

These reports on availability of legal services to the non-affluent in foreign systems indicate that the major focus remains provision of litigation aid to indigent persons. Provision of counseling services, and attention to the legal needs of "middle income" people, are distant luxuries when existing facilities are insufficient to respond to the most urgent legal problems of the very poor. But it is a hopeful sign that in many systems, as in our own, jurists are moving toward acceptance of the principle that the right to adequate legal representation should be enjoyed by all members of the community.

### **England and Wales**

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Substantial concern has been shown in Britain in the past decade over the failure of the Legal Aid System to make adequate provision for the needs of those who, while not falling within the definition of abject poverty, lack sufficient funds to prosecute their legitimate grievances through the courts. Both major political parties<sup>4</sup> and a number of independent groups<sup>5</sup> have made highly critical reports on the operation of the present system, but resistance to reform on the part of the Bar and the Law Society, among others, has prevented their proposals from being effectively implemented.

In many ways the problem of legal assistance for the middle class is even more acute in Britain than in the United States. In order to prosecute an action in any court above the County Court level, it is necessary to employ both a solicitor and a barrister,<sup>6</sup> and the double fee involved constitutes an extremely heavy burden on the income of the average wage earner. Furthermore, the strict interpretation given to the rules of professional ethics in Britain has prevented the development of alternatives to the case-fee system such as the contingent fee or prepaid legal insurance which, despite the problems they create, have made the courts available to many who could not otherwise afford the costs. It also appears that general liability insurance is far less common than in the United States, and even where it is compulsory, as in the case of automobile insurance, the range of coverage provided is relatively limited.<sup>7</sup>

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<sup>4</sup>Society of Labour Lawyers, *Justice for All*, London (1968); Society of Conservative Lawyers, *Rough Justice*, London (1968).

<sup>5</sup>The Cobden Trust, *Legal Aid as a Social Service*, London (1969) (hereinafter cited as LASS). Law Society, *Legal Advice and Assistance*, London (1968-9).

<sup>6</sup>For a general description of the difference and information about the manner of setting fees see: H. Cecil, *Brief to Counsel*, London (1958).

<sup>7</sup>Discussion with Professor M. Zander, London School of Economics and Political Science who has written extensively on Legal Aid in Britain.

Partly as a result of these factors a number of institutions have developed which attempt to provide correctives for these weaknesses in the formal legal system. In the area of employment-connected injuries, the unions have played an active role in providing counsel for their members and assisting them in actions against their employers.<sup>8</sup>

In other areas administrative tribunals have been created to adjudicate questions which would otherwise be open for judicial determination. Such tribunals, with their relatively informal procedures, permit an individual to appear without representation by counsel, and they are therefore far more available to the unassisted litigant. By 1969 there were over 2,000 such tribunals in operation hearing matters ranging from disputes between landlords and tenants (especially with regard to public housing) to malpractice claims by patients against their doctors for treatment under the National Health Scheme.<sup>9</sup> In the words of the Lord Chancellor's Committee, these tribunals "perform the same basic function as ordinary courts of law"<sup>10</sup> without nearly the same expense to the litigants.

Other less formal programs also exist to supplement the work of the Legal Aid System in supplying legal advice. Among the most notable of these are the Law Society program under which any person, regardless of means, can receive up to one-half hour of legal counselling from a cooperating solicitor on payment of a £1.00 (\$2.40) fee.<sup>11</sup> Similarly, a number of newspapers operate professionally staffed legal advice bureaus, one of which, the John Hilton Bureau of *News of the World*, handles an average of 80,000 inquiries a year.<sup>12</sup> Also, in cases of special significance, legal assistance may be available from such organizations as the National Council for Civil Liberties.<sup>13</sup>

The various reports mentioned above, however, all point up strongly the inadequacy of these partial solutions. While they may be available for certain classes of complainants, union members in employment cases, or for certain types of litigation, malpractice claims and landlord-tenant matters, there are many very important areas of litigation in which such alternatives are not available. Even in the areas where they are, moreover, a party who has legal representation will be in a far stronger position than one without such counseling.<sup>14</sup> Thus, Legal Aid remains, in many cases, the only means by which an individual may be able to obtain a remedy.

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<sup>8</sup>*Id.*

<sup>9</sup>LASS, *op. cit. supra* note 5, at 44-51.

<sup>10</sup>*Id.* at 44.

<sup>11</sup>*Id.* at 22-23.

<sup>12</sup>*Id.* at 24-25.

<sup>13</sup>National Council for Civil Liberties, *Annual Report*, London (1970).

<sup>14</sup>LASS, *op. cit., supra* note 5, 45-51.

Legal Aid<sup>15</sup> is available for the prosecution or defense of any civil action in the courts except one for a defamation, breach of promise of marriage, loss of services in consequence of rape or seduction or inducement of a spouse to leave another.<sup>16</sup> It is provided by the government as a social service, and is free to individuals with a disposable income of not more than £250 (\$600) a year and disposable capital of not more than £125 (\$300).<sup>17</sup> It is also provided on a contributory basis to those with an income above this level but less than £700 (\$1,680) or capital exceeding the above figure but less than £500 (\$1,200).<sup>18</sup>

Contribution by the party is required to 1/3 of the extent by which his income exceeds the figure for free legal aid or to the whole extent by which his capital exceeds that amount.<sup>19</sup> Disposable income is the sum of the income of the spouses less a specified amount for dependents; disposable capital is the sum of their capital goods less an allowance for a house, dependents and the tools of their trades. However, if the spouses have a conflicting interest in the claim to be litigated, their incomes and capital resources are considered separately.<sup>20</sup> Because of a lack of statistics in this area, it is not possible to calculate the percentage of the population with access to legal aid on the basis of disposable income. However, if actual income figures<sup>21</sup> are used, it appears that less than 2% of the population qualify for free Legal Aid and about 8% for contributory.

Even within this portion of the population there are a number of bars to receiving legal assistance under the Legal Aid Program. The program has developed, not as a service to be provided by salaried lawyers working through a neighborhood legal aid office, but rather through the cooperation of individual solicitors and barristers who have agreed to participate in the scheme.<sup>22</sup> As the compensation allowed by the program is substantially

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<sup>15</sup>Details of the Legal Aid Scheme including the statutes establishing it and the Regulations issued thereunder are collected in the *Legal Aid Handbook* published by Her Majesty's Stationery Office in looseleaf binding with periodic supplements. It should be noted that the Legal Aid and Advice Act (1949) and subsequent amending legislation applies only to England and Wales and not to the remainder of the United Kingdom although the Northern Ireland Parliament has enacted a similar statute.

<sup>16</sup>Legal Aid and Advice Act (1949), 12 & 13 Geo. 6. Ch. 51, First Schedule part II. This is not a complete list, but includes the most important excepted proceedings.

<sup>17</sup>*Id.* as amended by the Legal Aid Act (1960), 8 & 9 Eliz. 2. Ch. 28.

<sup>18</sup>*Id.*

<sup>19</sup>1960 Act, *op. cit. supra* note 17, Ch. 28-1(2).

<sup>20</sup>For further detail on the calculation of disposable income and capital see: The Legal Aid (Assessment of Resources) Regulations 1960, S.I. 1960 No. 1471, as amended by S.I. 1961 No. 555, S.I. 1962 No. 147, S.I. 1964 No. 1907, S.I. 1966 No. 1348 and S.I. 1969 No. 922.

<sup>21</sup>The figures employed are from Family Expenditure Survey, *Report for 1969*, HMSO (1970).

<sup>22</sup>See E. Moeran, *Practical Legal Aid*, London (1969).