consulted his Assignment Card File and had the client sign a request for a reference, the next step is to make an ap-

⁹ In selecting the lawyer for a reference, the executive secretary of the Columbus Bar Association is governed by three rules: (1) She must distribute the references evenly within the separate sublists; (2) she must serve the client's convenience with respect to the location of the lawyer's office; (3) she must assure satisfaction with the lawyer selected.

pointment for him by calling the attorney. This is not carrying the Plan too far as a service. If it is left to the client to do, he may decide not to call for an appointment and then go to the office to find that the lawyer cannot see him. It may be that the lawyer is in Europe or tied up with other work. If his availability is ascertained by a telephone call at the time of the reference, experience proves that most applicants keep the appointments.

Telephone appointments are made in this fashion in New York, Philadelphia, Chicago, Baltimore, Chattanooga, and Cincinnati. Until late in 1948, in Los Angeles the applicant was given a choice of three names and only rarely was a telephone call made in his behalf. Now their Plan provides for making the call if the applicant so desires, and a notice of this is on the referral request.

One of the recent changes in the Los Angeles Reference Plan was the adoption of a rule forbidding a listed lawyer from referring a case referred to him. This does not happen if the lawyer is called on the telephone by the referrer about an appointment, for then the lawyer has a chance to refuse it.

4. RECORDS . . The office records should include a ledger, a record card for each lawyer, and an applicant's or case card. The referrer fills in the ledger and his secretary refers to those entries to keep the lawyer's cards and the applicant's cards up to date.

The ledger, made up of numbered pages in a broad book, provides a running account of what the Plan is doing.

5. REPORTS BACK . . In order to fill in the lawyers' and applicants' cards discussed above, the lawyers must report back to the Plan on each case. Two reports are desirable, one when the applicant comes in, so that the referrer can know that the reference was successful and that the lawyer's name may be removed from the list until his turn comes around again, unless the rules permit him to receive a case uniquely suited to his abilities or experiences, if any should present itself before his name came up again.

Follow-up reports sent by the Legal Aid portion of the Milwaukee Reference Plan between April 1, 1946, and August 31, 1948, yielded these totals:

Types of cases:	Table 15 Case Reports, Milwaukee B	
Divorce	(24 dropped or reconciled)	93
Landlord-tenant		36
Guardianship, adoption		11
Change of name		8
Collection		6
Miscellaneous		38
Failed to show up for appointment		37
TOTAL		219

Fees:

Paid in full	107
(Average, \$33.73)	
Paid in part	14
Unpaid	14
No charge	84
TOTAL	219

Note: This Plan had the best file of follow-up reports available. Their availability was the reason these particular reports were tabulated.

6. DISPUTES . . The plan aims to provide the applicant with a competent lawyer's services for a reasonable fee. Unless the applicant, after he becomes a client as a result of a reference, can object through an appropriate procedure if he thinks the lawyer is incompetent or the fee unreasonable, the Plan lacks means to enforce its promises.

If necessary, the usual grievance procedures can be utilized after the Reference Plan Committee hears both sides. In Philadelphia the client and the lawyer have agreed to abide by the decision of the Committee on Public Relations and the Bar, so a dispute could go no further. No Plan, however, has had a substantial number of controversies. Many Plans report no controversies at all.

7. RULES . . For information and ready reference, Plans often codify the above elements, aspects and stages into a series of rules, which are printed and distributed throughout the bar. Space limitations and the repetition involved preclude reproducing examples of these rules. Bar associations can request copies of the various rules from the Plans in Philadelphia, Los Angeles, Dallas, Milwaukee, and most of the other Plans mentioned here.

The rules need not be many or complex. They should cover the purpose of the Plan, the constituency and authority of the committee in charge, and the operation of the panel, including eligibility, fees, reports required, removal and withdrawal from the panel.

D. Financing

A useful Lawyer Reference Plan can be financed on a shoestring. Those that operate with Legal Aid offices, or in a bar association as part of the duties of the staff, or as a function of a bar association committee, have only small expenses. But when a lawyer is hired to do the referring as a full-time job and given an office, the expenses rise materially. At present only Chicago, New York and Philadelphia maintain this type of Plan.

On the assumption that the other types of Reference Plans will find it necessary to hire lawyers as referrers when the latent need for legal services is tapped, the financing of the most expensive type of Plan will be considered here. If that assumption is not accepted, the expenses of the less elaborate Plans, because they are so much smaller,

can more readily be met by the same system of fees to applicants and lawyers.

1. APPLICANT'S REGISTRATION FEE . . . Even if an applicant is not referred to a lawyer, he has been served in some respect and should pay a small fee, at least fifty cents or a dollar. In addition to this *quid pro quo* economic logic, there is the fact that if the applicant pays something for the service, he is more apt to heed the advice. Professor Karl N. Llewellyn adds three other reasons:

A charge of a dollar to get in will keep out cases which belong to legal aid, and discourage a fair percentage of the cranks and psychopaths, and go some distance to meet the actual outlay of the bureau. . . .¹⁰

2. LAWYER'S REGISTRATION FEE . . . This is payable annually, not for each case referred (though the Newark Plan provides that one-third of the fee charged in a referred case be set back to the Legal Aid organization). Public service though the Plan may be, it does add to the lawyer's income or provides an opportunity for doing so eventually.

In Los Angeles from the beginning of the Plan, the fees of participating lawyers were looked to for support. In Cincinnati, the fees to lawyers will be increased as the referrals increase and require more clerical work. Table 19 shows how few Plans charge fees to participating lawyers.

Charles G. Lind, the Reference Attorney in Chicago, does not believe in charging fees to either applicants or listed lawyers.¹¹

¹⁰ "The Problem of Undone Legal Service," *American Bar Association Journal*, January, 1940, p. 106.

¹¹ Mr. Lind writes:

"There are no indications that we will charge anything in the Lawyer Reference Plan. It has not even been suggested to the committee that we charge any fee for the Chicago Bar Association work. We feel that is a function of the Bar Association that should be supported the same as we support other public services. As you know, we are very independent in screening and the committee feels if we charge the applicant a fee he would be in a position to demand service for the fee no matter how small and would be entitled to a reference even though there would not be a case. By not charging we can remove absolutely the wheat from the chaff without any compunction.

"The same objection was raised years ago to charging the attorney a listing fee. By paying for listing the attorney would feel that he was paying a fee for the cases referred and the Bar Association was making money on his gratuity, no matter how small. As long as we are in a position to render service free of charge to both lawyer and client we do not think the question will arise to charge either one. Personally I feel any fee charged, which would have to be a small one, would tend to belittle the services and bring them into a category of 'two-bit' advice.

"I think the public feels they are really getting a service when they are getting it free and that the Bar is doing something to assist them, without some small donation."

There is a friendly difference of opinion among the Chicagoans on this point. Lind's fellow-worker, Walter T. Fisher, who was chairman of the committee initiating the Chicago Bar Association Plan, is in favor of charging all applicants \$1.00. Fisher says:

"The Plan ought to stand, as nearly as may be, in its own economic bottom. This will become more important as volume increases. I have been privileged

3. SELF-SUPPORTING THROUGH FEES . . Here is the possible fee income of a thriving Plan which exists nowhere today, though Philadelphia resembles it closely:

32 persons apply for help each day	
Each is charged a dollar	\$ 32.00
On the basis of a five-day week,	
5 x \$32.00 = (per week)	\$ 160.00
50 week weeks in the year,	
50 x \$160.00 = (a year)	\$ 8,000.00
400 lawyers on the list	
Each is charged \$10.00 a year (a year)	\$ 4,000.00
TOTAL INCOME	\$12,000.00

Experience in the Chicago and New York Plans proves that only about one out of every four applicants is referred to a lawyer. That would mean that 2,000 references would be made annually on a basis of 8,000 applicants in this hypothetical Plan, that is, five cases on the average to each participating lawyer.

A bar association can work out its own budget without difficulty if it accepts the proposition that the Lawyer Reference Plan is a valuable service, not a charity, for which its beneficiaries, the applicants and the lawyers, should pay a nominal amount to meet expenses.

E. Four Types of Plans

This classification according to the capacity of the referrer is adopted because he is the key person in the Plan.

1. FULL-TIME REFERENCE LAWYER . . In Philadelphia, his office is in the City Hall; in New York and Chicago, in the local bar association quarters. All offices are in excellent locations. All have receptionists. Each referrer, an experienced lawyer, was chosen with great care by the bar association committees. They are paid around \$5,000 a year, and in Chicago and Philadelphia are allowed to practice to the extent that their work with the Plan is not affected or related. As a result, these two referrers have very little outside work. They all like their jobs and are highly respected.

to watch the Philadelphia Plan in action and I am convinced that the would-be clients are well satisfied to pay the \$1 ante that Philadelphia charges. They feel that they have had their money's worth—in fact, that it is remarkably cheap. The one group is satisfied because they get to a lawyer and are taken care of by him—and a surprisingly helpful fellow he turns out to be. The others learn from the referrer that they have no cause for alarm and do not need a lawyer at all. The dollar seems a small price for their peace of mind. The dollar is remitted in cases referred to Legal Aid and, at the discretion of the referrer, in the occasional hardship case that does not go to Legal Aid." Lind's situation is almost ideal. His bar association has both the will and the means to support the Reference Plan, although as yet no advertising program has been attempted and he himself says that their Plan only "scratches the surface" of the need for legal services.

2. LEGAL AID LAWYER OR CLERK . . Legal Aid offices have always faced the problem of referring people to lawyers. They have applicants who are above the established income level or whose cases are the kind not handled by Legal Aid as, for example, where a contingent fee is involved. These persons in trouble want to be referred to a lawyer. Thirty-eight of the 48 Legal Aid offices studied last year by Mrs. Julia B. Dolan of the Milwaukee Legal Aid Society, use a reference list.

3. BAR ASSOCIATION SECRETARY OR CLERK . . This type of Plan requires the existence of bar association offices and paid personnel. The executive secretary may undertake to do the referring himself, as in Milwaukee (A) the Cleveland (A), or he may delegate the task to his clerks or secretaries, as in Los Angeles. The operation of the Plan becomes an additional duty of the paid employees of the bar association. Normally, like Legal Aid personnel, the bar association staff is asked by many people to help them find lawyers.

4. BAR ASSOCIATION COMMITTEE . . Where there are no paid personnel and bar association offices, or where there is a belief that the referring should be done by lawyers, a committee for that purpose is the solution. The referring is rotated among the committee members. In Minneapolis, they keep the same telephone number and pass is around at regular intervals.

5. EVALUATION OF THE TYPES . .

a. *Full-time reference lawyer.* This type at present exists only in Chicago, New York and Philadelphia, where a lawyer is paid to devote all of his working hours to referring. For smaller cities or wherever the volume of cases does not warrant the exclusive services of a lawyer, this type of Plan could be adapted so that a lawyer was hired specifically to do referring for a certain period, not necessarily full-time. If the bar association has no office, then it may be possible to convince the city or county officials that the service warrants the allocation of space. If this fails, the lawyer designated as the referrer can use his own office. The essence of this type of Plan is the use of an attorney devoting his full attention for specified periods (even if not all his time) to the making of the reference and doing so in a known, central location.

The referrer should be a lawyer. (But see Table 25.) Wherever the Plans have kept tabulations, the figures show that almost 80% of the cases can be settled on the spot. A layman could not do this because it would often require deciding whether or not a real legal problem was involved. A layman might be capable in half the cases, but who could tell him which cases? A layman referrer, to be safe, must refer out many cases a lawyer referrer could settle on the spot.

Reginald Herber Smith writes:

If any applicant can be correctly advised in a few minutes, it is common sense and it is only decent public service to answer the question then and there instead of consulting a list, locating an available lawyer, making an appointment, and sending the client off—possibly across town—to be told something he could have been told at once and without stirring from the office.¹²

The necessity for a central, known office needs little explanation. In order to be available to the public, the location must be close to means of transportation and its existence must be widely publicized.

b. *Legal Aid lawyer or clerk.* Legal Aid offices can utilize lawyers with the kind of experience which is extremely useful in handling Reference Plan clients and usually such offices possess a comprehensive knowledge of the uses of public and social agencies. Moreover, their location is usually central and well known. Why, then, hire another lawyer and set up a separate Lawyer Reference office?

This is why: (1) A Legal Aid office is for the poor. A Lawyer Reference Plan is designed for persons of moderate means. Such persons do not regard themselves as belonging in an office for the poor. This attitude should be encouraged. The staff of a Lawyer Reference office should be in tune with the idea that the client is being handled by the lawyer on the basis of the normal economic relationship between client and lawyer. The two kinds of offices can and should be adjacent, but preferably they should be separate. (1) Legal Aid organizations, on the whole, have enough to do without this additional duty.

c. *Bar association secretary or clerk.* Usually the bar association offices are centrally located and well known. In Cleveland A and in Milwaukee A the executive secretary is a lawyer and handles the references. However, in both Plans, the referrers are determined—and instructed—not to give any legal advice. They feel that if the bar association members came to believe that they, salaried employees of the bar association, were depriving the bar of fees by giving legal advice, their conduct would be severely reprimanded.

Even if this were not true and they were encouraged to settle matters "on the spot" were feasible, it is a fact that a bar association executive secretary has a multitude of responsibilities other than referring persons to lawyers. If he has the time, he is the ideal man. Perhaps an assistant executive secretary, a lawyer, could be hired to take care of the referring and other duties. In the early years of the Chicago Plan it occupied only a portion of Mr. Lind's time, and he still regularly does administrative work for the bar association, on top of his duties as a full-time Reference Attorney.

¹² *Legal Service Offices for Persons of Moderate Means* (1947, p. 29; condensation, *Journal of the American Judicature Society*, August, 1947, pp. 41-42.

The best example of this type of Plan is in Los Angeles. Two woman clerks or stenographers do the referring for his oldest of all Lawyer Reference Plans. Committees since the beginning of the Plan have considered employing a lawyer for this work, according to the bar association's executive secretary. He writes:

Every committee has unanimously determined that this is not desirable in Los Angeles for a number of reasons. . . . The two principal reasons are (1) We have a Legal Aid clinic here which handles all legal matters of persons who are unable to pay a lawyer. (2) Our committees have felt that in view of the fact that we have a Legal Aid clinic for indigent persons, only persons who can pay a fee should be handled through the Lawyers Reference Service, and that to have a lawyer interview these people in the first instance who could pass upon their problems "on the spot" would defeat one of the most beneficial phases of the Service, in that it would eliminate the opportunity of the lawyer making contact with the client, which affords a golden opportunity to improve the relationship of the Bar with the public.

He goes on to say that a referral, instead of "on the spot" advice, shows the applicant that he can get a lawyer's services for a reasonable fee; and that sometimes a problem which appears simple develops into "a real problem and the basis of a sound law suit."

The lawyer at the receiving end of the reference can make a mistake on a simple problem just as easily as the reference lawyer whose instinct would be to refer it out in case of doubt. Lawyer Reference Plans are designed to improve the public relations of the bar, yes. But these relations cannot be helped by sending the applicants on fools' errands. One serious student of Lawyer Reference Plans, who did much to found this Plan and is an ex-president of the Los Angeles Bar Association, estimates that 80% of the troubles are superficial and remediable "on the spot." The experience of other plans supports this view.

d. *Bar association committee.* When the referral task is passed from one committee member to another, no one lawyer gets enough experience to become proficient, though in the smaller cities this may not be necessarily true. Another drawback is that the location changes regularly and the publicity cannot be concentrated on emphasizing the office to which a person goes to be referred to a lawyer. Finally, if volume increases the work may take too much time for a practicing lawyer to handle on a volunteer basis even for only a month.

Alert, continuous supervision by the bar association is also a necessity. Two social workers at the community center in Bridgeport, Connecticut, for example, send applicants to a lawyer designated by the bar association, but not supervised by a committee. He screens them. The lawyers are men who need business or who are friends of the reference

lawyer, who himself takes cases. There is no list; just "informal choosing" by the referrer from the 200 lawyers in the community. He admits to using "very personal discretion" and rejoices that there are "no rules to get mixed up on." No one is anxious to do this job," he states, "even for good will."

Although apparently it has not been tried anywhere, though it was proposed in Pittsburgh, a committee of lawyers could rotate the referrer's job and operate during specified hours at the offices of the bar association or in a public building. Provided that an income is assured by charging fees as proposed in Section D above, the Plan could afford to pay rent for an office in a central location.

PROGRESS IN ELEVEN YEARS, 1937-1948

A. Background

Los Angeles in 1937 launched the first Lawyer Reference Plan. Its Bar Association was the first to devise a polite, sensible answer to requests from persons asking to be referred to a competent lawyer who would not charge them too much. Before the Plan was adopted that Association, like most associations today, was obliged to answer that it could not ethically respond by suggesting the names of any attorneys. The most it could do was point to the list of lawyers in the classified section of the telephone book.

Legal Aid organizations have long faced the same problem. In 1934 John S. Bradway wrote that Legal Aid attorneys were frequently approached by clients whose incomes put them above Legal Aid level, requesting a referral to a good lawyer. "What answer to give such people is a real problem," he concluded.¹³

Apparently no one man or committee conceived the idea of the Lawyer Reference Plan.¹⁴ The first official consideration was in the 1936 report of the New York County Lawyers' Association Committee on Professional Economics. At the end of a four-year study this Committee, noting the large number of lawyers in the low income brackets and the small number of clients being served in New York, advised cooperation by the Lawyers' Association in furnishing lists of lawyers.

The bar associations began to wake up to the problem. The American Bar Association in 1937 established a Special Committee on Legal Clinics which later became the Committee on Legal Service Bureaus and now is called the Committee on Low-Cost Legal Service.

¹³ *The Bar and Public Relations* (1934), p. 245.

¹⁴ "The Los Angeles Bar Association claims to be the pioneer in the establishment of this plan, but admits the germ was planted by R. Allan Stephens, Secretary of the Illinois State Bar Association, July, 1935."—Burton E. Robinson, "Law and Lawyers in the Modern World" (a symposium), *University of Cincinnati Law Review*, March, 1941, p. 185. This refers to the experienced lawyers, list for other lawyers.

In the opening chapter two examples of the Lawyer Reference Plan in operation were set forth and Mr. Embree's admirable definition was quoted. Other similar plans designed to render legal services are sometimes confused with the Lawyer Reference Plan, so it is advisable to offer definitions for them:

Legal Service Office: Instead of the client being served in the office of the lawyer to whom he has been referred, as in a Reference Plan, he is served in a bar association-sponsored office where he applies and by a staff maintained for that purpose.

Neighborhood Law Office: This is a small office in outlying urban neighborhoods, so far only in Philadelphia, where persons of moderate means are encouraged by the publicizing of a nominal fee for advice, by flat rates for standard services, and by the old-shoe appearance of the place, to apply for legal services.

Legal Aid Clinic: This term should signify "a law office where part of the staff consists of law school students who, by doing part of the legal work under supervision, learn to practice law through the apprenticeship or internship method."¹⁵

The National Lawyers Guild at its first annual meeting in 1937 declared that legal clinics, i.e., legal service offices, were necessary to meet the needs of those who could pay only moderate fees. This resolution was based on

the conviction that the law profession in modern times has failed to provide for the legal needs of many millions of people who are willing and able to pay something for legal service. . . .¹⁶

A legal service office for persons of moderate means has not as yet actually been set up anywhere. It has been seriously considered in Louisville. Bar Association committees in Chicago and St. Louis in 1938 and 1939 respectively rejected the suggestion but approved the Lawyer Reference Plan.

In 1938 proponents of the Plan received encouragement from the report of the American Bar Association's Special Committee on the Economic Condition of the Bar, created the year before. In part, the report said:

While the rich and moderately well-to-do have learned the wisdom of keeping in close touch with their lawyers, and the poor, by the hundreds of thousands, have learned to consult the legal

¹⁵ Reginald Herber Smith, *Legal Service Offices for Persons of Moderate Means*, condensation, *Journal of the American Judicature Society*, August, 1947, p. 38. The other definitions derive from this article also.

¹⁶ Foreword to "Plan for the Establishment of a Legal Service Bureau for Meeting the Needs of Low Income Groups" (1939), submitted by the Committee on Legal Service Bureaus of the National Lawyers Guild, Chicago Chapter.

aid societies, there has been, and is, a huge intermediate class that needs legal help and knows not where to turn. And at the same time hundreds of honest and competent lawyers, able and eager to be of service, live on the borderline of starvation.

Where there is such an obvious need or demand, and such an obvious supply, it must be possible to bring the two together.¹⁷

Six "Neighborhood Law Offices" opened in Philadelphia neighborhoods late in 1939, sponsored by the local chapter of the National Lawyers Guild. More than 80% of their clients said that they had never before visited a lawyer.¹⁸ This percentage since then has never varied more than 1% or 2%. Some problems of these Neighborhood Law Offices, which now number eleven and are thriving, resemble those faced by Reference Plans. The Offices are not, however, Reference Plans, but law offices expressly publicized as places where legal services can be obtained at moderate prices.¹⁹

B. The First Plan: Los Angeles

In 1937 the Los Angeles Bar Association organized what they called an "Experienced Lawyers' List," similar to rosters used in Illinois and New York. But the Los Angeles roster was available for use by laymen as well as lawyers needing legal assistance. In 1941 the Association changed the name to "Lawyers Reference Service."

In 1940 the American Bar Association's Committee on Award of Merit gave honorable mention to the Los Angeles Bar Association "for developing a Lawyers Reference Service system designed to meet the needs of laymen and lawyers, who need the services of a lawyer experienced in some particular specialized field of law."

"A real public service will have been performed by the Bar Association," wrote the leading proponent of the Plan in 1940,²⁰ "if the reference plan accomplishes nothing more than the introduction of the lay-

¹⁷ *The Economics of the Legal Profession* (1938). p. 118. See also "Briefless Barristers and Lawyerless Clients," address by Robert H. Jackson, then Solicitor General of the United States, before the Junior Bar Conference of the American Bar Association, July 9, 1939.

¹⁸ "I believe the most significant result obtained from the operation of our service is the fact 2,008, or 71% of the persons of the 2,833 using the service in the first year had never previously consulted an attorney.

"Of the 825 who had previously consulted an attorney, in almost every instance the attorney was unavailable by reason of death or the removal of the attorney or client from one location to another. In less than ten instances was an attorney previously consulted and presently available for consultation. In each of these instances, the client was urged to return to such attorney. In not a single instance was a client referred to an attorney when the client was presently represented." James Neumann Lafferty, member, Lawyer Reference Service, Philadelphia Bar Association; comments on draft of this Report, July 28, 1949.

¹⁹ See Robert D. Abrahams, "The New Philadelphia Lawyer," Survey of the Legal Profession report, to be published in *Atlantic Monthly*, December, 1949.

²⁰ William C. Mathes, "The Answer?" *Bar Bulletin*, Los Angeles Association, June, 1940, p. 241.

man to some competent lawyer who is willing to serve him for a fee within his means."

Two years later the Executive Secretary of the Los Angeles Bar Association commended the Plan, saying that the number of inquiries from laymen not acquainted with any lawyer was "surprising," as well as the number of lawyers who registered. He also observed that many matters referred through the Service proved to be "substantial."

This Plan averaged a thousand references a year, starting in May of 1937 with 156 and going no higher than 402 until 1943 when it jumped to 1,104, due to the creation of rent control and war-born divorces, among other things. Since then the figure has risen to 1,822 in 1947 and 1,189 for the first nine months of 1948.

"Our Board of Trustees, our Committee on Lawyers Reference Service, and a large segment of our membership consider the service one of the most valuable activities of the Association," the Executive Secretary recently wrote.

C. 1940: Chicago

This Plan rose out of the work of the American Bar Association's Special Committee on the Economic Condition of the Bar which issued its report in 1938. The Chicago Lawyer Reference Plan started in January of 1940. In two ways this Reference Plan varied from the one under way in Los Angeles:

1) The lawyers seeking places on the reference list were required to go before the Bar Association's Reference Plan Committee for screening prior to their acceptance.

2) The reference was clinched by a telephone call from the referrer to the lawyer, making an appointment for the applicant.

This Plan soon differed from that of Los Angeles in another important respect, namely, that a lawyer, not a lay, member of the Bar Association staff interviewed the applicants. Later a lawyer was assigned to give this work substantially all his time.

As chairman of the Chicago Bar Association's Committee on Economics of the Legal Profession, Walter T. Fisher, the prime mover in this Plan and for many years in the forefront of American Bar Association efforts in this direction, recommended the Reference Plan in 1939, and also proposed a "bar association law office," i.e., a legal service office, "to perform those classes of legal service which lawyers generally do not now find it profitable to handle, principally the legal affairs of people of small means."²¹

Opposition to the Reference Plan before it started was based in large part on a confusion of it with the proposal for a legal service

²¹ "Low Cost Service Plans Proposed," *Chicago Bar Record*, June, 1939, pp. 232-234.

office.²² Once the Reference Plan was under way, no opposition appeared. Instead, the Committee received reports of satisfaction from both participating lawyers and from their clients, and Mr. Fisher was able to report:

The plan has demonstrated its value in getting clients to lawyers. It is believed to be productive of improved public relationships with lawyers and of good will toward the bar. It will give the public better legal service by making such service more readily available to the ordinary man.²³

D. 1941-1945: War Years

Cleveland voted in 1941 to establish the Chicago type of Plan but then suspended action during the war. In 1943 the Boston Bar Association exhaustively explored the matter. No action was taken. Other cities set up Plans, though none as fully developed as that in Chicago.

The most significant event of this period was the filing on July 12, 1941, of Opinion 227 by the Committee on Professional Ethics and Grievances of the American Bar Association. Here it was ruled that it was proper for the organized bar to advertise to acquaint the lay public with the lawyer reference service:

While the fact that incidental benefits may flow to members of the profession does not condemn such a plan, the primary object thereof, if it is to be advertised, must be benefit to the public and not to members of the profession or any particular or selected group.

This means that all reputable members of the bar should be eligible for the reference list, whether or not they are members of the bar association. An annual fee payable by all registrants was approved and, lest their registration be cancelled by the Reference Plan Committee, they had to agree to reasonable rules and regulations.

Increasingly the Plan was being promoted in terms of its benefits to the public, with the advantages to the bar treated as important but incidental. This shift in emphasis did not occur as a result of fiat by the Ethics and Grievance Committee. Nor was it a matter of window-dressing hypocrisy or self-delusion. In 1943 a founder of the Chicago Plan wrote:

The purpose of the plan is primarily to promote better public relations between the public and the bar, by encouraging people to consult lawyers as they would doctors and procure competent ad-

²² Walter T. Fisher, Chairman, "Lawyer Reference Plan, Report of First Four Months' Operation," Committee Report, *Chicago Bar Record*, July, 1940, p. 136. Reprint, p. 11.

²³ Walter T. Fisher, "Lawyer Reference Plan, Report of First Four Months' Operation," reprint p. 3.

vice and legal services instead of consulting insurance agents, real estate agents, bankers and other laymen.²⁴

In 1945 the American Bar Association Committee on the Economic Condition of the Bar was renamed, at its own request, Committee on Professional Services. The shift from the lawyers' need to make a living to a consideration of the public's need for legal services was gradual in these years, but nonetheless sure.²⁵

Another significant development during the war years was the establishment of a legal assistance plan under the joint sponsorship of the Army, Navy, and American Bar Association whereby servicemen and their dependents needing legal assistance in their personal affairs would be able to obtain "competent, reliable, and sympathetic counsel who would give due consideration to their ability to pay legal fees."

The plan was supervised by the Committee on War Work of the American Bar Association and the Judge Advocates General of the Army and Navy. Each of the state and many of the local associations cooperated in the operation of the plan through their respective Committees on War Work.

From the time the plan was established March, 1943, to January 1, 1947, records indicate that in the Army alone more than nine million cases were handled under the plan by lawyers in the service (legal assistance officers) and civilian lawyers working through the cooperating bar organizations. More than five million cases were handled by the Navy during this period.²⁶

With the end of hostilities and demobilization of the armed forces the volume of cases, of course, declined, but even today a substantial number are handled. The plan has been adopted as a permanent policy of the armed forces and is being continued under the supervision of the Committee on Legal Service to the Armed Forces of the American Bar

²⁴ Walter T. Fisher, Chairman, "Lawyer Reference Plan," Committee Report, *Chicago Bar Record*, July, 1943, p. 427.

²⁵ Reginald Herber Smith, *Legal Service Offices for Persons of Moderate Means* (1947), says: "We need not be ashamed that our earliest fumbling efforts originated in self-interest. They developed to maturity as soon as the profession could evaluate them. A motive that calls on a man for the best that is in him and at the same time enlists the support of enlightened selfishness is powerful and likely to get results.

"Dr. Liebman, in his notable book *Peace of Mind*, analyzes and repudiates the notion that a double motive must be a tainted and so a bad motive. We cannot be wholly unselfish and at the same time we are not wholly selfish. An impulse that appeals both to our instinct for self-preservation and also to our spiritual yearning to help others is a good motive, a sound motive, and a healthy motive because its appeal is to the whole man,"—p. 20.

²⁶ Estimates by Col. Milton J. Blake, former Chief of Army Legal Assistance, and Capt. Richard Bentley, USNR, former Chief of Navy Legal Assistance. See Reginald Heber Smith, *Legal Service Offices for Persons of Moderate Means*, *Wisconsin Law Review*, May, 1949, pp. 419, 420; Condensation, *Journal of the American Judicature Society*, August, 1947, p. 38.

Association, with the cooperation of similar committees in most of the state and local bar associations.

The Legal Aid Societies, under the leadership of the National Association of Legal Aid Organizations, from the beginning actively participated and cooperated in the legal assistance plan for servicemen and are continuing to do so.

As a result of the experience gained in the operation of the legal assistance plan during the war those concerned with the matter in the Army, Navy, and American Bar Association felt that certain conclusions could be reached from this first experiment in "mass legal service." Persons served under the plan represented a fairly accurate cross-section of the American people and can be used as a basis for measuring the whole problem of legal service for persons of moderate means.

It was found from this experience, with its fifteen million cases, that from 10 to 20 per cent of those served could afford no lawyers' fees whatsoever, i.e., charity cases; that from 10 to 20 per cent could well afford lawyers' fees at the going rate; and that the rest, or 60 to 80 per cent, could pay something and generally wished to pay a reasonable fee or as much as they could, which last group posed the problem of making adequate legal service available to this large segment of the populace.

Believing that this problem was a matter of great importance to the legal profession, the above conclusions and findings were presented by those concerned (Capt. Richard Bentley, USNR, Chief of Navy Legal and Lawrence C. Spieth, Chairman, ABA War Work Committee) to Assistance, Colonel Milton J. Blake, Chief of Army Legal Assistance, the President of the American Bar Association (Willis Smith) and the Board of Governors early in 1946.

As a result, the Board authorized the appointment of a Special Committee on Legal Service Policies to study the problem.²⁷ This committee was appointed with Judge Emory H. Niles, Chairman, and with a membership composed of the Chairmen and other members of the committees concerned as follows:

1. Committee on War Work
Lawrence C. Spieth, Chairman
Edmund R. Beckwith, former chairman
2. Committee on Legal Aid Work
Harrison Tweed, Chairman
3. Committee on Professional Services
Charles B. Stephens, Chairman
4. Committee on Low-Cost Legal Service Bureaus
John Kirkland Clark, Chairman
Walter T. Fisher, member

²⁷ Reports of the American Bar Association, 1946, p. 332.

This Special Committee on Legal Service Policies made a study of the problem and the work of the committees represented, and in its comprehensive report to the Annual Meeting of the American Bar Association in October, 1946,²⁸ recommended the following resolution, which was later adopted at the same meeting by the House of Delegates:

I. Low-Cost Legal Service

Whereas, The American Bar Association believes that it is a fundamental duty of the bar to see to it that all persons requiring legal advice be able to obtain it, irrespective of their economic status, and has recently approved and made an appropriation to increase the extent and efficiency of legal aid service in various parts of the country;

Resolved, That the Association approves and sponsors the setting up by state and local bar associations of lawyers' referral plans and low-cost legal service methods for the purpose of dealing with cases of persons who otherwise might not have the benefit of legal advice; and

II. Armed Forces

Whereas, By reason of the termination of hostilities, the work heretofore performed for members of the armed forces of the United States by the War Work Committees of state and local bar associations will shortly terminate; and

Whereas, The bar generally owes a duty to members of the armed forces in peace time, as to other citizens, to provide machinery for making adequate legal advice available to them,

Resolved, (1) That the American Bar Association express to the War Work Committees of state and local associations its appreciation and thanks for their arduous work well performed and recommends that the American Bar Association War Work Committee be discharged within a reasonably short time; and

(2) That the American Bar Association undertake to sponsor the creation of machinery by the state and local associations to provide active members of the armed forces with means of referring cases requiring legal services to competent civilian counsel in the localities concerned; and

(3) That a Special Committee on Legal Service to the Armed Forces be appointed by the American Bar Association to organize and sponsor this work, and that the Committee on Legal Aid and the Committee on Low-Cost Legal Service Bureaus be instructed to cooperate with the Committee on the Armed Forces.

As a result of all this war work activity, and the adoption of the above resolution particularly the first section thereof, and the mentioned report of the Special Committee on Legal Service Policies, great impetus was given to the movement to establish Lawyer Reference Plans

²⁸ Reports of the American Bar Association, 1946, p. 240.

and low-cost legal service methods by state and local bar associations.
E. 1946-1948: Postwar Years

In 1939 a joint committee in New York City, with representatives from the Association of the Bar of the City of New York, from the New York County Lawyers' Association and from the New York Chapter of the National Lawyers Guild, recommended "a legal reference bureau to bring prospective clients in touch with competent lawyers . . . willing to handle the matters referred to them for moderate fees." Seven years later, in 1946, the Plan came into being.

One of the leading sponsors wrote,

It is common knowledge that only a very small part of the public have the benefit of legal service. Based on national statistics there are probably in the City of New York alone, several million people to whom legal service is not readily available.²⁹

The work is regarded by the bar as a public service, he went on to say, and will enhance the good will of the public toward the legal profession.

Later in 1946 the American Bar Association specifically approved Lawyer Reference Plans, affirming the fundamental duty of the bar to see that legal advice was available to all requiring it, "irrespective of economic status." It was resolved:

That the Association approves and sponsors the setting up by state and local bar associations of lawyers' referral plans and low-cost legal service methods for the purpose of dealing with cases of persons who otherwise might not have the benefit of legal advice.³⁰

In the following year, 1947, the Association's Committee on Low-Cost Legal Service mailed a questionnaire to all bar associations in cities over 100,000 to inquire about the Plan in those areas. The results, tabulated from the 54 replies out of the 92 questionnaires sent out, were:

Had heard of Plan	47
No Plan contemplated	37
Plan existing or pending	17
Had not heard of Plan	6

San Francisco put its Plan in operation in 1946 but keeps its existence unpublicized, as do many other bar associations. A number of Plans have been started since 1946.

²⁹ William Dean Embree, "A Comparative Analysis of Lawyer Reference Systems," *Bar Bulletin*, New York County Lawyers' Association, November, 1946, pp. 8-9.

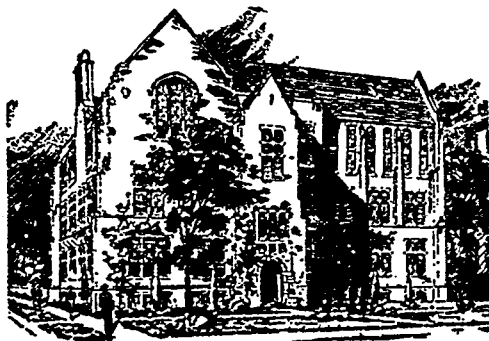
³⁰ Reports of the American Bar Association, 1946, p. 240.

F Summary

In all except twenty-odd cities in the United States, the citizen who turns to the bar association or the Legal Aid society for assistance in finding a lawyer will either be rebuffed directly or told to look in the classified section of the telephone book.

In most of the cities having Reference Plans it is highly probable that the average citizen has never heard of the Lawyer Reference Plan or, if he has, does not understand what it can do for him. A bare but promising start has been made in the eleven years since Los Angeles pioneered and in the eight years since Chicago began its well-developed Plan.

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