

## THE CHALLENGE TO ORGANIZED LEGAL AID

BY JOHN S. BRADWAY\*

Today is none too soon for the leaders of the organized bar to begin thinking and planning how the lawyer may become an increasingly useful person to the general public in the post-war world. Reasons for devoting precious time and serious effort to such problems of creative professional engineering range from a natural, self-interest in setting our feet more firmly on the bed rock of public respect and confidence to the patriotic and idealistic, but still thoroughly practical, impulse to demonstrate, to the best of our abilities, that the American way of life, in peace as in war, actually does operate more effectively for the benefit of the individual citizen than do competing systems of government. Whatever the motive, an obvious method of contributing to the solution of post-war problems consists in maintaining our administration of justice at the highest possible level of efficiency.<sup>1</sup> The administration of justice embraces many topics—all of them deserving of attention; but no one of them brings the lawyer in closer contact with the lives of greater numbers of our fellow citizens than does legal aid work.<sup>2</sup> Because things to come are already taking shape, there is urgent occasion for the members of the organized bar; to determine what may and should be done to promote organized post-war legal aid work; to plan how to carry out the program; and to put it into operation. Before plans can be made it is in order as a point of departure to explore the field and briefly set down the present position of legal aid work.

### *What Is Legal Aid Work?*

Legal Aid is a term used to describe the task of supplying to a person who needs, but who can not afford to pay for them, the skills

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<sup>1</sup>This idea is adequately set forth in the Preamble to the *Canons of Professional Ethics of the American Bar Association* (1937) A. B. A. REP. 1105. Contrast the Resolution Relating to Collective Professional Action in the Interest of the Public and the Bar adopted at the first annual convention of the National Lawyers' Guild, February, 1937, quoted in CHEATHAM, *CASES AND MATERIALS ON THE LEGAL PROFESSION* (1938) 73.

<sup>2</sup>The place of legal aid work in the general field of the administration of justice is described by BROWN in *LAWYERS AND THE PROMOTION OF JUSTICE* (1938) 253.

and abilities of a competent lawyer.<sup>3</sup> There is no occasion to waste time laboring the point that our professional services are vitally necessary to our fellow citizens. Most lawyers will admit this. But there is reason in explaining why it is desirable that such resources be supplied gratis, when the applicant has a legally meritorious "right," but no money. This is more readily understood if we view the problem through the eyes of three separate classes of persons. Each of these classes has an opportunity to observe and appraise the nature and extent of the unending stream of legal difficulties which, from cradle to grave, plague the average man. It is because of the repercussions which may develop from a failure to heed this largely inarticulate desire for professional help that the problem is urgent. These three classes of people are: the applicants themselves and those who, tomorrow, may be applicants; those members of the general public who are interested in achieving humanitarian goals for all of us; and the legal profession, functioning through its bar associations, the only group in a position to provide a satisfactory remedy for the justifiable requests for this form of specialized help.

The applicant's reasons for approving legal aid work are obvious. He has an annoying personal problem. At the moment, it is the most important matter in his world, however trivial it may appear to others.<sup>4</sup> It continues to plague him until someone with special skill solves it for him. He cannot perform this service for himself. Since he cannot afford to pay a fee, he approaches even a friendly law office with some misgivings as to whether his request will meet with courteous attention. He leaves the office, probably with his problem solved, and with a lighter heart. But even if he does not secure all he hoped for,

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<sup>3</sup>The National Association of Legal Aid Organizations has issued a pamphlet entitled *FORMS OF LEGAL AID ORGANIZATIONS IN MIDDLE SIZED CITIES AND SMALLER COMMUNITIES* (1940), which contains much of this information. See page 9 ff.

<sup>4</sup>Detailed statistics, regarding the source, nature, and disposition of the cases reported by member societies, are collected each year by the National Association of Legal Aid Organizations. Space will not permit a detailed statement of the figures but a few of the classification headings will indicate the variety of these problems:

- a. Cases growing out of *contractual relations* such as: small loans, small insurance matters, small installment purchases, wage claims.
- b. *Torts*, such as workmen's compensation, neighborhood quarrels, slander, assault and battery.
- c. Cases growing out of *property*. Even poor people may be tenants in controversy with their landlords or impecunious mortgagors. Frequently the recovery of small articles of personal property is important.
- d. Cases having to do with *estates*. The word estates sounds as though great wealth were involved but there may be an estate of \$50 claimed by an orphan.
- e. Domestic problems—there is a wide variety of this sort of thing.
- f. Criminal matters.

he has, at least, gained: a sympathetic hearing; information as to the law; advice as to his legal rights or as to a course of conduct it is desirable to follow; professional initiative in putting in motion the machinery of the law, and expert guidance through the complexities of the litigation or conciliation process; assurance that if his case calls for new legislation the matter will be presented honestly and fairly to the proper legislative committee; farsighted statemanship, where the nature of his problem exceeds the range of effectiveness of the orthodox legal remedies and the help of other professional groups must be solicited. His selfish satisfaction may be assumed. But in addition he may, and often does, rejoice that he is fortunate enough to live in a country where his own dignity as an individual is respected, no matter to what class or party he may happen to belong. One of the imponderables is his confidence that his ability to secure justice according to law depends, not upon the contents of his pocket book, but on the legal merit of his claim.

Multiply his experience by several hundred thousand and you have a picture of the extent of such cases in a single year. Add all the past years, when such service has been available, and there are millions of instances of individuals who have sought justice and have secured it. The cumulative effect of such a movement over the centuries on the thinking public cannot but be considerable. Today we may be surprised, not that such aid is available, but on those occasions when, and in those places where, it cannot be, or is not, secured. Legal aid is a standard pattern in the intricate fabric of our modern legal world. Charles Evans Hughes has summed up this broader viewpoint when he said that in performing such service we lawyers are "buttressing the very foundations of democracy."

The general public also views favorably this humanitarian movement. In a republic it is the responsibility of the citizen to see that acceptable principles of government be adopted and enforced. Legal aid work is already an accepted principle in our fundamental religious and political writings. Many people think of it as applied Christianity, and point to Biblical injunctions to sustain their belief that it is a part of the finest thinking of the ancients.

Consider, for example, the 82nd Psalm:

"Defend the poor and fatherless: do justice to the afflicted and needy. Deliver the poor and needy: rid *them* out of the hand of the wicked. They know not, neither will they understand; they walk on in darkness. . . ."

From a political or civic standpoint the precedents are no less fundamental and impressive. "Equal protection of the law" is a constitutional promise thoroughly American in its origin. The Bill of Rights of the Texas Constitution of the year 1876<sup>6</sup> contains the idea in the following language:

"All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law."

The general public knows that such principles do not enforce themselves.<sup>7</sup> It is to every one's interest to see that proper machinery is set up and that it functions whenever and wherever a case arises requiring such remedy. Who knows when it may be his own turn to make an application.

The most obvious source from which we may expect administrative machinery to make good this constitutional promise and keep the law abreast of changing community needs is the legal profession.<sup>8</sup> If the individual cases of all our fellow citizens are courteously received and intelligently solved, credit is due and will be given to the bar. If, on the other hand, the machinery breaks down, or is never set up, the public tends to fix responsibility on the lawyers, not on the individual so much as on the profession as a group. The public in a sense has been educated to such a reaction. The lawyer, in general, has put public service ahead of a fee. It may even be argued that the fee was an after thought. Because of such traditions, there is reason to distinguish between a profession and a business.

The building of such a tradition is not accomplished in a day. The Roman patron<sup>9</sup> served his clients because it was an honor to have the opportunity. The medieval ecclesiastical lawyer sought his rewards in the spiritual rather than the material world.<sup>10</sup> The English

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<sup>6</sup>Art. I, §13.

<sup>7</sup>For a discussion of the obstacles confronting a poor man on his way to justice because of his poverty, *viz.* expense, delay, and the need for the services of a competent lawyer, see SMITH, *JUSTICE AND THE POOR* (1919) 16, 20, 30 ff.

<sup>8</sup>For a general statement of the significance of the lawyer in legal aid work, see Maguire, *Legal Aid*, in 9 *ENCYC. SOC. SCIENCES* (1933) 319.

<sup>9</sup>Hazeltine, *Legal Profession*, in *id.* at 326, remarks, "The pursuit of the law was treated as a matter of honor; its reward was the public influence or high office that came to the lawyer."

<sup>10</sup>For a description of legal aid service in a medieval court, see GERT, *THE OLD YELLOW BOOK* (1925) 39, 40. For another approach, see Wigniore, *How Many Lawyers Were Ever Made Saints?* (1929) 23 *ILL. L. REV.* 199. As to Saint Ives, the patron saint of lawyers, see (1932) 18 *A. B. A. J.* 157, 794; (1935) 21 *id.* at 558, 810; (1936) 22 *id.* at 223, 255, 459.

Sergeants<sup>11</sup> carried on the traditions. In this country the early lawyers found it well entrenched in the public mind.<sup>12</sup> Probably few members of the bar have not, at some time, been privileged to help some client and forget to send him a bill. If the whole story could be gathered from countless files in individual law offices and made available, it would constitute the most splendid page in the history of the profession.<sup>13</sup>

A closer and more critical examination might reveal that the obligation to perform this service has rested unevenly on the consciences of the various practitioners. Some would be found to have shouldered more than their fair share. The interest of the organized bar association in the subject is recent. Such inequalities and spottiness are added reasons, in post-war planning, to provide for a fairer distribution of the burdens and privileges. Here is something fine, handed down to us from antiquity. We have the chance of improving upon it and passing it on to future generations better than it came to us. If all of us are to bask in the public esteem resulting from such work, there is reason to encourage each of us to pull his weight.

### *Organized Legal Aid*

The step from individual to group responsibility is also a step from volunteer to organized service. Organized legal aid work, for all its long and distinguished history, is a comparative new comer. Its progress may be measured geographically, or by the growth of the concept, or by the development of the types of "organization" through which the work is to be carried on.

Organized legal aid work is worldwide. Prior to World War II it was well represented in continental Europe, Scandinavia, South America. Legal aid societies functioned in such widely separated places as Johannesburg, South Africa, Bombay and Karachi, India, and in various parts of Australia. Some of this work was supported by legislation, but the legal profession has always had a substantial part to play in its creation and maintenance.

In 1924 at the invitation of the League of Nations a group of experts met at Geneva to exchange experiences and discuss what would now

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<sup>11</sup>HOLDSWORTH, A HISTORY OF ENGLISH LAW (3d ed. 1923) 491 ("They might be required by any of these courts to plead for a poor man"); PULLING, THE ORDER OF THE COIF (1884) 3 ("... ever ready to receive those who sought their assistance, to give counsel *pur son donant* to the rich, and gratis to the poor suitor").

<sup>12</sup>WARREN, HISTORY OF THE AMERICAN BAR (1911) 3 and 211.

<sup>13</sup>In 1938, The Standing Committee on Legal Aid Work of the American Bar Association published a pamphlet entitled THE WORK OF LEGAL AID COMMITTEES OF BAR ASSOCIATIONS. This gives part of the story.

be called the "global" aspects of the movement. In 1927, as a result of this conference, there was published a volume containing the "Laws, Regulations and Treaty Provisions Regulating Legal Aid in Certain Countries."<sup>14</sup> A simple international machinery was set up for the exchange of cases and ideas. Thereafter until 1935 the work grew naturally; and occasional visitors brought back encouraging reports.<sup>15</sup> The work in Great Britain has not been interrupted, even during the most crucial period of World War II—an indication of the steadiness of the citizens of our gallant ally.<sup>16</sup> Last year the organization of the Inter-American Bar Association provided an opportunity for closer contacts with our Latin-American neighbors. One of the obvious *musts* of the post war period is a Second International Conference to take up where we left off when called upon to restrain the Axis partners.

Organized legal aid work<sup>17</sup> in the United States has been functioning for nearly seventy years. In 1876 a group of New York City lawyers, conscious of the legal needs of immigrants for protection from a variety of impositions and unscrupulous practices, established an agency now called The Legal Aid Society. The following table outlines the numerical development:<sup>18</sup>

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<sup>14</sup>LEGAL AID FOR THE POOR, Vol. 27 of PUBLICATIONS OF THE LEAGUE OF NATIONS (1927).

<sup>15</sup>Wainhouse, *The Legal Aid in the German Social Welfare Program* (1934) 33 LEGAL AID REV. 1. Stone, *Certain European Legal Aid Offices* (1936) 25 CALIF. L. REV. 52.

<sup>16</sup>See *Poor Persons Procedure Report of The Law Society for 1942*; Cohn, *Legal Aid for the Poor* (1943) 59 L. Q. REV. 250, 359.

See as to New South Wales: Legal Assistance Act of October 17, 1943, 7 GEO. VI: "An act to make provision for the granting of legal assistance to persons of limited means and with limited income; to provide for the appointment of a Public Solicitor and to define his powers, authorities, duties, and functions; to amend the Poor Persons Legal Remedies Act, 1918, and certain other acts in certain respects, and for purposes connected therewith [assented to, 29, June, 1943]."

<sup>17</sup>Two legal problems connected with organizing in the field of law practice are: incorporating and advertising. The desirability of allowing non-profit corporations to furnish legal services is supported by reason [see Weihofen, "*Practice of Law*" by *Non-Pecuniary Corporations: A Social Utility* (1934) 2 U. OF CHI. L. REV. 119] and practice (the incorporation of State Bar Associations).

The Committee on Professional Ethics and Grievances of the American Bar Association has indicated in its opinions 169, 205, and 227, a distinction between a bona fide legal aid enterprise and a device to attract business to a particular lawyer or group of lawyers.

<sup>18</sup>The figures are taken from records of the National Association of Legal Aid Organizations.

Year	Number of Legal Aid Organizations in the United States
1876 .....	1
1900 .....	5
1914-1921 .....	41
1930 .....	86
1943 .....	143

Writing on the basis of figures available in 1933, Justice Owen J. Roberts makes the following statement:

“Although in 1883 there was but 1 such organization, and between 1883 and 1903 the number had grown only to 10, the record shows that in the 50 years, 1883 to 1933, inclusive, these instrumentalities handled approximately 3,900,000 cases and collected for clients in excess of \$13,500,000 and that, in 1933, 84 were functioning, serving a territory in which over 39 million people live and dealing with over 300,000 clients per annum. It is no small thing to have obtained for these clients this vast sum in cases which involved an average of about \$15; but it is a much greater thing to have demonstrated to these nearly 4 million poor persons that there is an avenue through which they may obtain justice and to have removed from their minds the thought that the portals of the courts were closed to them by their poverty.”<sup>19</sup>

Since 1933 the progress has continued. New varieties of organizations were tried. The movement spread from the larger cities to the smaller towns and even to the rural areas.<sup>20</sup> Experience, in answering the question, How may we distinguish good from poor legal aid work, accumulated. The advent of World War II found the movement in better shape than ever before. Recognition of the value of an organized, as compared with the volunteer, system became general. Those who expected interest in the subject to decline because of the outbreak of hostilities were surprised to find a contrary tendency.

Another method of recording the advance of the movement is by describing the stages in growth of the concept. At different times the place or the objective of a legal aid organization in the complexities of modern civilization has changed. With each stage recognition of the dignity of the enterprise and its expanding usefulness to the public has become greater. For convenience in cataloguing one may speak of the work as being, in turn, proprietary,<sup>21</sup> charitable, a part of the administration of justice, and interprofessional.

<sup>19</sup>SMITH AND BRADWAY, THE GROWTH OF LEGAL AID WORK IN THE UNITED STATES, BULL. No. 607 (U.S. Bur. Lab. Stat. 1936) vi.

<sup>20</sup>Templeton, *Legal Aid Problems in a Rural County* (1939) 205 ANNALS 95.

<sup>21</sup>This term is used by SMITH in JUSTICE AND THE POOR at 135.

The New York Legal Aid Society, established in 1876,<sup>22</sup> the Chicago Protective Agency for Women and Children, organized in 1886,<sup>23</sup> the various public and voluntary defenders<sup>24</sup> and, to a certain extent, the National Desertion Bureau, which was created in 1911, are examples of proprietary agencies. The term is not used disparagingly, but merely to indicate a specialized service directed to the solution of a particular type of problem or to a specialized group of people affected with a particular type of problem. This approach is a perfectly natural one. Some legal difficulty affecting a certain class of persons is recognized and becomes dramatic. The public response is to set up an agency to deal specifically with it. It handles no other type of problem.

In this country there are many examples of this proprietary device in related legal fields. The inquirer will find special statutes providing for the assignment of counsel or the payment of counsel fees for poor persons in civil cases,<sup>25</sup> the waiver of the prepayment of court costs and fees,<sup>26</sup> and the appointment of counsel or the payment of attorneys' fees in workmen's compensation cases. Another approach, which gives less consideration to the need for a lawyer, is the modern practice of setting up a specialized court or administrative agency or official. If one pictures the efforts to improve the legal situation as a defense in depth against injustice, it is possible to assign to the lawyer the first line. The court system is second line. In the third are specialized courts and agencies. Finally, there is the legal aid organization for those who have cases not cared for by the rest of the defense system and who cannot pay a fee; and the legal service bureau for those who can pay only a moderate fee. This final line is flexible, inclusive, and designed as a catch-all for matters not previously cared for.

The charitable<sup>27</sup> stage is reached when the services are made available—not only to a specialized group—but to any poor person. The

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<sup>22</sup>A history of the New York Legal Aid has been written. MAGUIRE, *THE LANCE OF JUSTICE* (1928).

<sup>23</sup>Garipey, *The Legal Aid Bureau of the United Charities* (1926) 124 *ANNALS* 33.

<sup>24</sup>See Goldman, *Public Defenders in Criminal Cases* (1939) 205 *ANNALS* 16; Fabricant, *Voluntary Defenders in Criminal Cases*, *id.* at 24.

<sup>25</sup>The material is collected in *LEGAL AID FOR THE POOR*, *supra* note 14.

<sup>26</sup>Maguire, *Poverty and Civil Litigation* (1923) 36 *HARV. L. REV.* 361, is the basic article on this topic. As a result of it, see drafts of model statutes (1924) 49 *A. B. A. REP.* 386 and (1925) 50 *id.* 456.

<sup>27</sup>This matter received early consideration. See *Report of Committee on Relationship between Social Service Work and Legal Aid Work*, *RECORD OF PROCEEDINGS* (1922) of the meetings of the Central Committee of the National Alliance of Legal Aid Societies 35.

realization that the distinguishing prerequisite to aid is poverty immediately identifies the work with that of welfare agencies such as the Red Cross, the Family Service Association, and similar enterprises. By this time legal aid work has been accepted as a community resource providing a commodity which is not, as yet, distinguished from material relief in the form of food, clothing, and shelter.

As soon as discriminating observers conclude that justice according to law is a matter of right, while charity is a matter of grace, we come to a further stage.<sup>28</sup> Some years ago there was a decided difference of opinion as to whether a legal aid organization was a social service agency or a law office. Some commentators were aroused over the possibility that the rule requiring information imparted by the client to the attorney be kept confidential might be breached; but they overlooked the obvious fact that the records of social service agencies also are protected by a similar professional rule. When a conclusion was reached it was clear that the distinction was less important than that the quality of legal aid work should be equal to that maintained by standard neighboring law offices.<sup>29</sup> When the work is identified as a part of the administration of justice it is appropriate to expect at least moral support for it from those persons concerned with the administration of justice. The legal profession is conspicuous in this role.

The final stage, to which the concept has grown at present, is one in which efforts are being made, and with considerable success, to break down the artificial distinction between community resources implied in the statement that a legal aid organization is a law office and not a social agency. There was a time when it was popular to classify remedies on the basis of the profession which has assumed responsibility for providing them. Such action is a more convenient device for identification than for public service. When it threatens

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<sup>28</sup>The situation was recognized by Arthur v. Briesen of the New York Legal Aid Society about 1890. Reginald Heber Smith made it the theme of his book, *JUSTICE AND THE POOR*. A brief statement is contained in the following quotation from a letter written by Elihu Root: (1923) *PROC. NAT. ASS'N OF LEGAL AID ORGANIZATIONS* 15.

"It becomes every year more evident that something is wanted to establish a contact between the system of justice, of which we are so proud, and the very people who need it most. The people who know how can easily get a very good brand of justice, but the people who don't know how have little reason to suppose that there is any justice here. I am afraid they are getting a very bad idea of our institutions. It is becoming evident also that this subject must be dealt with, in the first instance at least by private enterprise." *PROC. NAT. ASS'N OF LEGAL AID ORGANIZATIONS* (1923) 15.

<sup>29</sup>See *BULL. No. 80* for the standards adopted by the National Association of Legal Aid Organizations.

to become a basis for declining to take an interest in the applicant's case, a public relations difficulty common to all professional fields is presented. Clearly, if a human problem will yield satisfactorily to remedies exclusively in the legal field, lawyers should handle it. But only the simpler human problems fall into that category. In the more complex matters the resources of more than one professional field are required to put the client back on his feet. If the law has not made contacts with its sister professions so that any or all of their resources may be made available readily in necessary cases, then the whole structure by which modern professions serve the layman has become so highly specialized as to overlook its main objective—public service. The answer to over-specialization, in theory, is more inter-professional coöperation; in practice, one answer is the legal aid organization. It does not attempt to practice medicine or social work or to assume an ability it does not possess, but it does coöperate with all other community organizations and services to meet the needs of the client, using the term "needs" in a broad sense. It is submitted that the concept of legal aid work has come a long way and that its value as a community resource is greater now than ever before.

But the progress of the movement is not dependent alone upon its geographical growth or the changes in the underlying concept. A third measuring rod is the resourcefulness of groups in individual communities in working out different types of organizations to carry on the service. As a result there is no standard type of agency, but rather a group of types, from which new communities may choose those features best suited to their own local needs. Local proponents are even free to devise entirely new arrangements, but since the existing types have been tested by the trial-and-error method it seems wise, as far as possible, to make use of this experience gained with so much difficulty over so many years.

Originally "organization" meant a poor man's law office with a paid full-time legal and clerical staff. Usually a non-profit corporation was set up with a board of directors on which the bar was well represented. It was financed by contributions from interested laymen and lawyers who argued that if such an organization were not in existence it would be necessary for them to maintain someone in their own offices to do this work. It was cheaper and more convenient for them to pay the money to the "organization" and thus, vicariously, see that the work was performed. Such a device, while

well adapted to the needs of the larger urban centers, was viewed with some alarm by smaller communities. To people in a rural county a suggestion that they create such an expensive and elaborate agency was enough to insure a negative vote.

However, the need continued; and, since it was obviously not being met in many communities by the volunteer system, native resourcefulness devised other types of "organization." In place of non-profit corporations financed by community chests, as in Baltimore, Philadelphia, Pittsburgh, Cleveland, Detroit, Denver, San Francisco, and elsewhere, or publicly financed bureaus, as in Connecticut, Kansas City, and St. Louis, or a third type represented by the Legal Aid Bureau of the United Charities of Chicago, they turned their attention to the fundamentals of organized work. They found that large sums of money and elaborate machinery were not among these essential factors. The three items without which organized work cannot be done appeared to be: a definite place where the administrative part of the work is centered, so that applicants may readily find it; a definite time, so that no one may be forced to waste this valuable commodity; and a definite person to receive applicants, so that responsibility may be fixed. If, in addition, provision is made for promulgating and enforcing a reasonable set of rules defining minimum standards for the work, the foundation is laid; more can readily be added.

Following this line of thinking, proponents in middle-sized cities developed their plans with less specialization and a more modest budget.<sup>30</sup> Offices were shared with other agencies. If there was to be a paid employee, he was put on a part-time basis. Volunteer legal service always has formed a large, important, and valuable part of the plan. In some instances, where the applicant could afford it, a nominal registration fee was charged to cover phone calls, stationery, and postage. Based upon an economy program the organization idea already has made headway, even in rural areas.

Resourcefulness as to type of organization is not confined to meeting problems of density of population. The relationship between legal aid work and companion public services has been explored. One of the interesting lines of development has been with respect to legal

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<sup>30</sup>The Legal Aid Committee of the State Bar of California discussed this in an appendix to their 1934 report, (1934) PROC. CAL. BAR 179. The appendix is entitled *The Formation of a Legal Aid Committee*, *id.* at 182.

aid clinics<sup>31</sup> which link the legal aid movement to the field of legal education. A legal aid clinic is a legal aid organization operated in connection with a law school. Like any other similar agency it serves a section of the public. It also aids law students in the same way that a medical clinic prepares the embryo physician under competent supervision for more effective service to his community. The reader should distinguish this type of agency from the legal service bureau for persons of moderate means<sup>32</sup> which appears under various names—in Philadelphia, as the "Neighborhood Law Office"; in Chicago and Los Angeles as a "Lawyer's Reference Plan."

The legal aid clinic idea has been accepted by a number of law schools throughout the country. Its value to the legal aid movement is primarily a matter of manpower. The men trained in this fashion have an opportunity to put into operation the idealism which is so well developed in law students. At a later time they will be available as participants in the work in their home communities.

#### *Volunteer Legal Aid Compared with Organized Legal Aid*

In whichever form it may be tried, the organization is a more effective device than the volunteer plan. This plan is individualistic and the expense falls, not upon the bar or the public, but entirely upon the shoulders of the willing participant. Beyond these points the advantages are clearly with the more formal type. It is desirable that the two methods be compared.

Organized legal aid work is the more effective of the two if we view it through the eyes of the most obvious beneficiary, the applicant. Without too much trouble he can learn about it, find it, secure a courteous, speedy hearing, and go his way. Some observers have thought that the organization might encourage litigation. Apparently their mental picture of the typical legal aid client is a vigorous, aggressive fellow who wants something for nothing. Such a person, they feel, should not be encouraged. At the other extreme are those who view with an over-abundance of sympathy all poor applicants and vigorously support any kind of claim they make. Neither of these extreme positions appears realistic. The legal aid societies, on the

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<sup>31</sup>There is much published material on Legal Aid Clinics. A representative article is David, *The Value of Legal Aid Work to Law Schools* (1939) 205 *ANALS* 121.

<sup>32</sup>Abrahams, *The Philadelphia Neighborhood Law Office Plan* (1941) 1 *LAW. GUILD REV.* 30; *Lawyer Reference Plan*. (1940) 21 *CHI. BAR REC.* 406; Spencer, *Lawyers' Reference Service* (1940) 15 *LOS ANGELES BAR BULL.* 218.

basis of their wide experience, have concluded that a better attitude lies somewhere between the two. A visit to a legal aid organization should convince any but a very biased observer that applicants are not much different from any other group of people. Along with the aggressive belligerents who might fight their way into a law office whether or not free service is available, there are many, probably very many, ignorant, timid, hopeless, muddle-headed individuals who have legally meritorious claims but who do not know what to do about them.<sup>33</sup> The experienced legal aid worker is sure that many applicants do not know that the law offers a remedy for their problem until it is too late for anyone to help. Others have never heard that the bar is ready to aid them even though they cannot pay for the services; or they do not know any particular lawyer to whom they feel free to go. Still others are uncomfortable sitting in the waiting room of a law office alongside of paying clients.

Such factors have created a very real gap between the needy applicant with a meritorious case and the public-spirited lawyer. Since the purpose of legal aid is to remedy a need, it seems that one measure of the effectiveness of the plan is the extent to which it is really available to those who may have occasion to use it. It is easy to set up a simple and inexpensive organization which everyone may know about. It is easy to develop and enforce safeguards to see that it is not imposed upon by those who should not consume its time or attention. In this respect, the volunteer system is less adequate.

Again, the organization plan is more beneficial to the general public. It gives more adequate assurance of meeting the entire need it was designed to remedy. By centralizing the administrative routine in a single office, perhaps for purposes of economy, supported by a panel of all available volunteer lawyers, it is easier to establish and maintain standards as to quality of service, to adopt and promulgate rules for the protection of those engaged in the work, such as the tests for determining eligibility for the service, to accumulate experience, and to develop the effectiveness which comes from continuity of policies and personnel. A modest organization makes it possible to keep records which will tell the public, which supports it by money and encouragement,

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<sup>33</sup>Weresch, *The Legal Five and Ten* (1943) 42 READER'S DIGEST 111: "Eighty-two per cent of these clients never had consulted a lawyer before. Not two per cent of matters handled got into court." This suggests the existence of the general public which can pay fees and which is not served. One may infer that those who cannot pay fees are in not much better position unless some special organization is devised to care for them.

not merely that we are fighting a battle, but whether we are winning the war.

But the greatest advantages of the organization over the volunteer plan accrue to the conscientious lawyer who desires to perform his professional duty to the public in the most effective fashion. Some persons have expressed a fear that such an organization may become a competitor of the bar for lucrative legal business. An examination of the records of legal aid societies will reveal that each one of them has confronted this problem and without difficulty has solved it by a series of administrative rules wisely enforced. It is not hard to determine ability to pay in most cases. The legal aid staff can hardly expect to benefit from handling fee cases because the organization is not permitted to charge a fee. If some member of the staff violates the rule directly or indirectly disciplinary action may be taken to prevent repetition.<sup>34</sup>

With this question behind us, it is possible to enumerate the advantages of the organization to the conscientious lawyer. First, it relieves the pressure upon his time and energy by distributing the load more evenly among all the willing participants. Second, it gives the young lawyer a desirable entree into a field of public service. Third, it represents an advance in the public relations field of the organized bar. Under the volunteer system all credit goes to the lawyer who does the work. There is enough glory to go around and few individual lawyers will begrudge their bar association an opportunity to assure the public that lawyers, as a group, are solidly in favor of seeing that everyone with a legally meritorious case should have the aid of a competent attorney. This sort of organization does not oust the individual volunteer. It recognizes his contribution, encourages him to continue, incorporates his efforts, and builds upon them an even finer public service.

Some hesitation has been noticed with respect to endorsing the organization plan on the ground that the expense may fall entirely upon the shoulders of the bar. The cost of the volunteer plan certainly rests squarely and exclusively upon the individual lawyer who participates. But there is no reason why the money for the legal aid organization should come from the bar alone. Organized free medical

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<sup>34</sup>Legal Aid organizations customarily impose on their staff attorneys a rule to the effect that they shall not accept or directly or indirectly profit by legal business which came to them in the first instance as a legal aid case. There is little difficulty in enforcement, as most legal aid attorneys are glad to cooperate. It is easy to overestimate the number of lucrative cases which might thus be made available.

care is given through out-patient clinics and dispensaries. To such enterprises the physician or surgeon contributes his time and skill and that is regarded as sufficient. The cost of the building in which the work is done, the staff of receptionists, secretaries, nurses, attendants, and the supplies and equipment are a matter of community responsibility. Beside the high cost of medical care the few dollars necessary for a simple legal aid organization should be a matter of little concern. The real test is the value of the benefits to be derived; but, in any event, the public and not the bar should advance the funds.

Thus to applicants, to the general public, and to the bar, it may be argued with some force that organized legal aid work is a better community resource than the volunteer plan.

Up to the present point the argument has been in general terms. It may be well to indicate something of the progress which the organization idea has made in the State of Texas. A non-resident can hardly expect to do justice to all the splendid volunteer legal aid work which has been rendered by members of the Texas bar since the very beginning; but he may, at least, refer with suitable respect to some of the organizations now in actual operation.

### *Organized Legal Aid in Texas*

In 1915 it is reported that a public defender was set up in Dallas. It appears that this office handled 914 cases the first year and 1480 in 1916. In 1917 the work was discontinued for local reasons, apparently political. Undiscouraged by this catastrophe, a local group of interested persons in 1924 succeeded in their efforts to create another agency—the Municipal Legal Aid Bureau. Since then it has served a large number of persons. In 1932 a peak of 7700 was reached. This organization is a member of the National Association of Legal Aid Organizations.

In 1942 the Standing Committee on Legal Aid Work of the American Bar Association reported the following organizations in the state:

Austin—A legal aid clinic operated as a part of the Law School of The University of Texas. This was established in 1941 and in its first year accepted 114 cases.

Dallas—The Municipal Bureau mentioned above. In 1941 it handled 1544 cases.

San Antonio—A department of a social agency. It was established in 1917 and reported 551 cases in 1941.

The 1943 report of the same committee of the American Bar Association records the organization of a committee in Houston.

For several years the Anti-Usury Committee of the San Antonio Bar Association has maintained a vigorous and courageous program to "suppress the loan shark evil."

Thus there are in the state examples of four types of organization—a legal aid clinic, a municipal bureau, a department of a social agency, and two bar association committees. They establish a practical and reasonable point of departure for the promotion of organized legal aid elsewhere in the state. But something more is necessary to rally enthusiasm and focus attention for a promotional campaign than a theory, even though well-reasoned, and a few organizations successfully applying the theory. One more essential is a recognition of the urgency of the program. Why should it be undertaken now?

#### *Why. A Promotional Program Is Urgent*

The urgency of the situation is arguable on four points. The legal profession itself has reached a stage of organization at which it is able to recognize and deal with community problems which need attention in the field of the administration of justice. The bar association now can, and does, speak for its members. The bar association in other states has led the way in promoting this service. Therefore the first point of the urgency argument is that legal aid experience is available and the machinery of the organized bar is adequate to put into operation such a professionally supervised program. The most immediate contribution of the bar will be leadership in the promotional program.

Just because facilities are available, public criticism of an inactive bar association may be expected to become sharper. The bar is conscious of that criticism<sup>35</sup> and in response has established public relations committees.<sup>36</sup> If the unfounded charge is made that the bar has no humanitarian plank in its public relations program, the development of a vigorous plan for promoting organized legal aid will constitute an adequate answer.

<sup>35</sup>Many lawyers have read *RODELL, WOE UNTO YOU, LAWYERS!* (1939) and similar material. Lazarus, *The New Group Responsibility of the Bar* (1937) 9 *OHIO L. REP. AND WEEKLY L. BULL.* 59, takes a somewhat different approach. The position of other professional groups may be affected by the recent cases involving the American Medical Association. See Tolman, *Review of Recent Supreme Court Decisions* (1943) 29 *A. B. A. J.* 150.

<sup>36</sup>The activity of the American Bar Association's Committee on Public Relations may be followed in the reports.

What preventive medicine has done to improve public regard for the medical profession may, in large part, be accomplished for the organized bar by organized legal aid.

We may expect that public evaluation of professions generally and of the legal profession in particular will be all the more discriminating in the post-war world. All sorts of people disturbed by the world conflict will ask for all sorts of professional services which in quieter times might have remained inchoate musings. It will be asked whether the lawyer has kept pace with the physician. In such a scrutiny the bar must be prepared with convincing answers. One of the most necessary of these is an explanation of the manner in which we are using our exclusive privileges to practice law. The bar, through its vigorous advocacy of Unauthorized-Practice Statutes, has placed itself in control of a monopoly of law practice.<sup>87</sup> The boundaries of that field have been clarified by the legislature and the courts have actively sustained the prosecution of lay violators. Along with the increased privileges we enjoy from this statutory eminence come increased obligations. Since no one but a lawyer may practice law, unless a lawyer's services are made available without charge, many persons will not be able to obtain justice; and the fault will lie unmistakably on our doorstep. Here again the trail leads to the organized legal aid plan as the most satisfactory answer.

If the weight of these arguments is recognized one final cheering word may be written. The program is already under way in most states; and, with a little further leadership from the bar and some community support in respect to finances, can be made into a permanent plan. With the advent of war the National Association of Legal Aid Organizations and the American Bar Association took action.<sup>88</sup> Now there exists in every state a comprehensive plan for providing legal assistance to service men and their families. Sometimes it is spoken of as legal aid—sometimes as war work. The armed forces have cooperated by appointing Legal Assistance Officers at the various camps and stations.<sup>89</sup> These state-wide organizations are now functioning energetically. Thousands of problems are being handled. Many people who never before had occasion to seek the services of a lawyer are being educated to appreciate the benefits of having competent legal advice available. When the war comes to an end, these same

<sup>87</sup>TEX. PEN. CODE (Vernon, 1936) art. 430a.

<sup>88</sup>The activities of this committee are elaborated in the AMERICAN BAR ASSOCIATION JOURNAL and in the "War Letter" published monthly by the American Bar Association Committee on Coördination and Direction of War Effort.

<sup>89</sup>WAR DEP'T CIRCULAR No. 74 (1943); NAVY DEP'T CIRCULAR R-1184 (1943).

men, in civilian costume, and their families will continue to have legal problems. They will expect a continuance of the service and if it is not available they may notice the lack.

Seldom has an opportunity in the field of improving the administration of justice been available which shows more promise than the present one. If nothing is done by the end of the conflict the machinery, now largely on a volunteer basis, set up to meet a particular emergency will probably collapse, because the interest of the participants has been drawn away to something more immediately engrossing. But if action is taken now, we may with little trouble build on the present foundation a system which will do us credit and serve well many of our fellow citizens.<sup>40</sup>

As matters stand the legal profession through its Bar Associations is confronted with a challenge, an opportunity. With a minimum of exertion it can convert a temporary volunteer plan into an organized permanent professional service. The only needed factor is leadership. Traditionally in this country leadership has been the unique contribution of the bar. We may be confident that there will be those who will rise also to this occasion.

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<sup>40</sup>The most obvious feature of such a system, in its least formal aspects, would be a part-time receptionist. Legal aid clients probably do not read reports of proceedings of bar associations telling of the appointments of committees. Many of them do not even read newspapers. But they do talk to each other about their problems and one satisfied or relieved client will tell others.

The biggest problem is to give the uninformed applicant a definite person to contact in surroundings where he may not feel uncomfortable sitting beside other clients who can pay a fee. The functions of such a receptionist would be to receive applications, determine ability to pay a fee, eliminate matters and applicants not entitled to the service, care for administrative routine, and refer the balance in rotation, or by some other acceptable method, to a panel of volunteer lawyers. The expense of such a simple "organization" would be purely nominal. The change from a volunteer to an organized service would make legal aid work a permanent community resource. The public relations value to the bar association as well as to the volunteer lawyer participating in the work is obvious.