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LOW COST LEGAL SERVICE BUREAUS

JOHN S. BRADWAY*

A complete social and economic history of the legal profession in the United States,¹ if one were available, would probably reveal a continuous, if slow, adjustment to changing conditions in the community.² The record of this adjustment would not necessarily be limited to the types of substantive legal problems which the profession is engaged in solving,³ nor to the perennial task of keeping the court machinery in touch with public needs and demands.⁴ It might include material on the extent to which the profession itself has been sought by the public and has affirmatively endeavored to educate the layman to appreciate and require its aid, skills, and resources in meeting his difficulties. Each step in the process of adjustment would probably be found marked by a conflict and a resulting compromise within the profession between a traditional rugged individualism⁵ and coöperative activity⁶ in which the individual loses himself in the mass of members of a bar association and the organization recognizes and discharges group responsibilities. The more obvious mainsprings of this process range from economic need of individual attorneys⁷ to such imponderable, but nonetheless significant, motives as a desire for personal prestige,⁸ or an idealistic sense of professional obligation to serve the public.⁹

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¹ Vanderbilt, *United We Stand* (1938) 24 A. B. A. J. 597, gives a brief sketch of the development of the lawyer. The subject is treated from a different angle by BROWN, *LAWYERS AND THE PROMOTION OF JUSTICE* (1938) 11-21.

² Pound, *Some Parallels from Legal History* (1924) 49 A. B. A. REP. 204, indicates the change in the type of legal problems handled by the Bar between 1774 and 1824, 1874 and 1924.

³ The PROCEEDINGS OF THE AMERICAN LAW INSTITUTE provide a record of an enterprise designed to solve substantive legal problems.

⁴ WILLOUGHBY, *PRINCIPLES OF JUDICIAL ADMINISTRATION* (1929) is a comprehensive survey of such machinery, and may be contrasted with the survey by BRYCE, *THE AMERICAN COMMONWEALTH* (1891), c.c. 97, 98.

⁵ Llewellyn, *Legal Service Bureaus* (1938) 19 CHI. B. REC. 95; Llewellyn, *The Bar's Troubles, Poultices—and Cures?* (1938) 5 LAW & CONTEMP. PROB. 104.

⁶ For instance, the reorganization of the American Bar Association in 1936. See *Discussion of the Report of the Special Committee on Coordination of the Bar* (1936) 61 A. B. A. REP. 15, 76; *Report of the Special Committee on Coordination of the Bar* (1936) 61 A. B. A. REP. 803, 813; *Constitution and By-laws as Adopted* (1936) 61 A. B. A. REP. 966, 998; *Brief Survey of the Bar Integration Movement* (1935) 20 J. AM. JUD. SOC. 202.

⁷ See Moore, *The Economics of the Legal Profession Survey Reveals Deploable Situation* (1938) 14 LOS ANGELES B. BULL. 55; *First California Employment Survey* (1932) PROCEEDINGS OF THE FIFTH ANNUAL MEETING OF THE STATE BAR OF CAL. 32; *Second California Employment Survey* (1937) 12 CAL. ST. B. J. 261.

⁸ "Petitioner himself says that, because of the exigencies which confronted him in early life, he had become combative and determined, and that in his intense desire to succeed professionally and financially, for the sake of his family

A history of the search of the common man for justice would show the other side of the same process—a series of constitutional promises nailing the flag to the mast; a constant struggle to adapt the administrative machinery to the needs of a changing world; an occasional demand for a speedier, less expensive and less complicated system.¹⁰

In responding to such pressures the bar has organized.¹¹ The country lawyer practicing by himself in the traditional manner may contrast his work with that of the large metropolitan law firm.¹² The form of bar associations is changing from voluntary and selective¹³ to compulsory, inclusive, and integrated.¹⁴ Present day professional problems include matters of little concern to our fathers—the importance of specialization,¹⁵ continuity of law partnerships after the death of a partner,¹⁶ efficiency in the dispatch of business comparable to that of a commercial establishment.¹⁷ A self-conscious, aggressive group program of professional activities has developed.

This program includes attempts to improve the administration of justice¹⁸ and to modify the stereotype of the lawyer in the public mind. As to the first, examples are the clarification of substantive law¹⁹ and the modernization of the administrative machinery of the courts.²⁰ As to the second, an example is the interpretation of the objects, ideals, and problems of the legal profession to the public.²¹ Among the agencies through which this latter development proceeds are bar association

and himself, he entered into the competition and strife of his profession to such an extent that he lost sight of those ethical rules and standards which he should have heeded." *In re* Petition of Morrison, 45 S. D. 123, 127, 186 N. W. 556, 557 (1922); CANONS OF PROFESSIONAL ETHICS, AMERICAN BAR ASSOCIATION, No. 15.

¹⁰ BALDWIN, *THE YOUNG MAN AND THE LAW* (1930) 42; SHARSWOOD, *PROFESSIONAL ETHICS* (5th ed. 1896) 9; RUTHERFORD, *THE INFLUENCE OF THE AMERICAN BAR ASSOCIATION ON PUBLIC OPINION AND LEGISLATION* (1937) 35.

¹¹ Holt, *Justice Without Juries* (Dec. 1931) 164 HARPERS 92; Jackson, *An Organized American Bar* (1932) 18 A. B. A. J. 383; Wigmore, *Roscoe Pound's St. Paul Address of 1906* (1937) 20 J. AM. JUD. SOC. 176.

¹² Wickser, *National Organization of the Bar* (1935) 69 U. S. L. REV. 626.

¹³ BERLE, *Legal Profession and Legal Education, Modern Legal Profession* in 9 ENCYC. SOC. SCI. 340, 342.

¹⁴ Fiero, *The Work of the Bar Association* (1895) 1 PROC. OF A. B. A. 89.

¹⁵ See Essery, *Bar Integration* (1935) 41 PA. B. REP. 328, 333.

¹⁶ McCARTY, *LAW OFFICE MANAGEMENT* (1926) 2, n. 1, 15; Llewellyn, *The Bar Specializes* (1933) 167 ANNALS 177.

¹⁷ CANONS OF PROFESSIONAL ETHICS, AMERICAN BAR ASSOCIATION, No. 33.

¹⁸ CHEATHAM, *CASES AND MATERIALS ON THE LEGAL PROFESSION* (1938) 8.

¹⁹ See the purpose clause of the Constitution of the American Bar Association.

²⁰ For example, the work of such committees of the American Bar Association as those of Admiralty, Maritime Law, Federal Taxation, Jurisprudence and Law Reform, Securities Laws and Regulations, etc.

²¹ REPORT OF THE COMMITTEE ON JUDICIAL ADMINISTRATION OF THE AMERICAN BAR ASSOCIATION (1938).

²² Stone, *The Public Influence of the Bar* (1934) 48 HARV. L. REV. 1.

committees on legal aid work,²² public relations,²³ and the economic condition of the bar.²⁴ Legal aid work²⁵ is essentially an humanitarian task. Improving the economic condition of the bar is motivated by an enlightened self-interest. In July 1938 the American Bar Association's Committee on the Economic Condition of the Bar published a handbook²⁶ summarizing efforts to gather significant data on incomes of lawyers and discussing a series of proposals for improving them, such as: a reduction in the number of lawyers;²⁷ higher and more rigid barriers against lay competition;²⁸ reduction in the overhead cost of practicing law;²⁹ a more equitable distribution of work;³⁰ the creation of a full-time staff of experts to study professional needs;³¹ and the extension of legal service to groups which are not now receiving it.³² This last includes as an administrative device the legal service bureau.

I. THE LEGAL SERVICE BUREAU

A legal service bureau cannot receive the moral and financial support necessary for its operation unless there are satisfactory social and economic justifications for its existence. Proponents urge that such justifications exist and allege the presence of a large group of potential clients in the middle income brackets³³ with legal problems not now redressed through professional channels;³⁴ the inability of many laymen to diagnose the existence of a legal problem in situations confronting them and their reluctance to consult a lawyer except as a last resort;³⁵ the recurring economic problem of the bar—what is to become of a group of lawyers whose time is not completely absorbed in serving clients;³⁶ the desire on the part of many lawyers to find some reasonable compromise for the future of the legal profession which may

²² See REPORTS OF COMMITTEE ON LEGAL AID OF THE AMERICAN BAR ASSOCIATION (1921 to date).

²³ See REPORTS OF COMMITTEE ON PUBLIC RELATIONS OF THE AMERICAN BAR ASSOCIATION (1933 to date).

²⁴ A special committee to study the economic condition of the bar was authorized by a resolution adopted at the second meeting of the House of Delegates to the American Bar Association in Columbus, Ohio, January 5, 1937. See 62 A. B. A. REP. 1030 (1937).

²⁵ SMITH, JUSTICE AND THE POOR (1919) contains the first comprehensive survey of the legal aid movement.

²⁶ THE ECONOMICS OF THE LEGAL PROFESSION (1938), a manual designed primarily for the use of state, local, and junior bar associations, describing the results of the bar surveys which have been made to date, the chief proposals which have been advanced for improving the economic condition of the profession and increasing its capacity for usefulness, and the methods and forms which were used in the several surveys.

²⁷ *Id.* at 83-86.

²⁸ *Id.* at 87-88.

²⁹ *Id.* at 91-92.

³⁰ *Id.* at 98.

³¹ *Id.* at 154.

³² *Id.* at 105-153.

³³ The term "middle income" is used in the specialized sense of those who are neither paupers, nor able to pay a full fee for legal services.

³⁴ THE ECONOMICS OF THE LEGAL PROFESSION (1938) 13 ff.

³⁵ *Id.* at 13 ff.; see also REPORT OF THE COMMITTEE ON PROFESSIONAL ECONOMICS OF THE NEW YORK COUNTY LAWYERS' ASSOCIATION (1936).

³⁶ THE ECONOMICS OF THE LEGAL PROFESSION (1938) 17 ff., cited *supra* note 26.

avoid the necessity for a struggle between movements to socialize the law³⁷ and the traditional habits of conservative idealism.³⁸

Collected facts are inadequate to indicate, precisely, the weight to be accorded each of these reasons, but enough is known to warrant a series of fact-finding surveys and a continuing study of possible remedies. If there are any groups of people not now served by the bar it may be a matter of good business judgment as well as of professional responsibility to see that the situation is investigated and the members of the groups given an opportunity to contact members of the profession.

The organized bar traditionally has recognized two client classes in the lay public—those persons who could pay a fee and those who could not. The legal aid societies and bureaus and legal aid committees of bar associations³⁹ long ago assumed responsibility for service to the latter, and the private law office was supposed to care for the former. The contention of the proponents of the legal service bureau that there exists a substantial intermediate class (those able to pay a small fee, perhaps quite inadequate for the labor involved) which is refused help by legal aid societies, but which cannot be cared for economically by the private law office because the individual lawyer is limited in the amount of work and time he can contribute without at least enough return to cover its share of overhead expense, deserves serious consideration.

Justification for bar activity in this field is found in idealistic and practical grounds. The constitutions of the states⁴⁰ and the purpose clauses of bar associations⁴¹ are clearly to the effect that justice in this country is a matter of right, not of grace, and that the bar has accepted as peculiarly its own the duty of giving effect to such principles in actual cases. The bar association rather than the individual practitioner is in a position to handle such matters. One should not overlook the element of self-interest. The prestige of the profession will be increased if every man, woman, and child in the country is educated to appreciate the value of the services of a good lawyer. It is argued that there will be a greater number of clients and of fees if legal service bureaus are established.

The allegation that such a group in the middle income brackets does exist is not fantastic. The medical profession has recently become

³⁷ Laski, *The Decline of the Professions* (Nov. 1935) 172 HARPER'S 676; see N. Y. Times, Dec. 15, 1935, p. 28, col. 2; *id.*, Dec. 3, 1936, p. 12, col. 2.

³⁸ 2 BEARD AND BEARD, *THE RISE OF AMERICAN CIVILIZATION* (1927) 761.

³⁹ See BRADWAY, *THE WORK OF LEGAL AID COMMITTEES OF BAR ASSOCIATIONS* (1938).

⁴⁰ INDEX DIGEST OF STATE CONSTITUTIONS (Prepared for the New York State Constitutional Convention Commission by the Legislative Drafting Research Fund of Columbia University. 1915.) 1, 2.

⁴¹ Many state bar associations employ in their purpose clauses phrases such as "to promote the administration of justice".

aware of it and is now conducting a series of experiments in aiding its members.⁴² The pending controversy between the United States Department of Justice and the American Medical Association⁴³ indicates support in high places for such experimentation. If there are people who cannot pay for medical service it is fair to assume that legal service is also out of their reach. It appears that, on a number of grounds, inquiry into the relations between the bar and the public is justified.

The other social and economic grounds, mentioned above, which are urged as justifications for some activity on the part of the bar are more readily accepted. Consequently, it appears that the organized bar should inquire into its relations with the public. Since a legal service bureau is proposed as a remedy, or perhaps as an experimental fact-finding device, some thought should be given to the significance of the name and the nature of the administrative machinery.

The title "Legal Service Bureau" is chosen rather arbitrarily. A number of names have been suggested, and it will be necessary, before a permanent title is adopted, to wait until public usage has selected one and endowed it with appropriate connotations. The term "Legal Clinic"⁴⁴ is open to the twin criticisms of being borrowed from the medical field⁴⁵ and of conflicting with the similar phrase "Legal Aid Clinic", which is employed to designate an instrumentality in the field of legal education.⁴⁶ The term "Bar Association Law Office for Persons of Moderate Means"⁴⁷ is adequately descriptive, but perhaps too long for popular use. "Legal Service Bureau" does not indicate the auspices under which it functions, nor the particular group of clients or cases accepted, but it is brief.

II. THE FORM OF A LEGAL SERVICE BUREAU

There are apparently no legal service bureaus in existence, so there is space for the individual to employ his imagination as to details of the administrative machinery for such a bureau. One thinks of such

⁴² MEDICAL CARE FOR THE AMERICAN PEOPLE: FINAL REPORT OF THE COMMITTEE ON THE COST OF MEDICAL CARE (1932).

⁴³ N. Y. Times, Aug. 1, 1938, p. 1, col. 1.

⁴⁴ Maguire, *Legal Aid Clinics—A Definitional Comment* (1934) 7 AM. L. SCHOOL REV. 1151.

⁴⁵ WEBSTER, NEW INTERNATIONAL DICTIONARY (1931) defines the word "clinic" as follows:

(1) a bed rid patient, especially in a hospital; (2) Eccl. Hist. one who received baptism on his death bed, or postponed it until then, believing that sins committed after reception of this sacrament could not be atoned for. (3) Med. a. Instruction of a class by examination and treatment of patients in its presence. b. The gathering of students at a clinical lecture. c. An institution connected with a medical college or hospital devoted to the free treatment of patients.

⁴⁶ David, *The Clinical Lawyer-School: The Clinic* (1934) 83 U. OF PA. L. REV. 1.

⁴⁷ THE ECONOMICS OF THE LEGAL PROFESSION (1938) 118-133, cited *supra* note 26.

a bureau as being fundamentally a law office, with a suitable staff of lawyers and clerical help, which handles a certain limited economic class of clients or particular types of cases on a low cost basis.⁴⁸ Distinctive features of the legal service bureau which set it apart from other law offices will include the office, the personnel, the types of clients, the types of cases, and the type of organization.

The Office

The plan of a low cost legal office for handling routine cases in bulk would be somewhat analogous to that of the large city law office⁴⁹ and of the legal aid society.⁵⁰ A respectable location in the city, but not so pretentious as to frighten clients away; comfortable working quarters for the staff; reasonable privacy for conferences; and an office system which will keep the work moving at a maximum speed consistent with high calibre work should be provided. The furnishings need not be expensive, but if the client's confidence is to be gained, special care should be taken to adapt the physical surroundings to his personality.

The Personnel

The staff may be divided into two main groups—those members who will meet the clients and those who will not. In the first group—whether the position is reception clerk, interviewing attorney, trial attorney, or investigator—care should be taken to select individuals who have the ability to meet the middle income client in such a way as to inspire him with confidence in the institution. In the second group, composed of research assistants, typists, and file clerks, technical efficiency is to be sought. It seems that an office manager, similar to the managing partner of a large law firm, is essential to establish and main-

⁴⁸ The preliminary report of the sub-committee of The Committee on Economic Welfare of the Legal Profession of the National Lawyers' Guild, Chicago chapter 1938, contains the following guiding principles for a legal service bureau:

"A legal service bureau of the kind here outlined would meet the problem. Its work would be guided by the following principles:

"1. The bureau is an institution provided by the legal profession created in the public interest and vested with unique rights and privileges for the exercise of which it is responsible to the profession and the public at large; its work is of the highest trust.

"2. The bureau is principally an instrumentality for serving the legal needs of the low income groups which either are not being handled at all or are being handled in an unsatisfactory manner.

"3. The bureau is an agency for engaging in, exploring and developing fields of legal services required by the public but not served by the legal profession.

"4. The services of the bureau are to be rendered on a standard, low cost basis.

"5. The bureau is interested in educating the low-income groups and the public at large about their needs for legal services."

⁴⁹ Descriptions of law office plans will be found in McCARTY, *LAW OFFICE MANAGEMENT* (1926); *LAW OFFICE MANAGEMENT* (prepared by a special Committee on Law Office Management of the Association of the Bar of the City of New York, 1931).

⁵⁰ Stewart and Abrahams, *Legal Aid in Civil Cases* (1937) 26 GEO. L. J. 32.

tain a smooth routine and to deal with the exceptional case which does not fit into the grooves. The training of personnel should occupy some time and attention, because it seems likely that the conditions under which the work is to be carried on will require a group of specialists.

The Selection of Clients

Legal Aid Societies have perfected a system of investigation for the purpose of determining who are legal aid clients.⁵¹ The legal service bureau cannot afford to accept legal aid clients because, unless it is self-supporting, there is no other sure source of income. It cannot take clients who are able to pay a full fee because it will then be in competition with the members of the bar in private practice. To steer a suitable course between this Scylla and Charybdis will require administrative ability of statesmanlike quality. Yet this problem must be solved before the enterprise can expect to emerge from the experimental stage. The solution probably will follow in some respects the path blazed by the legal aid societies which have learned how to practice law in bulk; but new and uncharted difficulties calling for investigation are apparent.

The Selection of Cases

Since the financial return on each matter handled by a legal service bureau must be kept at a minimum, the only hope for the solvency of the enterprise is in the judicious acceptance and rejection of cases. Profitable acceptance may be made of routine matters such as: advice at so much per hour; drafting simple documents at so much per document; collection of small money claims out of court on a percentage basis; *ex parte* court appearances; and uncontested cases on a fixed schedule of prices. Time consuming matters such as: litigation, prolonged adjustments out of court, and various specialties in the law, such as corporation practice or patents, should be accepted with hesitation because of the possible time and expense involved. And yet one cannot *a priori* exclude specific matters, because only by the trial and error method will appear the need to be met and the best means of meeting it. Legal aid societies have found it possible to accept, with limitations, divorce,⁵² criminal,⁵³ negligence,⁵⁴ and bankruptcy⁵⁵ cases

⁵¹ See Office Regulations, New York Legal Aid Society, Regulation No. 1.

⁵² "Every legal aid organization should, as far as local conditions permit, endeavor to . . . accept divorce cases on behalf of indigent persons, whether plaintiffs or defendants, in those instances in which there are social reasons which appear to make such an action both necessary and desirable from the standpoint of the client as well as of the family." NATIONAL ASSOCIATION OF LEGAL AID ORGANIZATIONS, STANDARDS AND IDEALS: BULLETIN No. 80.

⁵³ "Every legal aid organization should as far as local conditions permit, endeavor to provide for legal aid in criminal cases where there is no statute providing for the assignment of counsel or for a public defender or where the

and to decline entirely matters where a contingent fee may be secured or where the outcome of the case will raise up a fund out of which a fee can be paid. The reasons back of such practices should apply with almost equal force to the consideration of legal service bureau applicants.

The Type of Organization

The nature of the community and its size will determine the type of organization. At present there are three proposals: a centralized unit for a large city;⁵⁶ a decentralized system of neighborhood offices for a large city;⁵⁷ a county unit system for less thickly settled communities.⁵⁸ Determining factors will include expense of operation, volume of business, accessibility, and popularity of the enterprise with the group to be served.

Much controversy may be avoided if the project from the outset is recognized as a function of the organized bar. Control may rest in the hands of a single lawyer as a private venture, a group of lawyers, or the bar association. Obvious objections to the first two methods, such as the possibility of personal gain or unprofessional self-advertisement, make bar association control the most practical plan.

A corporation⁵⁹ is a suitable agency to provide continuity and to attract the funds necessary for the initial experiment. It is not unlikely

circumstances are such the defendant cannot obtain proper representation in any other way." NATIONAL ASSOCIATION OF LEGAL AID ORGANIZATIONS, STANDARDS AND IDEALS: BULLETIN No. 80.

⁵⁶"Every legal aid organization should, as far as local conditions permit, endeavor . . . to establish contacts with the sources of legal aid cases where essential to adequate service of special types of clients, such as workmen's compensation cases, seamen's cases, veterans' cases, etc.

"Every legal aid organization should as far as local conditions permit, except for good cause in individual instances, accept personal injury cases in which the client is unable to pay any fee and in which the amount of recovery is not sufficient to induce a reputable attorney to accept the case on a contingent basis." NATIONAL ASSOCIATION OF LEGAL AID ORGANIZATIONS, STANDARDS AND IDEALS: BULLETIN No. 80.

⁵⁷"Every legal aid organization should, as far as local conditions permit, endeavor to . . . accept bankruptcy cases on behalf of indigent persons in those instances in which the client has a reputation for honesty and has made every reasonable effort to pay his just debts, but in which creditors have refused to cooperate in any reasonable plan of payment and have persisted in harassing the client by attachment of his wages, or by other proceedings to such an extent that he is in danger of losing his employment; to undertake bankruptcy proceedings, however, only as a last resort, and after all other attempts in the way of conciliation or otherwise have failed to protect the client from the unreasonable collection practice of his creditors." NATIONAL ASSOCIATION OF LEGAL AID ORGANIZATIONS, STANDARDS AND IDEALS: BULLETIN No. 80.

⁵⁸THE ECONOMICS OF THE LEGAL PROFESSION (1938) 118, cited *supra* note 26.

⁵⁹*Id.* at 148.

⁶⁰*Id.* at 133.

⁶¹While ordinarily a corporation may not practice law the courts and legislatures in the case of incorporated and integrated state bar associations and legal aid societies have approved the corporate form as a device to facilitate certain types of work done by lawyers.

that a bar association committee may inaugurate the work but the ultimate need for a trained full-time staff and reasonable continuity of policy will suggest the greater efficiency of the corporate form. Such form necessarily involves a consideration of the board of directors or the governing body. Most if not all of the members of this group should be lawyers. The question of lay representation may be answered by considering the various functions to be performed by the directors. At least three may be mentioned: promulgating policies; raising money; and establishing and maintaining public relations. In the latter two the aid of laymen may be of distinct value, but the first of these is obviously a matter for professional judgment.

III. THE POLICIES

One of the first steps to be taken by the governing board will be the consideration of various administrative procedures and the promulgation of tentative policies. Some of these problems have been raised previously. Particularly important are such additional ones as: whether the attorneys should serve full time or part time; what should be done with clients who request service outside the bureau's jurisdiction; how to protect the organization against the mistakes of its agents; the desirability of establishing a suitable accounting system to record both the time spent in certain types of legal work and the funds of parties received in the course of business; the possibility of enforcing certain standard procedures in each type of case handled; whether the objective shall be to provide positions for as many lawyers as possible, or to maintain a high quality of service for the clients.

The arguments for full-time attorneys who may be free to give undivided attention and may be protected from temptation to profit personally at the expense of the clients of the bureau are countered by considerations as to whether the bureau can afford to pay enough in salaries to attract and maintain good men. A limitation upon the length of service will result in an infusion of new blood, but the value of tried experience should be kept in mind. It may be that certain pivotal positions should be full time with such a salary as to attract excellent men who will continue in office during good behavior. Other positions may be made available to part-time men who will be allowed to serve only for two or three years and then give place to others. It would seem unwise to keep anyone so long that he would lose interest in the work.

Applicants to the bureau who cannot pay a fee should be referred to the legal aid society. Applicants who can pay a full fee and who do not know what lawyer to seek present problems for which the bar association should endeavor to find a solution. The determination of

a suitable line separating this last group from the "middle income" group and the erection of an investigating system to provide the necessary data on each case are problems which may well command the best attention of the policy making body. How to dispose of those who can pay a full fee without favoritism will require a flexible rule and intelligent enforcement. Perhaps a list of all lawyers who might desire to participate with a distribution of cases in rotation would be acceptable. Merely to turn them away to find an attorney on their own account involves the risk that they may fall into the hands of someone not skilled in the particular field of law.

The bureau cannot avoid some responsibility for its mistakes (even if they are reduced to a minimum) and still expect to retain the confidence of the public. Perhaps some insurance device similar to that now employed by physicians may be useful. Apparently a case against a legal aid society has never arisen. If it did, one assumes that one of the defenses might well be the privileged position with which the law surrounds a charity. At the other extreme is the private practitioner who may be sued⁶⁰ and who does not believe it proper to protect himself by a bond.⁶¹ The legal service bureau may be formed to occupy a different position.

A cost accounting system both as to time and money is essential in such a project. Examples may be found in the systems employed by large law offices. The policy making body will have occasion to spend a substantial amount of time in fixing the rate of charge for services and in considering how the routine tasks may be performed with a minimum of expense.

If only certain types of cases are accepted a high degree of specialization is possible. Specific procedures⁶² of standard quality should be developed, adopted, and enforced so that the client may receive as good, if not better, service than he would secure anywhere else. The consideration of which cases to accept and the promulgation of the essential steps in an efficient, high speed, low cost procedure are matters for the policy making group.

⁶⁰ See, in general, notes (1920) 5 A. L. R. 1389; (1923) 24 A. L. R. 1025; (1926) 43 A. L. R. 932; (1930) 69 A. L. R. 705.

⁶¹ See OPINION No. 239 OF THE COMMITTEE ON PROFESSIONAL ETHICS OF NEW YORK COUNTY LAWYERS' ASSOCIATION; *Report of Committee on Commerce, Trade and Commercial Law of the American Bar Association* (1923) 48 A. B. A. REP. 285, recommending that a resolution be adopted condemning the bonding of attorneys in the faithful performance of their duties as attorneys. This resolution was adopted by the association, (1923) 48 A. B. A. REP. 60.

⁶² For example, in the collection of small money claims it should be possible to work out a procedure involving form letters comparable to that employed by the best collection agencies and thus establish a standard. Similarly, in the drafting of documents the preparation of model printed forms to meet the more common situations should expedite and standardize the work. The experience of trust companies and realtors may be drawn upon.

The selection of a staff of attorneys for the bureau involves deciding the question of an open door or a hand picked group. By allowing any attorney who may wish to do so, to put his name on the list and give some time to the work, one overcomes the natural objection of some lawyers that they are being excluded from what they may regard as a profitable employment. Their contention that equal opportunity for all is an appropriate goal is counter-balanced by the obligation upon those who are responsible for the operation of the bureau to see that the standard of service is kept at a high level. If lawyers of varying degrees of training and effectiveness are permitted to serve, the task of supervision will be increased and the quality of the work may be jeopardized. If the main objective of the bureau is in the field of the public relations of the bar, quality of service is the significant test. If the plan is designed primarily to give employment to lawyers who need it, there should be no bars. In either event it is necessary to recognize that lawyers do vary in effectiveness and that any compromise between the two extremes involves a discriminating process of selection. The mechanical device for such selection will probably be an examination.⁶³ Unless applicants demonstrate the ability to handle legal service bureau problems with reasonable accuracy and ease they will be rejected. If a satisfactory basis of minimum efficiency can be agreed upon it might be well to invite all young lawyers to take this test in addition to the bar examinations. Some people have the impression that among the younger men who have ability to surmount the obstacles at the threshold of the bar there are those who, for one reason or another, are not qualified to practice law. To allow such misfits to remain in the profession may be to delay their finding the work for which they are best fitted. It may also result in lowering the prestige of the profession. If they all took an examination in the ability to practice law, in which skills and techniques and temperamental conditions counted on a par with actual knowledge, one might find a basis for raising the quality of work of the entire legal profession.

No matter what sort of test is proposed for admission to the bureau staff, there will be inequalities in capability. To provide a standard service, to guard against as many mistakes as possible, and to enhance the prestige of the organization, it seems desirable to provide supervision⁶⁴ of the work and the workers. One step in accomplishing this

⁶³ Various proposals have been made such as a graded bar, or an interlocutory bar for the elimination of inefficient lawyers. An examination for a place on the staff of the legal service bureau in which passing grades will be given only to those who demonstrate ability to practice law in an acceptable manner should insure the bureau against incompetence.

⁶⁴ While the simple routine work may be entrusted to the bureau lawyer with reasonable expectation of satisfactory results, the pressure of business and the dulling effect of routine makes it desirable that some at least of the tasks in

result will be to lay down a series of routines in different types of cases which may be readily checked. Another step will be to divide the staff into the more skillful members who will supervise and those less effective who will handle the matters in the first instance.

The mass of cases will inevitably provide material which may be used as a basis for remedial legislation. One may even consider the bureau as an observation post from which to determine just how effectively certain rules of law operate. Legal aid societies gather similar data⁶⁵ and use it in drafting new bills and in urging them before legislative committees. The legal service bureau's policy making body will be called upon to make many interesting decisions regarding what should be done with facts thus revealed in its cases.

The Precedents

If it is necessary to borrow experience to sustain the plan for a legal service bureau, there are several sources of information. The individual lawyer deals with clients in the intermediate group. It is to his credit that, traditionally, he has done an enormous amount of free work and has given generously of his time and ability in matters where the fee was quite inadequate; but he has had too little experience with practice in bulk to provide much useful data. The large, high powered, streamlined, modern law office and the legal aid society are more likely to yield the desired information. The first of these is not unfamiliar to the practicing attorney, but the second deserves some discussion.

Legal aid work as an humanitarian program has been mentioned elsewhere. Here we are concerned with two aspects—the volume of its business and its contact with clients in the middle income group. As to the first, statistics are available⁶⁶ from the year 1876, when what is now the New York Legal Aid Society opened its doors, until the present time.⁶⁷ These statistics show approximately 300,000 cases a year for the country and in individual offices as high as 25,000 to 30,000 applicants. Practicing law under such conditions requires a special technique, and this the legal aid society staffs have acquired.

As to the second, it appears that in 1937, the last year for which figures are available, 5290 such applicants were refused service because either they could pay a fee or the case was one in which a fund would

the office be checked by a lawyer other than the one actually handling the case. Staff conferences will be found of value.

⁶⁵ ANNUAL REPORT OF THE LEGAL AID SOCIETY OF NEW YORK (1936) 10.

⁶⁶ MAGUIRE, *THE LANCE OF JUSTICE* (1928); SMITH, *JUSTICE AND THE POOR* (1919).

⁶⁷ See APPENDIX TO ANNALS, REPORT OF STANDING COMMITTEE ON LEGAL AID WORK OF THE AMERICAN BAR ASSOCIATION. The 1938 report is contained in the American Bar Association Advance Program including Committee and Section Reports to be presented at the Sixty-First Annual Meeting, p. 113.

be raised up before the conclusion of the controversy out of which a fee could be secured. Persons thus refused aid are members of the group which the legal service bureau is designed to serve.

An interesting procedure which may provide information to those about to start a legal service bureau has been tried by a number of legal aid societies. In 1923 the National Association of Legal Aid Organizations⁶⁸ submitted to the Legal Aid Committee of the American Bar Association,⁶⁹ a series of five questions. The first two of these with the comments attached are:

"Question 1. Who is a legal aid client and who should be referred to other lawyers?

"Every legal aid organization has a rule that it will not accept as a client any person able to pay for the services of an attorney. The problem is just where to draw the line and what practical tests to employ.

"Question 2. To what lawyers should such persons be referred?

"Many applicants who are able to pay ask the legal aid attorney to refer them to some competent lawyer. The problem of referring cases without discrimination obviously calls for bar association supervision. The legal aid organizations have found this to be a delicate and difficult matter and ask for guidance."

The legal aid societies in 1930 recognized an obligation to such people and adopted the following standard: "Every legal aid organization should make adequate provision for the reference of cases which are not handled by the legal aid office."

Local conditions account for the variety of devices employed to solve this problem. In some places the applicant is referred to the telephone directory and permitted to decide upon a lawyer. This plan is open to the objection that the selection is left to chance and the client is afforded no guidance or protection. At the other extreme are elaborate plans as in New York⁷⁰ and Philadelphia.⁷¹ In these cities there are committees of lawyers who have agreed to accept such cases either without remuneration or on a basis which considers the ability of the client to pay more important than the amount of work, skill, and responsibility required of the lawyer. These plans vary with re-

⁶⁸ See Reports of Committee on Relations with the Bar of the National Association of Legal Aid Organizations in PROC. NATIONAL ASSOCIATION OF LEGAL AID ORGANIZATIONS (1923) 57, PROC. NATIONAL ASSOCIATION OF LEGAL AID ORGANIZATIONS (1924) 73.

⁶⁹ See *Report of the Committee on Legal Aid Work of the American Bar Association* (1923) 48 A. B. A. REP. 374, 377.

⁷⁰ REPORTS OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK (1929) 299; REPORTS OF THE NEW YORK COUNTY LAWYERS' ASSOCIATION (1929) 285.

⁷¹ See PROC. OF THE NATIONAL ASSOCIATION OF LEGAL AID ORGANIZATIONS (1937). The Thursday afternoon conference.

spect to the group which selects the committee, the method of referring cases, and the extent of supervision exercised by the bar association or the legal aid society over the quality of the work done and the fees charged. The experience of the legal aid societies has been recorded at various meetings of the National Association of Legal Aid Organizations.⁷² This experience emphasizes the point that there is a group of people of modest income who are not receiving legal aid, and demonstrates the nature of their legal needs, and the extent to which committees composed of volunteers are an answer to the problem. It does not indicate how large that group is.

Criticism

The critics of the proposed legal service bureau urge its variance with the traditional individualism of the bar; doubts as to the public need where every law office is willing to render such service—at least to a reasonable extent; and the novelty, expense, and administrative difficulties of the plan. Alternative proposals are made.⁷³

The proponents, on the other hand, view the matter in the light of the enormous changes in social thinking which have swept over the country during the last ten years. It seems clear to them that the country will not settle back into the rugged individualism of pre-depression years. The influx of new ideas as to the social responsibility of the professions has inevitably affected the relationship between the lay public and the bar. The man in the street demands more and different service from the members of the professions than he did in the past. He insists upon a seat in the professional councils.⁷⁴ He questions the right of the physician to exclusive responsibility in the matter of public health;⁷⁵ he criticizes the legal practitioner⁷⁶ and competes with him for business, insisting that his services are more effective than those of the attorney.⁷⁷ When unauthorized practice statutes restrict him too rigidly, he suggests reprisals.⁷⁸ The proposal to socialize the professions is made in earnest.⁷⁹ The bar cannot afford to make a wrong guess as to the power of this lay attitude. It is the mark of wisdom to

⁷² See HANDBOOK OF THE NATIONAL ASSOCIATION OF LEGAL AID ORGANIZATIONS (1931) 663, 667; REPORTS OF COMMITTEES OF THE NATIONAL ASSOCIATION OF LEGAL AID ORGANIZATIONS (1923) 89, 91.

⁷³ The major proposals are an extension of the legal aid society plan above described and the experienced attorney service mentioned hereafter.

⁷⁴ EHRMAN, *THE UNTRIED CASE* (1933) 231 (an illustration of lay participation); 6 HOLDSWORTH, *HISTORY OF ENGLISH LAW* (1st ed. 1927) 420.

⁷⁵ N. Y. Times, Aug. 1, 1938, p. 1, col. 1.

⁷⁶ GISNET, *THE LAWYER TELLS THE TRUTH* (1931) (see especially Introduction by Norman Thomas).

⁷⁷ Nelson, *Drafting of Real Estate Instruments: The Problem from the Standpoint of the Realtors* (1938) 5 LAW & CONTEMP. PROB. 57.

⁷⁸ Clark and Corstvet, *The Lawyer and the Public* (1938) 47 YALE L. J. 1272.

⁷⁹ See CARR-SAUNDERS AND WILSON, *Professions* in 12 ENCYC. OF SOC. SCI. 476, 479.

anticipate and prepare rather than be forced into action by hostile public clamor.

The most serious objection is that there is no substantial need for any service of this sort. Whether there is or not is a question of fact to be determined like other questions of fact, upon patient gathering and evaluation of data. It is not wise to assume anything but rather to conduct a fact-finding survey.⁸⁰ Such an investigation should be directed to the client group as well as to the lawyers.

As was to be expected the early proposals for the establishment of such organizations as the legal service bureau have met with a normal scepticism. While the National Lawyers' Guild favors the plan,⁸¹ the American Bar Association still has it under consideration.⁸² Information about the progress of alternative proposals is not available. Nor have the experiments in Los Angeles⁸³ and throughout the State of Illinois⁸⁴ proceeded far enough to indicate whether they provide an adequate solution.

From the whole discussion certain matters seem clear. There is a distinction between legal aid work and legal service bureau work. It is not to be assumed that by joining the two in one office the problem will be solved. Rather it seems that such a partnership would place legal aid work in a difficult position. Already it has been accepted by the bar as an humanitarian program peculiarly appropriate to the functioning of the normal idealism of the high minded practitioner. Again and again it has made clear its unselfish attitude toward cases it handles. A legal aid society has no problem of self-interest because it differs from other law offices in not sending out bills. The legal serv-

⁸⁰ ECONOMICS OF THE LEGAL PROFESSION (1938) 155 ff., cited *supra* note 26.

⁸¹ Resolution Relating to Collective Professional Action in the Interest of the Public and Bar, adopted at the first annual convention of the National Lawyers' Guild, February, 1937:

"To meet the needs of those able to pay moderate fees we believe it desirable to encourage the formation of legal clinics, offering services in civil and criminal cases, and recommend the study of ways and means and of necessary safeguards to accomplish that end."

See also *Proposal for a Legal Service Bureau for the Metropolitan Area of Chicago* (1938) 1 NAT. LAWY. GUILD Q. 149.

⁸² *Report of the Special Committee on Legal Clinics* (1938) ADVANCE PROGRAM 61ST ANNUAL MEETING A. B. A. 195.

⁸³ The literature issued by the Los Angeles Bar Association in April, 1938, describing the "Experienced Lawyers List" indicates the following more significant elements: The purpose is "to furnish lawyers and laymen upon request the names of lawyers experienced in the general practice of the law or in some particular branch thereof. . . . Any member of the association in good standing and whose current dues are paid, who has been continuously engaged in the active practice of the law for not less than five years, may apply for registration . . . upon written or personal application by any lawyer or layman to the office of the association, the name of the registrant first in order alphabetically . . . whose card is then on file in the division of the law relating to such application shall be given to such applicant."

⁸⁴ Stephens, *The Lawyer and His State Bar Association* (1938) 24 A. B. A. J. 921.

ice bureau with twin purposes of public service and of improving the economic condition of the bar is in an experimental stage where it must learn how to balance the two objectives. Until this balance has been reached it is well to have the enterprise make its own way on its own merits where both supporter and critic may have a fair chance to observe it.

Several other considerations deserve mention. There seems to be no suitable way for determining the facts short of establishing some sort of legal service bureau on an experimental basis and observing it in operation. If only clients who now go to private attorneys frequent its doors, we may assume that it is not necessary. If a new group of clients arises, then the need will be established beyond question. The administrative difficulties of limiting the operations of a legal service bureau in jurisdiction and scope loom large. Perhaps these difficulties may appear more serious in anticipation than they would in an actual operation. Some persons tend to view the formation of the bureaus as an entering wedge for the socialization of the law. It seems that there may be a misconception here of the word "socialization". If the organized bar operates and controls the bureau and if the process of selecting lawyers to serve on the staff is not unreasonably discriminatory, the bureau would seem to be readily distinguishable from a similar organization under control of the political forces of the state or from a taking over of the legal profession by the state with all lawyers on a salary. The medical profession has tried out group practice for some years without having the matter become one for state control, and the distinction between this group practice and public health services is clearly recognized. Whether a legal service bureau would increase the number of paying clients or would result in taking practice away from the individual lawyer is again a question of fact. It might, if properly organized and operated, tend to create a standard for legal work which would be of value in eliminating inefficient or improperly trained lawyers.

The problem seems to narrow down to this. Some sincere lawyers think a need exists and that the legal service bureau is a suitable remedy. Others, equally sincere, deny that there is a substantial need, and contend that if a need does exist, which they question, a better remedy can be found. The profession, in a sense, is being called upon to make a decision one way or the other. The consequences of a mistake in decision may be serious. It would seem the part of good judgment to gather all available pertinent facts so that the decision when it is made may be properly buttressed.

There is enough *prima facie* evidence of the need to justify the establishment of an experimental bureau. If it operates for a period

of five years, its staff will accumulate experience, administrative problems will be solved, policies will be tried and tested, and objections will be weighed. If at the end of the period the collected data demonstrates that the extent of the need has been exaggerated, the facts will be at hand to answer the proponents. If the need is clear, the first step will have been taken in a new service by the bar to the citizen of moderate means. There will be new evidence of the broad, farsighted, statesmanlike interest of the legal profession in the public welfare. Here is an opportunity for courageous leadership on the part of the bar.