Legal Service For All

Glenn R. Winters
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It is not uncommon, when I am introduced to an audience of lawyers, to be asked to tell something about the American Judicature Society, which I represent. I will begin in that manner today, because it is a convenient way to bring up the subject I am going to discuss.

The American Judicature Society is a nation-wide organization of lawyers, judges and a few laymen, devoted to promoting the efficient administration of justice. It had its origin in Manistee, Michigan, nearly forty years ago, when Herbert Harley, a young lawyer then editing the town's daily newspaper, persuaded Charles F. Ruggles, a wealthy lumberman, to finance a movement to improve the administration of justice. The Society was incorporated in July, 1913, with headquarters in Chicago.

Its first work was research in fundamental problems of judicial administration, published in a series of bulletins over the next four years. In 1917 the Journal was founded, and for thirty-three years it has been the leading exponent of better justice in American courts. It is sent free to all who desire it, and its present mailing list is about 25,000. Other publications have been put out from time to time, and the Society's office serves as a clearing house for information, ideas and materials on all phases of judicial administration and its improvement.

After about fifteen years of support by Ruggles, the Society was reorganized with a dues-paying membership which has grown from about 600 to its present total of over 11,000. It is now housed in the law quadrangle of the University of Michigan.

The Society's field has been defined as the organization, personnel and operation of the courts, the bar and other allied agencies and institutions. Under this heading come organization of courts, including statewide, metropolitan, local and minor; selection, tenure, retirement and compensation of judges, civil, criminal and appellate procedure, the rule-making power of the courts; integration of the bar; legal education and admission to the bar; and a variety of different activities of

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1 See 20 J. Am. Jud. Soc. 9 (June, 1936); 19 Conn. Bar Journal 67 (April, 1945).
the bar, including legal ethics, unauthorized practice, public relations of the bar, and legal aid work.

It should be and probably is unnecessary to explain why legal aid work is included under judicial administration, but to do so will help to complete our exposition of the subject. My dictionary defines justice as the principle or practice of dealing uprightly and equitably with others; rectitude, integrity, absolute fairness, impartiality. If everybody believed in this principle and had the willingness and the wisdom to apply it in practice, and I take it that the administration of justice is the method and means of enforcing such practice so far as possible by everybody.

It is essential that this latter concept include everybody. If any people or class of people are exempted or neglected, the important elements of equity and impartiality are lacking. Richard Hooker was thinking of this when he said:

"Of law there can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world. All things in heaven and earth do her homage—the very least as feeling her care, and the greatest as not exempted from her power."

It is not enough that the courts are open daily to do justice to all who come before them. The care of which Hooker spoke is an affirmative thing—it seeks out those who are suffering and makes the righting of their wrongs its active concern.

Our country today is a battle ground between the idea of self-reliance and that "every tub should stand on its own bottom" and the newer concept of the "welfare state" wherein a supposedly benevolent government looks after its people and takes better care of them than they could of themselves. Those who favor the former as against the latter may wonder offhand why there should be any more concern about lawyer's services than barbers' services. If a man wants his hair cut badly enough he will find a barber, and if he choses to go unshorn, isn't that his own business? An injured person should have medical aid regardless of who he is or what his education and financial resources; but is there an equal public concern in seeing to it that other people live up to their contracts with him?

Well, many people think there is, and they base the distinction on the fact that the administration of justice, unlike these other things and most of the affairs of life, is a primary and inescapable responsi-

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bility of government, and its failure is a reflection upon the entire social and governmental structure of the commonwealth.

"If ever the time shall come," it has been said, "when only the rich man can enjoy law as a doubtful luxury, when the poor who need it most cannot have it, when only a golden key will unlock the door to the court room, the seeds of revolution will be sown."  

What we are talking about is not merely legal aid, but legal service for all. We may think of several different types of people in this connection. First, there are the regular clients of the bar, who, of course, are adequately provided for so far as legal services are concerned. At the other end of the scale are the poor and ignorant who have no money for fees, do not know how to go about defending their rights and often do not even know what their rights are. These people need legal aid on a charity basis.

There are two intermediate groups. There are those who can afford the cost of regular legal services, but who have never been in legal difficulties before and are bewildered and uncertain as to how to proceed. Then there are many who are able to pay something and often are too proud to accept charity, but cannot afford to pay the regular fees. Finally, cases involving the criminal law present such unique problems as to warrant considering criminal defendants a fifth classification.

The English Legal Aid and Advice Scheme

The attention of the members of the legal profession in this country has been focused on these matters during recent months as never before by the adoption in England of the Legal Aid and Advice Scheme, which sets up a comprehensive plan under government sponsorship to provide legal service for all. Its five basic principles were stated by Thomas G. Lund, secretary of the Law Society, as follows:

"They are, first of all, that no person ought to be deprived of legal advice, or, if necessary, legal representation before any court in the country by reason only of lack of means.

"Secondly, that those who can afford to pay nothing should receive their legal aid free, but that those who can afford to contribute something towards their own costs should contribute what they can afford.

"Thirdly, that the legal services to be provided should be provided by the legal profession, who should receive fair and reasonable remuneration for their services.

“Fourthly, that the administration of the Scheme should not be by a department of state or a local authority, but should be by the profession itself, acting through the Law Society and responsible to the Lord Chancellor as the head of the legal profession.

“Finally, that, in so far as it is not found from other sources, the cost should be borne by the state.”

The mechanics of the Scheme are simply implementation of these principles. There is nothing in it to disturb the ordinary relationship between attorneys and their regular clients. Only persons who are unable to pay the normal fee for the legal services they need come under it. Such a person goes first to a National Assistance Board, which passes judgment on his financial ability much as our legal aid bureaus do in determining the eligibility of an applicant for legal aid. The standards are such that about one-fourth to one-half of the population of the country is said to be eligible to receive benefits. Having passed the "means" test, the applicant goes next to a local committee of five lawyers, which determines whether or not his claim or defense has enough merit to justify giving him a "Civil Aid Certificate." If it is refused, there is an appeal to one of twelve area committees consisting of four barristers and twelve solicitors. All this is merely on the question of his right to representation. (Advice alone is given with less formalities.) Once that right has been cleared, he may select one of a list of lawyers who have volunteered to take such cases, and thereafter his case is handled like that of any other client, except that he pays only the amount approved. Regardless of how much that is, the lawyer will get just about a normal fee for his work. The client's contribution, if any, goes into a "Legal Aid Fund" and the lawyer is paid the difference out of that fund. The difference, which advance estimates have set at around eight million dollars a year, will be paid out of the public treasury.

The background of this is that for years Great Britain lagged far behind this country in development of legal aid services. As a result, during the war they were swamped with the urgent demands of the military personnel for legal aid. So serious was the situation that the government appointed a committee headed by Lord Rushcliffe to in-

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5 From The Record (Association of the Bar of the City of New York), Vol. 4, p. 77 (March, 1949).

6 From an analysis by Reginald Heber Smith in "The English Legal Assistance Plan: Its Significance for American Legal Institutions," 35 A. B. A. Journal 453 (June, 1949). This brief summary does not pretend to cover all features of the Scheme, many of which are entirely omitted from mention.
vestigate it. The famous Rushcliffe Report was the result, and the Legal Aid and Advice Scheme is in substance the carrying out of its recommendations.\textsuperscript{7}

**Legal Aid in This Country**

Before we allow ourselves to become sold on any scheme or proposal from across the sea, even from the land to which our legal system already owes so much, we should appraise it in comparison with what we already have. The bar always has acknowledged its responsibility for protecting the legal rights of everybody, and not just those who can afford to pay a fee. In countless instances this responsibility has been met by individual lawyers serving all comers and billing only those who could pay. For a lawyer to spend more than a small percentage of his time in that manner, however, is unfair to his other clients and to those who depend upon him for support. Most lawyers have to be earning money most of the time to keep the wolf from the door. Organized legal aid is the twentieth-century answer to the legal needs of the poor who are always with us.

In 83 of the 126 cities of over 100,000 in this country some kind of organized legal aid is available, as well as in numerous smaller cities. Emery A. Brownell, secretary of the National Legal Aid Association, has described their structural set-up as follows:

"The predominant type of organization is the independent society, generally incorporated and having a board of directors representative of the bar and local civic and social interests to make sure that operating policies will be sound and that the service will be effectively integrated with other welfare activities. Most are supported by Community Chest funds. In some places the service is carried on as a department of a social agency. This is the case in Chicago, where the Legal Aid Bureau is a division of the United Charities, with operating policies being formulated by a joint committee of the agency board of directors and the Legal Aid Committee of the Chicago Bar Association.

"Bar associations themselves sometimes operate an office. In Seattle, Washington, and Wilmington, Delaware, the lawyers provide the funds as well as direct the work. In general, however, legal aid is regarded as one of the necessary community services for which the entire community is financially responsible.

"In a number of cities legal aid service is maintained as a public tax-supported function—either as an independent bureau or as a part of a welfare department. Finally there are the clinics

which are supported and operated by Law schools. There are six of these, but, in addition, there are more than a dozen law schools which offer clinic experience to their students by a co-operative arrangement with a separately existing legal aid organization."8

The American Bar Association has been responsible for a substantial increase in legal aid facilities during the past few years. Its committee on Legal Aid Work has had an appropriation of $10,000 a year, through which a field worker, Arthur E. Schoepfer of the Boston Legal Aid Society, has been kept on the job promoting the extension of legal aid to those communities where it is not available. Through these efforts more than a dozen new legal aid offices have been established on a permanent basis, and negotiations are under way for the establishment of as many more.

This is quite a bright picture. It still leaves most of the people of our country without access to organized legal aid, including those of more than forty metropolitan cities, but the number that are being served is substantial, and fairly rapid progress is being made in the right direction. With the triple stimulus of the A. B. A. committee, the National Legal Aid Association, and the Survey of the Legal Profession, and with the support of the local bar, it is not too much to hope that adequate legal aid organizations may be seen in operation in every one of the 126 major cities and in many more smaller ones within—shall we say?—five years. A consummation devoutly to be wished.

Low-Cost Legal Service

The English make no distinction between out-and-out charity clients and those able to pay something less than the full market price of legal services, so far as machinery and services go. Both are handled by the same organization. If the client can pay something, he pays; if not, he is served free. In this country, our legal aid has been operated just about entirely on a charity basis. A client either is eligible for free legal aid or is not, and in general there has been no middle ground between free legal aid and the regular fee-paying clients.

The first move toward doing something for those in-betweens in this country, as far as I know, was just ten years ago when Mr. Robert D. Abrahams of the staff of the Philadelphia Legal Aid Society brought about the establishment of seven "Neighborhood Law Offices" in outlying districts of Philadelphia.9 Two more were added in 1946. In

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8 Brownell, "Legal Aid and Democracy," 34 Cornell L. Q. 580 (Summer, 1949).
these, staff lawyers give half-hour consultations for a fixed fee of one dollar. The office and its services are advertised to the public, and to make such advertising ethical it was necessary to have it formally sponsored by a bar organization. The National Lawyers Guild, which has always been especially interested in social justice, provided that sponsorship, and many thousands of people, most of whom had never consulted a lawyer before, have been served in these offices during their first decade of existence.

Just why the Neighborhood Law Office idea has not spread more rapidly is a little hard to say. I believe some efforts were made a few years ago to establish them in one or two other cities, but I am not aware of anything substantially similar to the Philadelphia system in operation anywhere else right now.

One possible reason for that neglect has been the considerably greater acceptance of the Lawyer Reference Plan. This originated in Chicago just a year after the Philadelphia experiment began, under the sponsorship of the Chicago Bar Association, which still operates one of the biggest and best of these services. A person needing legal service and not knowing where to turn goes to the office of the bar association. An appointment is made for him with a lawyer who has registered for that purpose, and there is a fixed fee of $3.00 for a half-hour consultation. If further services are needed, the client and lawyer agree on the charge. You may see that the chief difference between this and the Philadelphia plan is that there the client is served by a staff attorney in the office to which he first applies, while in Chicago he is sent to a regular lawyer's office, where he is treated like any other client except for the initial fixed fee. Both reach about the same class of people, as may be surmised from the fact that eighty-two per cent of the clients served in Philadelphia during the first eighteen months had never been to a lawyer before, while the same was true of eighty per cent of those making use of the Chicago reference service.

The lawyer reference service takes care of the second of the five groups we mentioned at the start—those quiet able to pay regular fees and whose only need is for a reference to the right attorney. More than half of the referred cases reported by the Columbus Bar Association reference service last year required additional services involving additional compensation beyond the fixed initial minimum. Two of them were thousand-dollar cases, and one was expected to run as high as $8,000 in fees.

Reginald Herber Smith, in an article in the Journal of the American Judicature Society two years ago, advocated the establishment under
the local bar sponsorship of what he christened "legal service offices", designed especially to serve the intermediate group, without the specialized limitations that have characterized both the neighborhood offices and the reference services.\textsuperscript{10} The American Bar Association in 1946 formally approved and endorsed the movement to bring legal service to these people, by adopting the following resolution:

"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."

Since the adoption of that resolution, the Association has had a Committee on Low-Cost Legal Service, which reported last year that fully-developed and well-established lawyer reference plans were in operation in seven major cities—Chicago, Cincinnati, Columbus, Milwaukee, New York, San Francisco and Los Angeles; on some less formal basis in nine others, and were to be established in eight more. In addition, a "legal service office" of the type proposed by Mr. Smith was being planned by the Louisville Bar Association in connection with its reference plan.\textsuperscript{12}

Considerable progress has been made in this field in a fairly short time, but low-cost legal service still is far behind legal aid in general development, and most of the multiplied millions of people for whom it is intended are still without access to it.

\textit{Legal Aid for Criminal Defendants}

We cannot complete the picture without saying something about legal aid in criminal cases. The British plan does not touch upon this field at all, such cases already having been provided for by the Poor Prisoners Defence Act of 1930. There is so much disparity between problems and procedures involved in handling civil and criminal legal aid cases that most American legal aid organizations have likewise steered clear of criminal work and left it to the other agencies, if any.

\textsuperscript{11} 73 A.B.A. Reports 109 (1946).
\textsuperscript{12} 73 A. B. A. Reports 418 (1948).
Throughout most of our country’s history indigent defendants have been defended by counsel appointed by the court. In some instances they have received a nominal fee from the court; more often they get nothing at all for it and are considered merely to be fulfilling their oath of admission to the bar. Often no counsel is appointed, and justice miscarries as a result. Some recent United States Supreme Court cases of this type coming up from Michigan and Illinois\(^1\) have focused attention on the necessity of legal service for criminal defendants, and several of the states now have statutes and court rules requiring counsel even in some instances when the defendant might be willing to waive it.\(^2\)

The modern answer to this problem is the public defender, first established in 1913 in Los Angeles County, and now functioning in a half-dozen states and a dozen large cities, including Chicago.\(^3\) He is a public official corresponding in many ways to the public prosecutor. The release of innocent defendants is just as important to the commonwealth as the conviction of guilty ones, but in the prosecutor’s office the emphasis is on convicting the guilty, and it is against human nature to expect it to be otherwise. The other side of the state’s obligation to its citizens not represented by private counsel is best served by vesting the defending function in a separate official and making it the duty of prosecutor and defender each to advocate his side of the case, both of course looking toward the ideal of justice for all.

In a number of communities, of which Philadelphia is an outstanding example, this need has been met by organizing what is known as a Voluntary Defenders Association, an approximate equivalent to a legal aid society specializing in criminal cases only.\(^4\)

*What Shall Be Our Future Course?*

Now we are ready to try to answer the question that arose a while back—is that very fine, comprehensive and well-planned English scheme something for us to consider adopting on this side of the water? As it gets under way there we may expect to hear an increasing clamor for an American equivalent to it. Although my own answer is in the negative, I am well aware that some advantages would flow from it. A

\(^{13}\) De Meerleer v. Michigan, 67 S. Ct. 596 (1947); Marino v. Ragen, 332 U.S. 561 (1948).

\(^{14}\) Illinois Rule 27A, effective September 1, 1948; Michigan Rule 35A, effective September 1, 1947.


better balance between free and low-cost legal services would no doubt be brought about. Both would be made available at once to millions who will not have them for years at the present rate. And I will acknowledge that in view of government's fundamental responsibility for administering justice among its citizens, I cannot say that the government would be poking its nose into our business if it undertook to sponsor such a project, as some municipal governments already are doing. I am afraid, however, that drastic changes in the practice of law would result, and that it would be necessary to maintain constant vigilance to keep governmental power from encroaching upon the lawyers' domain even though it started out with a reasonably safe barrier between them. Even among government lawyers, I think I am bold enough to venture to say that it is still true that the best government is the least government, and that Uncle Sam should intervene in no more of the affairs of life than necessary. Whether this particular intervention is necessary or desirable is largely a matter of opinion, and perhaps still more dependent upon how things go in our own legal aid movement from here on.

My own view is that while legal aid and low-cost legal service have not yet reached anything like a dissemination that could be regarded as satisfactory, the movement and the machinery for remedying that situation are in excellent shape. If what we already have here and there in the way of legal service for all were actually made available to the entire population of our country, I have no hesitation in saying that our people would be as well provided for as the British people under their scheme. I think, in fact, that they probably would be better taken care of, and at a lower cost to the public. If the tempo of our promotion of the various segments of the over-all program were merely stepped up to the pace that they deserve anyway on their own merits, and which I feel sure is coming within months from now, the clamor for an American Legal Aid and Advice Scheme will never materialize.

This requires action at two levels. In every community, leaders of the bench and bar should scrutinize their own facilities for rendering legal service to each of the four groups we have discussed—those able to pay but needing a reference service; those able to pay some but not all the service is worth on the market; those in need of free legal aid; and criminal defendants in need of free counsel and assistance. Local steps should immediately be taken to bring them up to par in whatever respect they fall short. Action on the local level is not enough, however. The problem is national in scope, and every instance of failure to measure up to the standard is a mark against not only the local bench and
bar but the bench and bar of the country as a whole. This requires support in all quarters for the national program for promotion of legal aid and the national agencies at work on it—even in a city like Chicago where these services are maintained at a very high level.

The reorganization of the National Association of Legal Aid Organizations into the new National Legal Aid Association in Boston last month is as especially promising development. Instead of a mere federation of local legal aid organizations it has expanded to include individual and professional memberships, and it is to be governed by a new nation-wide board of directors including prominent professional and business leaders as well as legal aiders. Dues for individual memberships have been fixed at ten dollars a year, and money received in that manner will be spent on an aggressive campaign to extend legal aid services to the forty-three metropolitan cities now without them and elsewhere as rapidly as possible across the land. Laymen are going to be able to get in on it on some basis or other, and without a doubt thousands of dollars will be received from such sources, but this is a lawyers' job more than anything else, and individual professional memberships in the National Legal Aid Association offer individual lawyers of this country for the first time an opportunity to take an active, personal part in the national campaign for promotion of legal service for all. I specifically commend this new organization to you, and urge you to take steps at once to get your name near the head of its list of charter members.

Socialization of the Profession

In giving his blessing to a state-wide rally for the establishment of legal aid offices throughout New Jersey, Chief Justice Arthur T. Vanderbilt of that state recently declared that the English plan was the first step toward socialization of the legal profession, and that the adoption of any such plan in this country would be a major catastrophe—the beginning of the end of the independence of the bar. Reginald Heber Smith of Boston, writing in the American Bar Association Journal, has stoutly denied that it is socialistic, contending that it cannot be as long as its administration is in the hands of the lawyers themselves. Sir Hartley Shawcross, attorney-general of Great Britain, emphasized the same point in his address at the banquet of the National Legal Aid Association in Boston last month. Some of us, like Chief Justice Vanderbilt, are not entirely reassured by that fact as long as

\[17\] 72 New Jersey Law Journal 333 (October, 1949).
\[18\] 35 A. B. A. Journal 543 (June, 1949), note 6 supra.
the plan is supported by government money, fearing, in Mr. Smith's own words, that making the government the lawyers' paymaster is perhaps the first step toward making it their master. The hand that signs the checks has at least as much to do with the rule of the world as the celebrated hand that rocks the cradle.

Be that as it may, however, I think it will turn out to be a moot question, for I believe that from here on the legal aid movement in America, by and through the lawyers of America, is going to advance with seven-league boots until within the span of our own times the day will come when for Americans in every station of life throughout the length and breadth of our land will come alive the age-old promise of Magna Carta—

"To none will we sell, to none will we deny or delay, right or justice."