tensive questionnaires showing the degree of acceptance in each jurisdiction of the minimum standards of justice approved by the Association. Thus the raw material for a preliminary report on a considerable part of the third topic of our service, the judicial service of the bar, is in such shape that it seems likely that, with the continued cooperation of the Junior Bar Conference, the report may be presented to the profession and the public within the next twelve months.

Meantime, the work of the Survey will be pushed on many fronts with the cooperation and support of leaders and experts in many fields of professional activity, with the hope that by the time of the next annual meeting of the Association in Seattle we will be able to place first reports on most, if not all, phases of the Survey in the hands of interested members of the profession and of the public.

Promoting Legal Aid Work

JOHN S. BRADWAY

The Inter-American Bar Association has already at an earlier meeting considered the nature of legal aid work and certain aspects of the theory behind it.[1] Material describing the manner in which it is carried on in some of the countries of the Western Hemisphere is also available. The distinguished value of these contributions makes it unnecessary here to attempt to repeat the process. Rather, having established a point of departure, it is our privilege to proceed. In effect we have said—Legal aid work is worthy of our attention. Now our question is—What shall *we* do about it?

With some hesitation I suggest the following definition[2] of legal aid work—the professional privilege resting peculiarly with the organized bar, of supplying a standard quality of justice according to law to those persons who lack the means to pay for it. This definition poses three questions:

Why should this task be considered a peculiar privilege of the organized bar?

What is a standard quality of justice according to law?

How shall we determine who are able to pay for this service?

Of these questions a hasty answer may be given here to the second and third. Justice according to law is not merely a matter of litigation. I suggest it covers the full range of contact between the individual and the law. Thus, advising a person as to his legal rights, adjusting controversies out of court, drafting remedial and preventive legislation, solving his problem by the use of inter-professional cooperation where the resources of the field of law are not equal to the task—these are

This is a paper prepared for delivery at the Fifth Conference of the Inter-American Bar Association, to be held in Lima, Peru, November 25 to December 8, 1947. Professor Bradway is director of the Legal Aid Clinic of Duke University, former secretary of the National Association of Legal Aid Organizations, and a frequent contributor of articles on this subject in this and other legal magazines.

1. Themes and Resolutions of the Fourth Conference of the Inter-American Bar Association (1945). Committee XII, Activities of Lawyers Associations

"a. that the councils should create and maintain legal aid offices for the poor.

"b. to point out to the bar associations affiliated with the Inter-American Bar Association the advisability of taking steps to have promulgated in their respective countries the necessary provisions for the fulfillment of the following principles:

1. Compulsory intervention of the legal profession in all legal matters, at the same time providing the services of legal assistance for the poor."

Florencio Gutierrez Solas, "Legal Aid to The Poor", Vol. II, Pages 893-946, Presented at Committee XII on Theme 3, Fourth Conference 1945.

See Proceedings of the Havana, Cuba, Conference, English Edition, Pages 392-396 for article by the present writer on International Legal Aid Work; Proceedings of the Fourth Conference at Santiago for a paper by Harrison Tweed, Vol. II, Spanish Edition, Pages 949-959.

2. A definition frequently used by legal aid organizations in the United States as their purpose clause reads:

"to render legal aid gratuitously, if necessary, to all who may appear worthy thereof; and who are unable to procure legal assistance elsewhere; to assist persons without means in the pursuit of any civil remedy, and to promote measures for their protection."

3. In the United States a movement for low cost law offices is making headway as a solution to this problem.

examples of justice according to law.

Ability to pay for legal service is hardly a matter for a rigid rule. It is not a simple problem in which all persons are divisible into those who can and those who cannot pay. In between is a group of persons whose ability to pay is a matter upon which observers may legitimately differ.[3] The problem, I suggest, is an administrative matter in each community. On the basis of trial and error a better working standard can be established than in any other way.[4]

Coming back to the first question, why this task is to be considered a privilege of the organized bar, there is more to be said. The responsibility, I suggest, rests upon the bar for two reasons. One, the widespread character of the service beyond the area of litigation; two, tradition.

There is no reason to disparage the leadership of the judges in this enterprise. Without their fearless, impartial and highly intelligent supervision the poor man would have a difficult time indeed in obtaining the equal protection of the law in litigated matters. No plan for the extension of legal aid service should fail to recognize the essential character of the contribution which our judges have made and will continue to make. However, the records of legal aid organizations in the United States indicate that perhaps nine out of ten requests for legal aid in the civil field are disposed of without court action. Many criminal cases are also adjusted without a trial.[5] In the light of these figures I am inclined to favor bar association responsibility for this work at least in its non-litigation aspects.

Traditionally lawyers have assumed this task as a professional function.

PROGRESS IN INTERNATIONAL LEGAL AID WORK

It is probable that the Roman lawyer practiced law as a civic duty.[6] He was the only source from which the public could ascertain rights and duties. His fees were, at least ostensibly, a matter of minor concern. Statutes attempting to enforce such a position were not unknown.

The medieval ecclesiastical lawyer, we are told, practiced his profession for the glory of God.[7] To a man so motivated service to persons from whom no fee could be anticipated was no doubt an opportunity to serve. St. Ives and others are outstanding examples.[8]

The English sergeant at law practiced law in part for the glory of his profession. We are told that he was an officer of the court and that he accepted the privileges of his position with an obligation, when required, to render free legal assistance to persons unable to pay a fee.[9]

In 1920 the American Bar Association listened to a series of four papers by distinguished lawyers in support of legal aid. There the historical argument was summarized in these words:[10]

"The realization that there exists this close relationship between legal aid work and the administration of justice has come but slowly. For a long time we were misled by the fact that legal aid organizations were supported by private philanthropy into thinking of them as just one more form of charity; we failed to see through the form to the substance and to appreciate that there was involved the great distinction between giving such things as fuel and clothing which is charity and giving justice which is the supreme obligation of government."

Thereafter the Standing Committee on Legal Aid Work of the American Bar Association has functioned as an indication that the obligation of the bar has been recognized and assumed.[11]

I have restricted my comments to the progress of the idea as an Anglo American concept in my own country because being more familiar with it I can speak with greater assurance. No doubt the record in all the other countries represented here reflects equal credit

4. The experience of the legal aid organizations in the United States on the subject of "who are legal aid clients and what should be done about those who are not," is contained in a volume published by the National Association of Legal Aid Organizations in 1939 entitled "Legal Aid Work and the Organized Bar".

5. The National Association of Legal Aid Organizations in the United States gathers and publishes statistics respecting several hundred thousand of these cases annually.

6. II Thornton Attorneys at Law, P. 688; Cicero, "Pliny and the Roman Bar," 25 Mich. S.B.J. 65 (1946).

7. Roscoe Pound, "The Legal Profession in America," 19 Notre Dame Lawyer 339, 354.

8. John H. Wigmore, "How Many Lawyers Were Ever Made Saints", 18 A.B.A.J., 794.

9. Holdsworth, *History of English Law,* Vol. 2, p. 491.

10. Reginald Heber Smith, "Legal Aid and the Administration of Justice", 45 A.B.A. Rep. 225 (1920).

11. The committee publishes an annual report as a part of the proceedings of the association.

upon the profession for its humanitarian interests and its devotion to ideals which bring it public respect.

But there still remains the need for explaining the word "privilege". Why should it be a privilege for the bar to do this work? I suggest the answer leads us from the area of pure idealism into that of enlightened self interest.

There may be those who assume that the lay public exists for the benefit of the legal profession. In the field of my observation the reverse is true. The lawyer exists because the public recognizes a social and economic need for such a public or quasi public official. In this respect we are in somewhat the same position as any of the other learned professions.

For many centuries the legal profession has been able to demonstrate its continuing usefulness to the public. But at least in my country it has had its critics.[12] They have, perhaps, some basis for their attitude, though probably not so much as they might think. To meet this criticism the bar in my country has devoted a great amount of time to quiet, dignified effort in the public service without publicity and without thought of reward except a sense of personal satisfaction in a task well done. Part of this work is in the humanitarian field. It may be said that legal aid work is the humanitarian plank in the public relations program of the organized bar in the United States.

In the last fifteen years a series of statutes in the various states of the United States has broadened the definition of "practicing law;"[13] has imposed graver punishments upon unauthorized persons who practice law; has given the legal profession, in effect, a monopoly. It is my argument that along with the obligations of ownership of a monopoly goes the privilege of making available to the public an indispensable service. It is difficult to see on what other basis a permanent monopoly could be expected to continue.

Whether similar conditions exist in other American countries or not at least one may argue that there is an economic basis of enlightened self interest supporting the bar association's privilege to see that free legal aid is rendered to those members of the general public who cannot afford to pay for it.

Assuming then a rational ground for the interest of the organized bar in seeing that no one is denied justice because of poverty the way is open to consider an affirmative program.

A LOCAL BAR ASSOCIATION PROGRAM

There seems to be no reason to labor the point that the task of providing free legal aid service to the indigent public insofar as it is a concern to the legal profession lies at the door, not of the individual lawyer, but of the bar association. The role of the individual lawyer is to aid in leading the bar association to an understanding of how it may best perform its function. A suggested program anticipates bar association interest on three levels—local, national, and in the present instance, international.

Locally the question is as to the simplest and least expensive form of organization necessary to meet the particular need. The following is merely suggestive.[14] The community to be served should be small enough so that the poor man, on foot, may make his way without too much inconvenience from his abode to the place where the service is available.

There should be a receptionist who in time would become known to persons of the legal aid class. They do not learn of services available for their benefit through the media of communication which more fortunate persons habitually employ. This receptionist would screen out those not entitled to the service whether because of financial or other considerations. He would also keep whatever records were necessary. Beyond these functions his major task would be to refer applicants to the membership of a committee of lawyers appointed by the local bar association for the purpose.

This committee large or small would serve gratuitously and would render the necessary service whatever it might be. When the demands grew so large that such a committee was overwhelmed the next step would be to secure funds to employ one or more lawyers

12. There is no need here to list the various publications in the literature of criticism, but they are available for one who wishes to study them.

13. A collection of some of these published by the American Bar Association in 1943 is of interest: Hicks and Katz, "Unauthorized Practice of the Law".

14. Some of the legal aid organizations in the United States are of this general type. During World War II the bar association Committees on War Work, which rendered legal aid to servicemen and their dependents, were generally of this type.

to handle the work. But at this point the organization develops into something more elaborate than we are called upon to consider here.

Starting with this very simple and inexpensive form of local organization one may of course expand it to meet the needs. There would seem to be no reason to fasten upon the legal profession itself the sole responsibility for financial support of any such organization. The physicians do not support all the hospitals, free clinics, out patients' departments out of their own pockets. The clergymen are not called upon personally to finance their own churches and places of worship nor the missions and foreign missions. It is enough if the lawyers give some of their time, skill and energy.

THE NATIONAL BAR PROGRAM

On the national level the role of the bar association would again be the appointment of a committee. But this committee would probably have different functions from those of the local committee just mentioned. Nationally the work to be done falls into certain categories:[15]

Maintaining a continuing study of the administration of justice to see whether poor persons are in fact securing the equal protection of the law;

Promotion of preventive and remedial measures to aid poor persons in the protection of their legal rights;

Encouraging the establishment and maintenance on a standard scale of local organizations where needed;

Acting as a clearing house for cases and ideas; and

Cooperating with other agencies also interested in the subject.

Perhaps it is sufficient here merely to suggest the points without attempt to elaborate them.

SUGGESTED PROGRAM FOR AN INTERNATIONAL BAR ASSOCIATION

But our interest is primarily on the international level. Perhaps one may point to the objectives of the Inter-American Bar Association as a specific purpose including legal aid service. It is said in Article I of The Constitution that the organization exists *inter alia* "to uphold the honor of the profession of the law".

More specifically the same tasks which confront a national bar association committee dealing with legal aid work recur here on the international scale. The study of the development of the work in the Western hemisphere may be a matter of an annual report to which each country will contribute a section. During the years a series of these reports would be of considerable value in indicating trends and giving appropriate recognition to advances in the respective countries. Perhaps a friendly and healthy rivalry might result.

The legislative task deserves mention. There are two phases of it. One is the creation of rights and the machinery for administering and enforcing them.[16] The other is legislation directed to certain abuses. A committee of the Inter-American Bar Association may well prepare a model Bill of Rights for the poor man and use it for the information of national bar associations. At the same time there are certain legal relations deserving study and perhaps the drafting of model bills of a remedial or preventive character.

The relation of lender and borrower is one of these. In the United States the loan shark is a serious menace. One method of dealing with him is to require supervision of the process of lending to prevent unfairness. Perhaps there are other better methods of solving the matter.

The relation of the litigant to the problem of court costs and fees is another deserving attention. What are the elements of a model statute providing that the poor man in certain cases may be relieved of the need for paying court costs? No doubt there are many statutes on the subject which would serve as a starting point for a comparative study.

There is no reason to elaborate the list. But one may reflect that since the compilation made by the League of Nations in 1927[17] no comparable study has been made. No doubt there is much new material waiting to be gathered. The three obstacles of delay, court costs, and expense of a lawyer still confront the poor man and it may take a long list of new statutes to establish his rights.

15. This is substantially the scope of the jurisdiction of the Standing Committee on Legal Aid Work of the American Bar Association. By Laws, Section 11.

16. Bradway and Evans, "International Aspects of Legal Aid", 38 Am. Jour. Internat'l Law 462 (1944).

17. "Legal Aid for the Poor". Publication of the League of Nations V. Legal 1927. V. 27.

Promotion of new organizations to supply legal aid work is not directly a task for an international bar association but it is possible for such a body to make a contribution. In the handling of the work locally there are certainly many techniques learned by the hard trial and error method. If such experience were available in published form new groups need not repeat the same mistakes.[18] A committee might well prepare a pamphlet or series of pamphlets describing the type of organization found successful in each of the countries and enumerating the standards and policies by which they are operated. The value of the resulting diffusion of information would easily outweigh the trouble of compiling the data.

Finally an international bar association[19] committee could profitably render its most distinguished service as a clearing house for information. No doubt there are already cases of poor persons in one country which for their solution require cooperation of lawyers in one or more other countries. A committee supervising these efforts to achieve justice for the poor on an international level should find its time put to good advantage.[20]

SUMMARY

In conclusion one may summarize the argument of this paper. It suggests that legal aid work for poor persons is a privilege of the organized bar, that support of the legal aid movement by the bar association is based upon considerations of idealism and enlightened self interest. It suggests the nature of a legal aid program by (1) a local bar association (2) a national bar association and (3) an international bar association.

It proposes concretely a committee or suitable sub-committee of the Inter-American Bar Association which shall have the following general and specific duties at the present time.

a. to maintain a continuing study of the administration of law; to determine whether in fact persons are denied equal justice according to law solely or largely because of poverty; and specifically to secure from the various countries in the Western hemisphere reports showing the progress made toward the ideal goal.

b. to encourage the establishment and maintenance on a standard scale of local legal aid organizations in the various countries, and specifically to gather and distribute literature describing forms of organization, techniques, methods, standards and policies.

c. to act as a clearing house for cases and ideas and in particular to compile a list of lawyers and organizations in the various countries with whom lawyers in other countries may correspond about the handling of specific cases.

d. to cooperate with other agencies interested in the same general project.

18. The publications of the National Association of Legal Aid Organizations in the United States supply some of this material.

19. The International Bar Association was organized at New York on February 17, 1947 (See American Bar Association Journal, February, 1947, Vol. 33, Page 125, 187), but the reference in the text is particularly to the Inter-American Bar Association.

20. The most obvious example of this type of international cooperation is of course the system for aiding servicemen during World War II. Part of that material is available in reports of the Committee on War Work of the American Bar Association. Other parts of it are buried perhaps permanently in the files of lawyers throughout the United States.

Law itself is an inert and powerless thing. Law does not act; it cannot act. It is nothing more than a statement of acts which human beings are expected to perform or to refrain from performing. When it prohibits certain acts, as crimes, it does not punish those who disregard the prohibitions; it merely declares what other persons shall do in order to punish the violators. Whether or not that punishment is ever imposed, whether or not the criminal is ever brought to justice according to the law's provisions, is entirely a matter of human effort. It depends not upon the law's action, but upon the action of those whose duty it is to carry out the law's provisions.—*John Barker Waite.*