

## Will "Socialized Law" Be Next?

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"The issues of professional vs. socialized medicine are now being drawn and settled in the public mind. One who is not a doctor may wonder how much of this conflict may have been avoided if the doctors themselves had done more toward broadening their professional service at an earlier period before the issue was forced on them. Assuming that a similar prospect confronts the bar, in which the issue of professional or socialized law will be raised, the lawyers may well consider the advantages to the legal profession of doing its thinking and planning now, rather than waiting till some other group or agency takes the initiative."

CONSERVATIVELY MINDED LAWYERS for some time, have been remarking upon the rising tide of popular support for programs in the field of socialized medicine. They wonder whether this may be a first step toward the "socialization" of all the professions; a program of socialized law may require extensive and perhaps unacceptable professional readjustments. They reflect that it can happen here. On the issue—whether the professions are competent to meet the specialized needs of the public or whether other agencies must be established by laymen, conservatively minded lawyers seem to have faith in professional auspices.

If these lawyers mean what they say, they are faced with the question whether every one will accept the lawyer's appraisal of the effectiveness of the present legal system; or whether some professional effort is needed to prevent a more or less substantial revolution in the legal field. The medical profession is now going through a difficult period,<sup>1</sup> while the issues of professional vs. socialized medicine are being drawn and settled in the public mind. One who is not a doctor may wonder how much of this themselves had done more toward broadening their professional service at an earlier period before the issue was forced on them. Assuming that a similar prospect confronts the bar, in which the issue of professional or socialized law will be raised, the lawyers may

well consider the advantages to the legal profession of doing its thinking and planning now, rather than waiting till some other group or agency takes the initiative.

One desiring to supplement a professional service and substitute a socialized program will likely single out an unmet need which is felt by large groups of people and by dramatizing specific horrible examples build up in the public mind the belief that a change in system is necessary. The profession—on the defensive in such a contest—has an uphill task to justify the status quo. Professional prestige is likely to suffer, no matter who is the ultimate victor. There might be an attack upon the profession itself as a reactionary group blocking popular progress.

Let us assume that a program for socialized law either is now in the making or is not unlikely to be made in the not too distant future.<sup>2</sup> We may also assume that it may be directed along lines similar to those now employed in support of socialized medicine. The delay, expense and complicated nature of the administration of justice have long been objects for public criticism.<sup>3</sup> Persons in a position to know have observed groups of our fellow citizens who, because of poverty, are not able to pay their way in their efforts to obtain their legal rights.<sup>4</sup> Many of these fellow citizens do not seek the aid of a lawyer.<sup>5</sup> Specific examples

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1. American Medical Association, v. U. S., 63 Su-

preme Ct. Repts. 326 (1943); 29 Journal A.B.A. 150.

2. The literature of criticism against the bar—always substantial—has increased in recent years.

3. Nearly thirty years ago Reginald Heber Smith gave a sympathetic statement of the situation in his book "Justice and the Poor" published by the Carnegie Foundation, 1919.

4. The Standing Committee on Legal Aid Work of the American Bar Association for years has published as a part of its annual report the available statistics.

would be useful ammunition in the hands of resourceful pleaders.

It is hard to deny the proposition that in a democracy justice should be available in fact to every one alike in quantity and quality sufficient for his individual needs. Lawyers in bar association meetings may defend the existing order; insist that the results being obtained under the present system are about as effective as one can expect in a human institution; point out inaccuracies in the statements of the proponents of the socialized program; and deplore the limited knowledge of the members of the general public. But such deliberations are not necessarily available to our fellow citizens. Probably every layman already has in his mind a picture of the administration of justice gained in part from the police courts, newspaper headlines and motion pictures. He reasons from this mental picture. Mental pictures are stubborn facts to be dealt with at our peril. On such a basis the issues between socialized and professional law will be decided. It is our opportunity as lawyers to see that those mental pictures are accurate. If they are accurate, the effect will be favorable.

How do we lawyers know whether the pictures accord with the facts as we see them and with our own mental picture of the same process? We should assume, if we are ordinarily prudent, that a substantial number already are not too favorable to the existing system. Perhaps the most fruitful step for us to take would be to head off an attack, to disarm our critics, and, by our own improvements to the present system, place ourselves in a position to provide statistical answers.

Since the movement for socialized law, if and when it comes, will probably be based at least in part on the inadequacy of the present legal system with respect to poor people, it is well for the members of the bar to examine the existing methods of providing for poor persons in search of justice and to rectify, of our own volition, any observable defects.

5. Joseph M. Weresch in "The Legal Five and Dime," 42 Reader's Digest, March, 1943, mentions that the Philadelphia Neighborhood Law Office reports during its first year of operation that over 80% of its applicants had never been in a law office before. In the hands of a resourceful debater this situation would arouse much popular interest.

6. With the advent of the present war the handling of legal aid problems of the servicemen and their dependents was entrusted by the American Bar Association not to its Standing Committee on Legal Aid

For many years these facilities have consisted of a group of legal aid societies, gradually established in the larger cities, and the individual professionally minded lawyer who generously volunteered his time and skill without financial return. The inadequacies of this system when viewed as a nationwide service are obvious. Legal aid societies exist only in the more thickly settled areas and not in all of them. The time of the volunteer lawyer which can be devoted to free cases is severely limited by his own economic needs. In consequence—and in spite of all this fine work that has been and is being done—the problem of free legal service for poor persons in this country has not been met. There are no figures to show how many people have been denied justice because of poverty; but a persuasive critic could build a strong argument on a few striking illustrations. Lawyers do not have sufficiently comprehensive figures on which to base a conclusive reply. It seems that legal aid work, long a Cinderella of the legal profession,<sup>6</sup> is now available as a practical means of heading off possible programs of socialized law. There are at least three supporting arguments for using legal aid for this purpose. Legal aid work already is the humanitarian plank in the public relations program of the organized bar. Through legal aid service the bar can make more friends at less expense than in any other way.<sup>7</sup> The professional service can be provided more economically than a program of socialized law.

The establishment of organized legal aid work in a single county eliminates the need for a socialized law program in that county. Establishment of organized legal aid work in every county in the United States would be a complete answer to this most persuasive basis for socialized law. If we succeed in doing the very thing our critics claim we are not doing, we shall have disarmed them.

Having now suggested a problem and a solution, there remain to consider: what we mean by the word "organized" when used in con-

Work but to the newly established Committee on War Work. The services rendered by the various State Bar Association Committees on War Work have been extensive. They would form an admirable nucleus for the establishment of the comprehensive legal aid system suggested in this article. In most cases all that would be necessary would be to continue them as permanent committees.

7. The Committee on War Work of the North Carolina Bar Association has contacts with several thousand persons a year.

nection with legal aid work; and what are the legal and ethical justifications for such work.

#### NATURE OF ORGANIZED LEGAL AID WORK

Where a legal aid organization exists, we should inquire whether or not it is meeting the full local need.<sup>8</sup> If not, then bar association help is needed for improvement of quantity or quality, or both. Elsewhere the comparison is between volunteer legal aid work and some simple form of organization.

Traditional informal free legal service rendered by individual lawyers in their spare time to poor persons is a credit to the individual lawyer rather than to the profession. Many lawyers announce that no poor person is ever turned away from the doors of their offices without having received a reasonable amount of free service. There is no question about this. Our inquiry is whether, assuming such service, the community problem is being solved and here the opinion of those who have examined the matter is in the negative.<sup>9</sup> In communities where legal aid societies are established there is no effort to interfere with applications for free service in private law offices. Rather, the lawyer avails himself of the legal aid facilities.

The trouble lies deeper—not with the willing lawyer, but with the timid, uninformed, bewildered client. The aggressive litigious applicant may be counted on to demand his rights under any and all circumstances—even when he makes a nuisance of himself. But he is not the typical legal aid client. The bona fide member of this group always has too much difficulty finding his way to the willing lawyer. Even if he knows that a particular law office is ready to serve him he finds it embarrassing to sit in the waiting room alongside of clients who can pay a fee. Too often he never comes in. If he

and his fellows did make a habit of coming in, their number probably would be so great as to make it necessary for the willing lawyer to decide between his free cases and his paying clients. In the long run there can be only one answer to such a question.

Organized legal aid work under professional auspices and in its simplest form consists of two parts:<sup>10</sup> a part-time paid receptionist and a committee of volunteer lawyers. The receptionist is readily discoverable by applicants; screens out cases and persons not entitled under the rules to the free service; keeps a few basic records. The committee of lawyers distributes the load among its members; handles the individual cases; adopts and enforces standards and policies. If a more elaborate organization is needed in a given community the foregoing is a point of departure.<sup>11</sup> The efficiency of this plan in comparison with the volunteer lawyer system is such as to justify its adoption by the bar. The economy of the plan as compared with a program of socialized law commands attention. Such an agency cares for the cases, makes friends for the lawyers and supplies the statistics needed in answering critics or interested laymen. But more than these, it builds in the minds of the clients and their friends a picture of the administration of justice at once accurate and favorable.

#### LEGAL JUSTIFICATION FOR FREE LEGAL AID

The usual justification for support of organized legal aid work by the bar is drawn from the fields of religious duty<sup>12</sup> and professional tradition.<sup>13</sup> Legal justification comes from the United States Constitution<sup>14</sup> in such phrases as the "equal protection of the law" and in Bills of Rights in State Constitutions which spell out the idea.<sup>15</sup> Statutes implement the concept in

8. An example of a legal aid survey is contained in 45 Reports Penna. Bar Association 161, 162, (1939).

9. Some of the available material is in the reports of the State Bar Committees on War Work. They reveal thousands of cases which previously were not matters of record.

10. "Wartime Opportunities in Legal Aid Work," 27 J. Am. Jud. Soc. 120 (1943).

11. Descriptions of forms of organized legal aid work are contained in:

"Legal Aid Bureaus; A Manual of Practice," published by the Public Administration Service, Chicago.

"Forms of Legal Aid Organizations in Middle-sized Cities and Smaller Communities," published by The National Association of Legal Aid Organizations.

12. "Defend the poor and fatherless; do justice to the afflicted and needy. Deliver the poor and needy; lead them out of the hand of the wicked." Psalm 82: 3, 4.

John H. Wigmore, How Many Lawyers were ever made Saints, 23 Ill. L. R. 199, 18 A.B.A.J. 794.

13. For a description of Legal Aid Work in England, see E. J. Cohn, "Legal Aid for the Poor," 59 Law Q. R. 250 (1943).

14. U. S. Constitution, amendment No. 14, Sec. 1. "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws."

15. For example, the Constitution of the State of North Carolina, Art. I, Sec. 35, provides:

"All courts shall be open; and every person for an injury done him in his lands, goods, person, or reputa-

civil cases.<sup>16</sup> The work of legal aid organizations and volunteer lawyers has already been mentioned. In criminal matters, where litigation is the rule rather than the exception, specific constitutional guaranties and the "due process" clause are invoked.<sup>17</sup> Public and voluntary defenders and the assigned counsel system perform the actual service.<sup>18</sup> Legal aid work is a device used to make good to the individual American a constitutional promise.

The responsibility of the lawyer to participate in this work arises in part from the oath which he takes upon his admission. Even more than that his obligation is fixed by the Unauthorized Practice Statutes.<sup>19</sup> Since the equal protection of the law is promised, and since only a lawyer may practice law, it is clear that lawyers are the only ones who can perform. Every time a single person fails to receive the equal protection of the law there is a lag between our promises and our performance. Multiply that by the number of persons each day who fail to receive their legal rights and the result shows both the extent of the problem and the availability of such material to the shrewd critic.

It is probable that most lawyers find the rendering of such free service a pleasant privilege: either because it has a legal basis or because its roots go back to religious precepts and professional tradition.

#### THE ETHICAL BASIS FOR LEGAL AID WORK

Apparently only two aspects of organized legal aid work have come to the official attention of the Committee on Ethics and Grievances of the American Bar Association.

Is it proper for a lawyer to handle legal work without charging a client a fee?

Is it proper for a legal aid organization to inform the public that its services are available?

The answer to both of these has been in the affirmative.

In respect to the charging of fee, the Commission, shall have remedy by due course of law, and right and justice administered without sale, denial or delay."

16. A collection of these laws was made some years ago for the League of Nations and is published in "Legal Aid for the Poor," V Legal, 1927 V 27, p. 295 ff. Publication of the League of Nations. Some of these laws provide for the assignment of counsel or the payment of special attorney fees. Others permit the waiver of court costs for paupers. Still others establish specialized commissions and courts where the presence of counsel is unnecessary.

mittee was early faced with the practice, customary in some bar associations, of establishing a minimum fee schedule. In Opinion 28 (1930) it made a pronouncement in the course of which it declared: "It is the committee's opinion that any obligatory fee schedule must necessarily conflict with that independence of thought and action which is necessary to professional existence."

More recently in discussing the work of committees which render free legal aid to service men and their dependents, it said in Opinion 259 (1943):

"The fundamental question seems to be whether a lawyer may render services gratuitously to a client who is able to pay for such services. Absent any improper motive we see no ethical impropriety in a lawyer serving the client gratuitously. Here, we assume the motive is to contribute to the war effort and improve the morale of the men in the service and their dependents."<sup>20</sup>

On the question of advertising, the committee has faced a variety of problems. In 1935 in its Opinion 148 the committee held that offering publicly to render legal services without charge to citizens who are unable to pay for them is not unethical. In the course of its Opinion, the committee took occasion to say:

"The defense of indigent citizens, without compensation, is carried on throughout the country by lawyers representing legal aid societies, not only with the approval but with the commendation of those acquainted with the work. Not infrequently services are rendered out of sympathy or for other philanthropic reasons, by individual lawyers who do not represent legal aid societies. There is nothing whatever in the canons to prevent a lawyer from performing such an act, nor should there be. Such work is analogous to that of the surgeon who daily operates in the wards of the hospitals upon patients free of charge—a work which is one of the glories of the medical profession."

More recently in 1939,<sup>21</sup> the chairman of the committee wrote:

17. For a discussion, see 28 Va. L. Rev. 1005, discussing U. S. ex rel McCann vs. Adams, 126 F. (2d) 774 (1942).

18. The public defender and the voluntary defender respectively are described by the Late Mayer C. Goldman and by Louis Fabricant in 205 The Annals 16, 24 (1939).

19. The effect of these Statutes is to give the licensed attorney a monopoly of law practice.

20. See also Opinions 205 and 227, to the same effect.

21. 25 Jour. A.B.A. 62.