THE UTILITY ASPECT OF ORGANIZED LEGAL AID WORK

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Our fundamental public documents, our Constitutions, Bills of Rights and the like, contain many essential promises. One of these declares, in effect, that the door to the temple of justice-according-to-law shall never be opened only to those who are able to use a golden key.[1] Rather the doorway shall at all times be unobstructed for the entry of every one, regardless of his economic condition, who has a legitimate grievance for which the law provides a remedy.[2] We do not expect that this, or any other of the fundamental promises, will be self executing. When it appears one is not being made good, it is proper for us to question, not so much the merits of the promise, but whether the agency charged with its implementation in the affairs of men has in some respect failed.

Over the centuries, in Anglo-Saxon jurisprudence, the legal profession has come to assume a responsibility for the administration of justice-according-to-law. The exclusive right of the bar to possession of this area of defending the public from attacks of injustice has presented to the lawyer a peculiar challenge, a unique privilege and a splendid opportunity for idealistic service.[3] In this article our interest is with a particular portion of that field—the area in which we lawyers are concerned with the task of providing the poor

1. "The Equal Protection of the Laws." Article XIV, *U. S. Constitution,* Sec. 1.

2. " . . . every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law and right and justice administered without sale denial or delay." *Constitution of Pennsylvania,* Article 1, Sec. 11.

3. The traditions of the bar in this respect come down to us from: the Roman lawyer who gave his service as a civic duty, the Ecclesiastical lawyer of the middle ages to whom justice had a spiritual connotation, and the Anglo-Saxon lawyer who took pride in contributing to the prestige of the profession of which he was a member.

man with the same type and quality of justice-according-to-law for which other people are prepared to pay.

The reasons impelling the individual lawyer to receive as his clients, without discrimination, both those who are able and those who are not able to pay a fee are certainly idealistic.[4] It is unlikely that anyone of us goes through a long process of introspection in an effort to discover and clarify his own motives. He probably reaches his conclusions simply: this is traditionally proper professional conduct;[5] a lawyer as a quasi public officer of the court has responsibilities;[6] the practice of the law is a profession—not merely a money-making business;[7] my conscience will rest easier. Whatever the motivation, the result has been recognized as one of the finest traditions of this or any other profession.[8]

It was three quarters of a century ago when the question was first raised—Is *organized* legal aid work sufficiently useful—to the client, to the public, to the profession—to more than compensate for the inevitable time, trouble, money and effort required to sustain it. In 1876 the volume of legal aid requests in New York City was found to be so great that a group of persons felt it desirable to establish a society

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4. The oath of office presented by the Committee on Professional Ethics and Grievances of the American Bar Association ends with these words:

> "I will never reject from any considerations personal to myself the cause of the defenseless or oppressed or delay any man's cause for lucre or malice. So help me God."

5. In Roman, Ecclesiastical, and English law there are examples of situations where lawyers were prohibited from charging fees.

6. Costigan *Cases on the Legal Profession and its Ethics.* West Publishing Co. 1933, (2nd edition) P. 83 ff.

7. Cohen *The Law: Business or Profession* (1924).

8. Opinion 148 of the Opinions of the Committee on Professional Ethics and Grievances of the American Bar Association:

> "The defense of the 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 analagous 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."

to care for them—the first legal aid organization in this country of which we have record.[9] During the succeeding years, legal aid societies have spread to most of the larger cities.[10]

Viewing the organized legal aid movement from the standpoint of the bar, one may speak of it in terms of professional service by proxy. It is more difficult to rationalize a proxy movement as an outpouring of personal idealism than it is for a lawyer to justify similar activity in his own office. The initial task of proponents of the organized movement was to identify it as an integral part of the administration of justice and therefore within the purview of the legal profession. This step was taken in 1919 when Reginald Heber Smith published his significant treatise "Justice and the Poor." The response of the American Bar Association in 1920[11] and the Pennsylvania Bar Association in 1923[12] was to appoint committees on legal aid work and begin to exercise a degree of leadership and supervision.

To promote organized legal aid work has never been a simple task. There was "sales resistance" to overcome, traditional methods of thinking to be modified, first impressions to be revised in the light of more adequate facts. The process still goes on. In the large cities the answers were comparatively obvious. Statistics gathered by the legal aid organizations[13] show a volume of requests for the service much greater than individual lawyers could hope to handle if at the same time they desired to give proper attention to their financially remunerative work.[14] The organized bar also came to support organized legal aid claiming that

9. Maguire *The Lance of Justice,* a history of the New York Legal Aid Society, 1928.

10. See annual reports of the National Association of Legal Aid Organizations.

11. 45 Reports A. B. A., p. 217 ff (1920).

12. 29 Reports Pennsylvania Bar Association 223 (1923).

13. See Annual Reports of the Standing Committee on Legal Aid Work of the American Bar Association.

14. The estimate is made of one legal aid client for every 100 of population each year. This is probably true in the larger urban centers and may be true elsewhere.

when the individual lawyer serves the non-paying client, whatever recognition is afforded does not go beyond the lawyer himself. If the organized bar, on the other hand, has some degree of responsibility for the maintenance of organized legal aid work the bar may properly claim credit for what it does. From this line of thinking came the description of organized legal aid work as the humanitarian plank in the public relations program of the organized bar.

Among the reactions of many individual lawyers to the proposal for organized legal aid is the perfectly legitimate argument that in a rural county there is no justification for the establishment of an agency corresponding in size, budget, and staff to the Philadelphia and Pittsburgh legal aid societies. If that sort of agency were the only form in which organized legal aid work could be conducted the movement would have been confined to a very few of the very largest cities. If, on the other hand, we consider the service as one which should be developed on a county, instead of exclusively an urban, basis it is not difficult to conclude that the implementative device may be flexible, appropriate to the needs of the population and other local county conditions. An informal bar association committee, the existence of which is made known to the public which will use it and, provided it is really active, is often all that is required.

In the less thickly settled counties there is need to answer a further local objection—there is no legal aid problem here. Anyone taking this extreme position may be wrong. Consider the experience of attorneys in legal aid societies who meet thousands of clients a year. Their testimony is to the effect that many potential legal aid clients may realize that they are in trouble but it does not occur to them that a law office is the place to go for relief. If they do think of the law office they often dismiss it from their minds because they are not aware that free service is available. If they have heard that there is free service the majority of them do not come flocking in trying to get something for nothing. Rather they do not know the location of the

available office. Even if they are assured that a particular lawyer is ready to aid them without cost they hesitate to sit in his waiting room alongside of paying clients. Under the circumstances one is inclined to indulge a presumption that there are few counties in Pennsylvania in which the bona fide legal aid demand is being completely met. The fault may be attributed not to the willing lawyer but to the mental attitude of the client and the inadequacy of the legal aid public relations program. It has been suggested that we should promulgate the slogan "See your lawyer twice a year."

The foregoing discussion has dealt rather negatively with the problem of promoting organized legal aid. On the positive side there are several reasons why development of the service at the present time is not merely desirable as a relief to the busy lawyer in his own office but imperative from the standpoint of the continuance of the legal profession in its age long role.

It is trite to assert that all our traditional mores and institutions are today in a period of transition. This condition is true of professions in general but of the bar in particular. It may not be too unfair to state the issue in the following form: Shall the country in its future development be guided by the lay politician who is subject to all sorts of pressures or by the more impersonal professional man with his traditions of idealism, his rigorous preadmission training and his practice of removing those members who offend the Canons of Ethics. Critics point to what they regard as our shortcomings as client servers and urge as a remedy socialized law in some form or other.[15] There is no obvious need for the community to assume the ultimate benefit of socialized law. To bring it about would require a revolutionary change. Like most violent disturbances one may predict a share of damage to balance, perhaps to over-balance, the benefits. Lawyers tend to feel that the damage would be expensive and irreparable. But what to do?

15. The progress of socialized law in Great Britain need not necessarily be the handwriting on the wall.

An organized legal aid movement is the best present answer we of the Bar have to the movement for socialized law. Consider in this connection the progress of the movement for socialized medicine. There the proponents attacked the Medical Profession inter alia for its alleged inability and/or unwillingness to care properly for poor people. Under a humanitarian aegis the attackers call for a transfer of the control of medicine from the physicians to the government. A similar offensive against the bar may obviously be answered factually and on the merits by the extent to which the legal aid program is effective in quality and geographical coverage. If there is organized legal aid in every county in Pennsylvania[16] and if the client who applies without a fee in hand actually receives the same quality of service as does his wealthier neighbor, there will be less justification for the general public to support a call for a change. A reasonable man will not be panicked into following the revolutionary leadership but will take time to deliberate.

A second threat hanging over the legal profession takes the form of lay competition—a movement to which we have applied the title "Unauthorized Practice of Law". This attack also seeks to change the status of the law office but here by emphasizing its alleged lack of business efficiency. Laymen offer the lay public more publicized services in the competitive offices of business men. Which office ultimately wins the attention of the lay public will, in the long run, probably be determined by standards of quality of service developed in, and understood by, the lay mind. If we members of the bar through our dignified public relations program are able affirmatively to form those standards the law office should continue to hold its own and a give a good account of itself. If we do not, our position, or the position of the one, two or three-man law office may come to be comparable to that of the small local merchant confronted by the competition of the national chain store.

16. The Pennsylvania Bar Association took this significant step in 1949. 43 Reports Pennsylvania Bar Association 55, 56 (1947).

It is shocking to the traditionally-minded lawyer to suggest that law practice should become nothing more than an assembly-line procedure. It is also unnecessary. But one may admit that a client will be pleased with efficiency whether he meets it in the law or the business office. The lawyer who desires to improve his efficiency may, of course, refer to a series of books written on the subject. Efficiency also may be studied realistically in a law office where the volume of demand for legal services is such as to require businesslike procedures—the well-run legal aid society. The thoughtful lawyer may agree that certain basic aspects of the practice of the profession may be reduced to a routine so detailed that one who follows a series of basic checklists will make fewer mistakes, will handle his work more quickly and will be able to free his mind for those other aspects of his highly complex work which are by no means suitable for treatment in a rigid and limiting routine. The client may not understand the arcane aspects of the legal mind but he probably will find no difficulty in recognizing the results which are achieved by sound professional habits of work. The role of the legal aid society in the defense of the profession against unlawful practice of the law deserves to be explored. Legal aid attorneys, in large cities, are compelled to turn out each day a vast amount of work. It must be correct the first time, for there is no opportunity to go back and resolve yesterday's unnecessary mistakes. By observing their methods the lawyer in private practice should be able to pick up many a useful idea.

There is a third situation in which a sound program of organized legal aid should be useful to the bar. Bar Associations in theory represent the profession. In practice too often they represent only those members of the profession who have the time and the inclination to belong and to attend the meetings. The lawyer who does not have enough interest to contribute some of his time to the upbuilding of his profession can hardly be counted upon to act in an in-

formed manner when swift, determined, united action must be taken, when significant decisions of overall policy must be made, when the profession calls upon all hands to support its reasonable public relations program.

In the past we have tried to solve this problem of participation in the work of the organized bar by inviting the individual lawyer to attend the bar meeting. The one, two and three-man law office finds it hard to take time off for this purpose. If a way can be found, on the other hand, to bring the bar association to the individual law office we might have better success. A program of organized legal aid to which each member of the bar locally can devote a certain amount of time each week would seem to offer one solution. It should provide: a common denominator of experience, a sense of professional fellowship based on shared responsibility, an activity from which both the individual lawyer and his profession will benefit. Organized legal aid, as a means of unifying a profession which has always been extremely individualistic, deserves more careful and intensive study than the present space will permit. It is not easy to secure agreement among lawyers who have systematically, from their first year in law school, been trained to disagree.

If we approach organized legal aid work from the idealistic point of view a realistic program to establish and maintain in each county in the United States a service appropriate to local needs should attract the attention of many lawyers. They will see in it a means of implementation of the constitutional promise. Other lawyers, who think in terms of enlightened self-interest, should find a justifying utility in a program which helps to defend the profession against socialized law, lay competition, internal disintegration.