

DEVELOPMENTS IN LEGAL AID*

EXTENSION OF LEGAL AID INTO SMALLER COMMUNITIES

JOHN S. BRADWAY

Professor of Law and Director of Legal Aid, Duke University

Legal aid work consists of unorganized and organized efforts. The former is done, and from the beginning has been done, informally in every individual law office. The latter, a more recent development, is handled where it exists as a problem with professional and often with broad community backing. All credit is due individual lawyers for their valued contribution; but our present concern is with the latter of these two forms.

Organized legal aid work—the idea that the community acting through the bar association or through a charitable society has a responsibility to see that each man gets the equal protection of the law promised him by the Constitution of the United States—is an urban concept. Legal Aid organizations traditionally are based on the New York or the Chicago model. When the conclusion is reached that every city with a population of 100,000 and over should have a legal aid organization, the promotional group turns its attention to some locally suitable modification of the larger and traditionally stronger agencies. This mental attitude is helpful up to a point—but no further.

Organized legal aid work in less thickly populated areas arises from the same basic concept, a realization of the need for machinery, professional or community, or both, to insure that we have the equal protection under the law. But from there on the promotional program is quite a different matter. For one thing, the big city societies do not serve as a point of departure. Merely to mention the splendid New York Legal Aid Society in a rural county would frighten away those who might otherwise be proponents of the idea. If we are to have a legal aid organization in each county of the United States, we need a new grass roots concept coined in simpler words and proceeding obviously from a rural need.

Again, as one adjusts his thinking from conditions in the larger to those in the smaller center, the county, not the urban area, becomes the unit to be served. As a matter of legal history, the county is the traditional founda-

*Copyright, 1952, Reginald Heber Smith.

These articles are preliminary reports prepared for the Survey of the Legal Profession. The Survey is securing much of its material by asking competent persons to write reports in connection with various parts and aspects of the whole study. Reports are released for publication in legal periodicals, law reviews, magazines and other media as soon as they have been approved by the Survey Council's Committee on Publications. Thus the information contained in Survey reports is given promptly to the Bar and to the public. Such publication also affords opportunities for criticisms, corrections, and suggestions. When this Survey has been completed, the Council plans to issue a final comprehensive report containing its findings, conclusions, and recommendations.

tion for most of our legal machinery. Again, in rural counties agencies to help people are generally on a less specialized basis than in cities. Some services are not available at all. The worker, in attempting to solve the client's problems, needs, if anything, to be more resourceful than his city cousin.

Again, one inclines to the thought, not in criticism of the metropolitan areas, that the client himself may count for more in the country. His problem stands out, not merely as another statistic lost in the crowd, but as the catastrophe of a neighbor.

It seems fair to conclude, therefore, that if a shrunken edition of the New York or Chicago office could be set up in each of the non-metropolitan counties of the United States, there is no assurance that it would meet the local needs, that people would support it, or that it would be successful.

Our point of departure in rural areas has had to be developed by the trial and error method during the last quarter century. It is rather a grass roots concept based, not on a desire to imitate some larger city, but rather upon local pride in being at least as well equipped with socio-legal resources as other cities and counties on approximately the same population level.

The grass roots form of organization has two and perhaps three distinct elements. There should be: a receptionist, one or more lawyers to handle the cases, and possibly another group of persons to develop policies, establish contacts and oversee. The receptionist may be, and often is, a social agency, or better still, a well-known representative of a social agency. It receives requests for legal aid, does more or less screening to eliminate those who are not proper applicants, keeps simple records, and refers the approved individuals to a lawyer—usually a member of a bar association committee. The lawyer handles the case as he would any other professional matter which might find its way to his office. He may make a report to the receptionist or to the bar association. This form of organization is inexpensive, time-saving, unassuming, flexible. It can be increased with ease when money is available. If no money at all is available, the system can still be operated on a county-wide basis. The social agency lends part-time of one worker in return for the free legal service to its clients and itself. It is not difficult to explain to social workers the value of this cooperative approach. The two groups who need an explanation are the lawyers and the clients.

Lawyers in general have gone through several stages in their thinking about organized legal aid. While in the larger cities experience with actual legal aid services may have resulted in a degree of tolerance, there is no reason to assume such a fortunate development everywhere. Lawyers who do not enthusiastically support legal aid work belong in two groups.

Lawyers who are actively opposed to legal aid work (and there are not too many of these left) base their objections on a variety of points: legal aid work is feared as a step toward socialization of the law; legal aid work is

proclaimed unnecessary because private law offices are always open to all, irrespective of ability to pay; legal aid work, it is urged, encourages litigation. The foregoing are examples. In promotional work, it is necessary first to find out the basis of objection and then to proceed to persuade the objector. Experience accumulated during the years indicates legal aid work may lead to socialized law, unless the organized bar keeps a general supervision over it. We have discovered that the average legal aid client is afraid to go to the average law office, even if he should happen to know that the service is available and even if he thought the law offered a solution to his problem. Over 90% of cases coming to legal aid agencies, the statistics show, are settled without litigation—at least as high a percentage as in the average law office. In other words, there are answers to the objections and in due course, the objectors may be persuaded.

Lawyers who are indifferent to legal aid work are even more of an obstacle to promotion. These gentlemen do not want to be bothered with it. If we are to win them to a more cordial support, it is necessary to demonstrate the legal aid picture as an essential factor in the field of the public relations of the legal profession. Doctors have their free clinics and gain much public prestige. If lawyers do not do likewise, how can they expect to maintain their position in the face of the pressure from lay agencies in the unauthorized practice of law? Inertia in the face of such realistic competition should stir many otherwise indifferent individuals. If the indifferent lawyer cannot be shaken out of his immediate preoccupation by the chance to support an agency which can return so much prestige to the profession as a whole, it is difficult to see what will. Even with all our efforts, there will probably be for a long time both objectors and indifferent lawyers. The promotional plans should therefore go further.

The problem of the clients—how to inform them of the availability of the service, and how to persuade them to make use of it—is still far from solved. Even in large cities there are poor people who do not know when to consult a legal aid society. If they come in at all, it is too late and our contribution can be nothing but too little. In a similar situation in the medical field, the patients are buried and we do not see them. In the law, the clients live on and the scars of injustice are livid in their minds. Their recollection haunts, or should haunt, us. Even more so in the case of rural clients, the difficulty of education to the value of preventive law looms large. In the medical field, insurance companies, public health services and other agencies “sell” the individual lawman on the importance of (a) preventive medicine (b) the value of seeking promptly and periodically standard medical service. At present the legal profession lacks such support from the business world and the gulf between the impecunious client and the lawyer remains to be completely bridged. Yet we have made progress.

Two examples of legal aid promotion in rural areas are in order. The

first comes from Pennsylvania, the second from North Carolina. They differ materially in detail, and for that reason, they afford an opportunity to point out on a comparative basis certain significant aspects. Each is appropriate in its own state. Neither is better than the other. They show us something of what we need for successful developments.

In Pennsylvania the Legal Aid Committee of the state bar association was created in 1923. Annually thereafter its reports have been published in the proceedings of the annual meeting. They form an interesting record. Like the corresponding committee of the American Bar Association, until the last six or seven years the committee has at all times functioned without appropriation from the association. Stenographic, clerical, and traveling expenses have been contributed by the members. In general its work falls into two periods. The year 1947 marks the dividing line.

From 1923 to 1947 the committee was dealing primarily with the question in the minds of conservative lawyers as to whether legal aid work was respectable or not. Local interest in the counties waxed until the time of World War II. The state association in 1947 amended its by-laws to include a purpose clause accepting the legal aid responsibility. At that point one may assume that respectability was officially established.

The next problem was how to arouse enough interest to insure local support for local ventures. The committee's records suggest that it has supported the grass roots theory of promotion. The state bar committee was ready to help, but did not attempt to force itself upon the counties. When local groups of lawyers, social workers, or others reached the point at which they desired advice or assistance, then the committee was ready to aid. In the meantime, it respected county rights and assumed that a premature high pressure sales campaign probably would be more harmful than helpful.

At the beginning of World War II, the committee was prepared to undertake the task of giving legal aid to servicemen and their dependents. However, a special Committee on War Work was set up in this field and did exceptional work, not only in actual service, but in convincing local groups that there was a real need and demand for legal aid.

At the annual meeting in 1947, the association turned over to the Legal Aid Committee the work which had been begun by the War Work Committee. At the same time, the Legal Aid Committee was increased to insure one member in each county. The committee, which previously had functioned in an advisory capacity, became at once in itself a state-wide service agency. The question then has been how to let legal aid clients know this socio-legal resource is available.

Integration of legal aid work on a state-wide basis is proceeding in the individual counties. As a first step, social agencies were contacted on the state level and were advised of the availability of the new service. At the county level, the matter of notification of local agencies was left in the dis-

cretion of the committee member. In these counties where legal aid organizations existed, their cooperation was solicited. Much remains to be done, but Pennsylvania has given a good account of itself in promotion and may be expected to carry forward.

In North Carolina a committee of the state bar association has been in operation since 1933. It also had no appropriations from the association with which to operate. Its members have financed its work from their own pockets. Its record is also available in the annual reports published in the proceedings of the association. Yet its history is marked by three factors not present in the Pennsylvania picture. The Committee during its existence has had the benefit of the Duke University Legal Aid Clinic. During the war it served as the War Work Committee. More recently the School of Social Work at the University of North Carolina has offered a course in law to its students.

Like the Pennsylvania group, the North Carolina group had to survive a period of questioning as to the respectability of its essential idea. Even more of a problem was the lack of existing legal aid organizations in the state to which one could point as examples. Pennsylvania had the Philadelphia and Pittsburgh Legal Aid Societies in existence before the state bar association took an interest. In North Carolina the establishment of the Duke University Legal Aid Clinic and the interest of the state bar association coincided. The North Carolina committee started from scratch.

The Duke University Legal Aid Clinic performed three functions for the Bar Association Committee. Since 1932 it has sent out annually into the profession a group of young men who have spent a year actually working in a client-serving legal aid office. This meant that they were available to promote legal aid organizations locally, to participate in their work, to contribute experience toward the rules and regulations regarding the operation of local organizations, and to aid in making local decisions. These men were from the beginning neither hostile nor indifferent to organized legal aid work. Many struggled valiantly against opposition and indifference. The fruit of their labor is now, after some twenty years, beginning to be reaped. No end of credit is due them. The pioneering they did was as rugged as any their forefathers in colonial days encountered.

Again, the Duke Legal Aid Clinic maintains a briefing service without charge to its alumni and other lawyers in the state. Through this service, lawyers in smaller counties can have the benefit of the material in the law library and are saved time in research. This lightens the legal aid load. It also makes contacts so that the legal aid idea is favorably known, not as an ivory tower theory, but as a cooperating agency in the administration of justice.

Finally, during the war the Duke Legal Aid Clinic had the stenographic and other facilities to enable it to serve as a clearing house for

thousands of cases which had to be routed from the distraught client to some attorney in one of North Carolina's 100 counties. The writer, as chairman of the Legal Aid Committee of the state bar association and director of the Legal Aid Clinic, was able in his own person to combine and integrate the legal aid idea with other bar association activities. The questioning as to respectability seems largely to have come to an end. This wartime experience aroused interest and cooperation. Legal aid became familiar to many persons and both the demand and the willingness to supply it was brought out in the open. At the present time there is a promotional movement for a simple legal aid organization in several cities. There is also a man to man relationship for getting a legal aid case handled in any of the counties.

Much remains to be done in North Carolina, but already she has given a good account of herself in this humanitarian work.

The significance of the course in law at the University of North Carolina School of Social Work now in its first year remains to be determined. If it succeeds in informing the new generation of social workers of the value of legal aid and gives them some idea when and how to use this socio-legal community resource, we may expect them to want to screen every case coming to their attention for legal implications. Such a demand would surely add greatly to the pressure for simple county legal aid societies.

The grass roots theory is based on the assumption that legal aid promotion in rural areas will make its way depending more upon local conditions than upon national pressure. There are two steps to be taken: first, a state-wide move to secure support of the bar association and social agencies on the state level; second, a promotional problem in each county. The appointment of a state bar committee is perhaps the first step. Here the American Bar Association can be, and has been, of great value. Support for the idea does not follow without more. There is need for someone in each state to act as a spark plug. How we are to train and stimulate 48 spark plugs is another matter.

After the state level has been developed, we move on to the most difficult job of all—the local counties. Our present system has been hit or miss. The need here is manpower.

Heretofore, we have been content with the individual lawyer who for some reason wants to devote time and effort to the idea. Now we need a more systematic approach, to develop interested and informed supporters.

A legal aid clinic is an obvious asset in developing interested and informed manpower. A lawyer who has had legal aid clinic experience is a potential spark plug. As a youngster, he is probably anxious to identify himself with some movement which will enable him to appear before the public.

If he is a citizen of the state in which he is operating, he should be able to get closer to the people than would an equally able national expert.

Perhaps there should not be this reaction; but there it is, and we may as well recognize it.

Legal aid promotion requires a great deal of spade work. We will do well to restrain our impatience at the apparent lack of progress and devote our attention to setting up a system which in due course and with a minimum of opposition should produce the desired result.

THE DEVELOPMENT OF THE LEGAL AID MOVEMENT IN THE SOUTHEAST*

FRANCES CRAIGHEAD DWYER

General Counsel, Atlanta Legal Aid Society

I. LOCATION OF AVAILABLE LEGAL AID SERVICES

The Southern lawyer, known in most communities as "colonel" has for generations dispensed legal aid service generously, considering that the representation of the poor was an obligation of the profession as well as a realistic means of building up and sustaining a lifetime law practice. Marion K. Smith, chairman of the Louisiana State Bar Association's Legal Aid Committee, speaks for the typical Southern attorney when he says: "The legal profession in Shreveport, Louisiana, has always come to the legal aid of impecunious persons who had just claims. I know of no instance where any person has failed to obtain representation in prosecuting a just and valid claim simply by reason of the fact that he had no funds with which to pay an attorney. Either the attorney sees enough merit in the claim to handle the matter on a contingent basis or provides for his client to give a pauper's oath in the event the client is unable to advance the necessary court costs. Legal aid assistance in this city has always been a voluntary act performed by the lawyer who may be first contacted."

By and large, legal aid service given in this fashion by the individual attorney on a volunteer basis is adequate in the small rural agricultural areas of the southeast. Many southern communities, however, are becoming industrialized and are growing at an unprecedented rate. In these cities, there is a widening gulf between the practicing attorneys and those persons needing legal assistance for which they are financially unable to pay.

At present, legal aid offices with paid legal and clerical staffs exist only in New Orleans, Louisiana, and in Atlanta, Georgia. Legal aid clinics operated in conjunction with law schools function at the University of Tennessee at Knoxville, Tennessee, and at Duke University serving Durham and Raleigh, North Carolina. In the following cities exist centrally located

*For the purpose of this study, the Southeast has been construed to be Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. Florida has been excluded because its economic and social problems differ from those of the agricultural southeastern states.

intake offices for legal aid clients who are referred to volunteer attorneys for assistance: Chattanooga, Tennessee; Savannah, Georgia; High Point, North Carolina; Winston-Salem, North Carolina; Charleston, South Carolina; and Greenville, South Carolina. Greensboro, North Carolina, and Memphis, Tennessee, have legal aid committees of the bar association but no central offices. The state bar associations of Georgia, Tennessee and North Carolina have legal aid committees. The departments of public welfare of North Carolina and Louisiana have attorneys on their administrative staffs. The state law departments in all of the southeastern states assist the workers of the state departments of public welfare with the legal aspects of their social problems and local solicitors and county attorneys assist social agencies in a limited number of cases.

II. METHODS USED IN THIS ANALYSIS

Data for this summary was compiled from questionnaires sent to the following: presidents of state bar associations of the seven southeastern states, directors of the state welfare departments, the welfare directors of the three largest towns in each state and to the deans of the law schools in the southeast. The questions propounded were: (1) What legal aid service exists in your state at the present time? (2) In what ways are free legal services provided to the poor in those communities which do not have legal aid services? (3) Are any plans being made in your community to establish free legal services? (4) What are the reasons, in your opinion, for the present lack of legal aid service in this area?

III. ANALYSIS STATE BY STATE AS TO THE EXISTENCE OF LEGAL AID FACILITIES

(A) ALABAMA. Alabama has no formal or organized legal aid service whatsoever. The state bar association has not appointed a legal aid committee and the state Department of Public Welfare has no legal advisor on its staff, though the Welfare Department receives legal assistance in occasional cases from the law department of the state. An Alabama welfare director states: "We definitely believe that there needs to be a more formal and accessible method of obtaining legal service for our clients and other indigent persons. We know of many cases where our clients have been abused and exploited because they could not obtain the necessary legal counsel in connection with property transactions, divorce suits, etc. Not only for the protection of clients who are unable to pay, but also from the standpoint of spreading charitable service more equitably among the various practicing attorneys in the district, we do feel that there should be some legal aid service which would provide a panel of rotating attorneys to serve certain cases on a free basis at various intervals."

In Mobile (population 150,000), the Council of Social Agencies presently has a committee evaluating the need for legal aid service.

In Montgomery (population 105,000), some interest is being shown among individual members of the bar in legal aid and occasional letters of inquiry from local lawyers are received by the National Association of Legal Aid Organizations but no committee as yet has been appointed. Social case workers in Montgomery obtain needed legal service from the county attorney and the county solicitor in a limited number of cases.

Birmingham, with a population of over 300,000 has no legal aid service whatsoever, nor does the local bar association have a legal aid committee. The Co-ordinating Council of Social Agencies is presently making a study of the need for free legal service. In the meantime, case workers of the Department of Public Welfare and other social agencies, to use the words of a case worker, "are abusing personal friends who are attorneys in order to get assistance in legal problems." She further states: "We regret that we do not have a legal aid service in Alabama. Obviously the lack of such a service impedes social case work with certain cases in which legal services are needed. Our case workers often seek advice and counsel of county solicitors, but, of course, an attorney in this capacity can not represent an individual client."

Birmingham, famed for its manufacture of steel and iron, is a thriving industrial area, and is one of the largest cities in the southeast. Since statistics over the country show that in urban centers of over 100,000 population, one per cent of the American population needs legal service for which it is financially unable to pay, it would appear that there must be approximately 3,000 potential legal aid clients in Birmingham.

The law school at the University of Alabama at Tuscaloosa reports that no legal aid clinic has been established there because of the opposition of the local bar. Neither the Birmingham Law School nor the Jones Law School at Montgomery has a legal aid clinic.

(B) GEORGIA. The state bar association has had a legal aid committee since 1941, through which limited volunteer legal assistance for needy persons can be obtained in each county. The state Welfare Department has no attorney on its administrative staff but the state Law Department gives legal assistance to case workers of the state Welfare Department. Both Atlanta and Savannah have legal aid offices.

The Atlanta Legal Aid Society was established in 1924 under the leadership of E. Smythe Gambrell, now a prominent Atlanta attorney, then a recent graduate of the Harvard Law School where he had participated as a student in the work of the legal aid clinic. During the first year of its operation the Atlanta Legal Aid Society was supported by contributions from members of the Atlanta Bar. In 1925, the society, having demonstrated its usefulness to the community, was accepted as a member of the Community Chest and has been supported entirely by Chest funds since 1925.

The agency has a staff of two full time attorneys and one part time attorney, two stenographic workers and six volunteer attorneys. The board is composed of twenty-four lawyers. Approximately 3,000 new clients each year receive advice or court representation from the agency. The agency is understaffed because of lack of funds. Its services should be decentralized so that legal aid facilities would be more easily available in suburban areas. The Society has taken leadership in the drafting and passage of corrective social legislation and members of the staff are directly responsible for progressive changes in the state's adoption and child labor laws.

The Emory University Law School, located on the outskirts of Atlanta, is showing considerable interest in the establishment of a legal aid clinic. A group of interested students have requested a legal aid clinic and the incoming dean is giving consideration to its establishment.

Augusta, with a population of 75,000 has no legal aid committee at the present time, though there is recurring interest in the legal aid movement among individual members of the bar. A legal aid office staffed by volunteer attorneys was tried for a brief period in 1930. Few clients came for service and the bar felt that the individual lawyers were providing the needed legal service and that a legal aid office was unnecessary. An up to date evaluation would doubtless indicate a greater need for legal aid services in view of Augusta's increased population and industrialization.

Columbus, with a population of 75,000, is a highly industrialized city, having textile mills, bottling plants and lumber mills. Several attempts have been made to establish a legal aid office by the Council of Social Agencies but the members of the bar believe that formal legal aid offices with paid staffs socialize the practice of law. The bar association at the present time, however, is making a further inquiry into the real need for free legal service and is presently giving free legal service one afternoon a week to members of the armed forces at Fort Benning, Georgia.

Macon, with a population of 75,000 has no legal aid society but students and faculty at the Walter George School of Law have evidenced interest in establishing a legal aid clinic.

In Savannah, whose population is 131,000, a legal aid society was established in 1946 under the sponsorship of the Savannah Bar Association and under the leadership of Sol Clark, Chairman of the Board of the Department of Public Welfare. For the first two years of operation it was financed by gifts from volunteer attorneys and the Department of Public Welfare served as the intake center for legal aid. Now the Savannah Community Fund makes a contribution to cover overhead, telephone, and clerical staff. The case load is 148 annually. There are fifty-five volunteer attorneys on the rotating panel and a part-time paid clerical worker.

(C) LOUISIANA. The state bar association has a committee on legal

aid and the State Department of Public Welfare has a staff attorney who is available to welfare workers for consultation on legal matters.

In New Orleans, whose population is 568,000, there is a formal legal aid office staffed by one part time attorney who is assisted by a panel of volunteer attorneys. This office was established in 1932 and has an annual case load of 600 cases. It is supported by the Community Chest and the New Orleans Bar Association. The case load seems small in view of the large population.

The bar in Baton Rouge, the state's capital, with a population of 73,000, is currently interested in legal aid work and is conferring with the state committee concerning the establishment of an office there.

Louisiana is predominantly an agricultural state producing cotton, Indian corn, rice, sugar cane and sweet potatoes. The farm population is 37 per cent of the total population. Legal aid service is given in Louisiana's small rural communities by individual attorneys and at present seems to be adequate.

(D) MISSISSIPPI. Though the state bar association of Mississippi has no legal aid committee and the State Welfare Department does not have an attorney on the administrative staff, individual attorneys and county and district attorneys give generously of their time in charity legal matters.

During the war period the Mississippi State Bar Association had a working committee composed of members of the Mississippi State Bar residing in the various counties, who gave free service to service men and their relatives when need for such was certified. Subsequently, the Junior Bar Association of Jackson, Mississippi, made a survey as to the need for legal aid service in Jackson and vicinity. The committee reported that in their opinion it would not at this time be practical to set up legal aid service as the apparent need for such would not justify the expense entailed. Apparently, the present need for free legal service is being met by volunteer effort in the state, which is largely agricultural and is composed of small communities.

(E) NORTH CAROLINA. The North Carolina State Bar Association has a legal aid committee and the state Department of Public Welfare in Raleigh reports that many county bar associations have legal aid committees. There is a staff attorney on the State Board of Public Welfare, and the State Attorney and assistants are helpful to the State Department of Public Welfare in the legal aspects of their social problems. The State Welfare Director states: "There is a need for education on the part of the case workers and others connected with the welfare program upon the valuable part an expanded use of the available legal services could play in a well-rounded program of social service in the community."

Raleigh, with a population of 65,000, has a legal aid clinic which was established in 1947 by the Council of Social Agencies. It is supervised by

Dr. John Bradway of the Duke University Law School Clinic and is staffed by senior law students.

In Charlotte, whose population is 120,000, the Department of Public Welfare has a small fund with which to employ attorneys in unusual cases. No legal aid exists. Local welfare agencies turn to the Domestic Relations Court and its workers for the solutions of family problems.

In Winston-Salem with a population of 92,000 there is a legal aid clinic which was established by the Community Council with the cooperation of the Family and Child Service Agency. It functions as a department of the Child Service Agency which furnishes case work and clerical assistance. The members of the Junior Bar Association give free legal services. The organization is supported by the Community Chest.

In Greensboro, with a population of 80,000 there is a legal aid committee of the bar but no centrally located office.

The legal aid clinic under the direction of John S. Bradway at Duke University, located at Durham, North Carolina, was established in 1931 and presently has a case load of approximately 400 cases a year. The Clinic is financed by Duke Law School and has a staff of three attorneys and two clerical workers. The clinic not only assists the poor of Durham, whose population is 72,000, but also procures needed legal services over the entire state of North Carolina for persons whose problems must be solved in counties outside of Durham and Raleigh.

Professor Bradway of the Duke Legal Clinic states: "In big cities you can argue the need for legal aid work because of the number of clients. In rural areas, and they are a characteristic of the south, legal aid promotion is largely a matter, it seems to me, of establishing legal aid clinics in law schools so that the young men may go out with the feeling that they want to make a contribution in the direction of legal aid."

(F) **SOUTH CAROLINA.** The state bar association has no legal aid committee although the Greenville, South Carolina, legal aid committee of the Family Service Association procures volunteer legal service throughout the state in a limited number of cases.

In Greenville, with a population of 45,000, the Family Service Association serves as the intake agent for legal aid clients and refers them to local volunteer attorneys for assistance. This service was established by the local bar and the Family Service Association.

In Charleston, with a population of 80,000, a legal aid society opened July 5, 1949. The society was established by the individual efforts of Charleston attorneys in cooperation with the Charleston Welfare Council. Legal advice is given by a committee of five volunteers to whom clients are referred by the legal aid society from a centrally located intake office. To date expenses of overhead have been borne by individual attorneys though an application for funds is now pending before the Charleston Community

Chest. Miss Mary Allen, attorney, is the volunteer director of the legal aid office.

In Spartanburg, with a population of 38,000, those needing free legal service have to depend upon the services of the county attorney, the probate judge and individual lawyers.

In Columbia, the state capital, with a population of 72,000, there is no legal aid service. The State Department of Public Welfare there turns to the attorney general for legal advice in social welfare matters.

The University of South Carolina has no legal aid clinic, though an inquiry is presently being made into the problem.

(G) TENNESSEE. The Tennessee State Bar Association has a well organized committee on legal aid work and local bar groups in Chattanooga, Memphis, and Knoxville have legal aid committees.

In Chattanooga, with a population of 135,064, a legal aid society was organized in 1947 by the bar association. The office is operated by a part-time clerical worker, and twenty-five volunteer attorneys accept cases in rotation. Fees are charged by the attorneys if the clients are able to pay. All legal aid clients pay a \$2.00 initial registration fee at the legal aid office and those who are unable to pay the fee for themselves have it advanced by the particular social agency which is supporting them.

Memphis, with a population of 325,776, at the present time has no legal aid office. The regional director of the State Welfare Department reports that "We have no definite place for case workers to secure legal assistance. We have often secured legal information through the probate judge of the county and at times have asked the advice and help of the county attorney. The Child Welfare Division of the State Welfare Department has recently employed a legal consultant who will be available for consultant service only on a state-wide basis. Also the 1949 state legislature approved a small amount of money to be used for legal services but we have not been notified as to just how these funds will be used." At one time a legal aid office sponsored by the Chamber of Commerce existed in Memphis but was discontinued in 1935. During the war a legal aid committee was organized by the bar to assist veterans and the bar association is now discussing the wisdom of reviving legal aid service in Memphis.

In Nashville, with a population of 175,000, there is no legal aid service. A legal aid office was operated there for several years by the Council of Community Agencies which employed a part time lawyer, but this service was discontinued in 1947.

In Knoxville, with a population of 145,000, the Legal Aid Clinic of the University of Tennessee Law College, opened in 1947, gives free legal service to needy persons in the Knoxville area and to clients of Knoxville social agencies. The clinic is open daily, has two full time attorneys in

charge, in addition to law school students, and is financed by the University of Tennessee College of Law.

At the present time the interest of the State of Tennessee remains predominantly agricultural, the main crops being corn, oats, wheat, cotton, and tobacco. The communities are small and legal aid service is given by individual attorneys at the local level. As the region becomes industrialized as a result of the Tennessee Valley Authority and as the communities grow, there will be greater need for organized legal aid service.

IV. REASONS FOR THE LACK OF FORMAL LEGAL AID SERVICE IN THE SECTION

There are several plausible explanations for the slow development of formal legal aid services in the Southeast.

(A) The South has been primarily rural throughout its entire history and matters have been settled on the basis of a common understanding and a common point of view rather than on legally established standards of conduct. Most differences between individuals in rural areas are settled among families in the traditional way rather than by court procedures.

(B) The South has had for generations a relatively homogeneous population group whereas in the East, where legal aid societies originated and have flourished, there were large populations from southern and eastern Europe, who were unfamiliar both with the language and the culture of the United States. Differences and disputes arise more readily among heterogeneous groups and are more difficult of solution than among homogeneous groups.

(C) In a small community, and the Southeast has only twenty communities of over 75,000 population, the lawyer is known personally to the average citizen; a poor person in a small community has little hesitancy in seeking legal help from an attorney he knew in school, played ball with or whom he sees weekly in church; in small communities there is not the gulf between the attorney and the needy client which we find in the larger urban areas.

(D) The average southern lawyer renders free legal aid every day as part of the day's work. Southern people have an unusually deep and sincere interest in other people and in helping them solve and meet their daily problems. Furthermore, the average attorney in a small southern community is not dependent solely on his law practice for a living but can depend upon his farm, live stock, timber and interests in local business for part of his income; hence, he can render free legal service without financial hardship.

(E) In the South the young lawyer expects as part of his legal preparation, to do his share of charity work for experience, to build up a practice, and to establish for himself a voting constituency in preparation for the day when he may enter politics. The counties in the South are small as well as

numerous and each county offers a variety of openings for lawyers with sufficient political backing as county attorneys, legislators, solicitors, judges, probate judges, justices of the peace and clerks of court.

(F) The patriarchal system which has existed in the Southeast explains to some measure the lack of the need for formal legal aid service. One-third of the population in the Southeast is colored; varying from 17 per cent of the population in Tennessee to 49 per cent of the population in Mississippi. Every colored family has its "white folks" to whom they turn with their problems, legal or otherwise. The white friend usually works out practical solutions rather than resorting to legal methods. The tenant farmers likewise depend upon their landlords to work out disputes; if the controversy has to be settled within the framework of the law, the land owner calls upon his own attorney who as an accomodation to a valuable client, handles the matter free of charge.

(G) In small communities the local public officials such as clerks of court, justices of the peace, probate court employees, etc., assist poor clients in the filing and answering simple legal proceedings so that legal representation is not needed.

(H) In some areas in the South there has been a definite reaction against the establishment of formal legal aid services. The South traditionally has been conservative and has been slow to accept and foster social reform. Some communities resist legal aid as a socialistic step and several southern bar associations have opposed the establishment of legal aid offices on the basis that they would deprive local attorneys of paying clients.

V. THE FUTURE OF THE LEGAL AID MOVEMENT

In small rural agricultural communities in the Southeast, legal aid services will doubtless continue for years to be given by local attorneys on a charity basis with the younger lawyers of the bar carrying the bulk of the free work as a means of gaining experience and building up a practice.

Over the country, communities needing formal legal aid services are characterized as urban, industrial and heterogeneous. As southern communities become industrialized and expand and have persons of different racial and cultural groups moving in, there will be an increasing need for legal aid service. In fact, voluntary free legal service by individual attorneys on an unorganized basis is already proving satisfactory in southern industrialized communities as evidenced by the current active interest of bar groups, councils of social agencies and individual attorneys in searching for some adequate form of free legal service for those persons in their communities who need easily available legal assistance for which they cannot pay.

Will this need for free legal service be financed by the bar itself? Or will members of the bar in the Southeast see to it that the community need for legal service is financed through organized charity? Or will public

opinion become so impatient with the slow progress of the bar that it will decide to use tax money to employ attorneys to give advice and legal representation to the poor on the theory that in a democracy legal representation is a matter of right? Or does the answer lie in America's acceptance or rejection of a welfare state?

DEFECTS IN PRESENT LEGAL AID SERVICE AND THE REMEDIES

BY RAYNOR M. GARDINER

General Counsel, Boston Legal Aid Society

I have made this memorandum very brief because the facts are well known to everyone who has knowledge of the subject, and to write a more elaborate report would not serve any useful purpose.

By defects in present legal aid service, I assume that we mean such things as entire lack of service in most communities, badly operated offices in many others, and a definite lack of money in nearly all cities that do have legal aid offices.

I assume that everyone will agree that all cities of reasonable size, say 75,000 to 100,000 population, should have an efficient legal aid office. By an efficient office, I do not mean a lawyer's reference bureau or a part-time lawyer sitting at a desk who gives information but never goes to court, nor do I mean a committee which takes occasional worthy cases. A number of cities have one of the above types of organizations. Some of them are proud of it and think that they are doing their part. They are not doing their fair share, but we must admit that they are doing more than cities which have no organization of any kind.

Anyone who asks the question, "What are the defects in present legal aid service?" has only to turn to the latest A. B. A. report, look at the organizations listed therein and then turn to any standard atlas showing cities of 50,000 or over. The present inadequacy of legal aid service in the country as a whole will immediately become apparent to all who can read. The fundamental defect in legal aid service today is that, from a national point of view, it hardly exists. It is true that nearly all of the larger cities in this country have legal aid organizations, good, bad and indifferent, but the great majority of our citizens have no access to legal aid and to pretend anything else is just pompous nonsense.

It is sad, but in my opinion true, that, of the member organizations of the National Association, there are only some fifteen that I would rate as even reasonably good legal aid offices and, of this fifteen, there are not more than six or seven that are neither too small nor definitely inefficient. There are not more than one-half dozen offices in the entire country that are equipped to provide a client with adequate representation in court. The

average legal aid office lacks the personnel or the money to engage in much litigation. They attempt to get around this difficulty in various ways. The commonest way is to be just an information bureau and tell the client who has a case pending in court to see the clerk of the court and perhaps something will be done about it. Another, and rather better expedient, is to send the case to volunteer lawyers who are apt to give it attention in proportion to the size of the fee they hope to get.

A fairly simple test of the efficiency of any legal aid organization is its annual statistics. Those that show little or no court work are, except in rare instances, relatively inefficient and those that show a high percentage of court work are quite effective. A simple statistical study of this sort brings forth many interesting facts about legal aid and one of the most discouraging aspects of any statistical survey is the realization that a good many organizations have always consistently side-stepped most questions in regard to court cases and have glossed over this feature of their work in a way that makes it very difficult to discover what, if anything, they actually do. They are fooling nobody but themselves and it is obvious that they are ashamed of operating an information bureau and presumably a pretty poor one at that.

Salaries in legal aid work in most cities of the country are well below those paid to social workers of equal age and experience. Legal aid lawyers are not equal in ability to partners of large and well known law firms, but they are highly skilled in certain fields of the law, such as domestic relations, workmen's compensation, etc. The calibre of legal aid work cannot be expected to improve greatly until the work itself pays at least as much as the salaries now being paid to social workers in the Red Cross, local family societies, etc.

Legal aid lawyers are not taken very seriously by members of the bar in general and they are seldom tendered judicial appointments or named on legislative committees investigating this or that evil, even though they frequently are much better equipped for these jobs than the individuals who are appointed.

It would be well to face the fact that legal aid is the poor relation of the bar and that those who work in a legal aid office are looked upon by the bar as worthy individuals who are not only slightly eccentric but also extremely unsuccessful from a material point of view.

Legal aid is supposed to provide remarkably fine clinical training. Many successful lawyers in Boston today, and to a lesser extent in other cities, have had at least a few months of summer training in a legal aid office. In many cases, this experience has been prior to their graduation from law school. Unfortunately most law firms will only employ graduates of a few selected law schools immediately after graduation. The partners in these particular firms will all tell you that a few months or a year in a legal aid

office is a wonderful thing but they never send their new employees to the legal aid for training. In fact, they do not really care to discuss the matter as they are well aware that their point of view is quite illogical. They honestly do not believe that the legal aid training is as good as they say it is or they would take advantage of it.

It is much easier to point out the defects in legal aid than to prescribe the remedies for these defects. The principal defect today is, of course, that there are hardly any legal aid offices in the country to criticize. Eventually we will probably have a legal aid organization in every small and large city in the country. Whether these organizations are run by the state, and are served by political hacks, or whether they are private charitable corporations adequately maintained and operated with bar sponsorship depends entirely upon the organized bar. Legal aid organizations must obtain something akin to the standard of medical clinics before it can be said that the public is being served in an adequate way. During the last few years, the A. B. A. has been very generous and has shown its sincere interest in legal aid by appropriating \$10,000 a year for three years to its Legal Aid Committee. This Committee, through its executive secretary, Arthur E. Schoepfer, has been responsible for starting a surprising number of new legal aid organizations and it is probable that, through the efforts of the Committee, quite a number of cities, which have as yet done nothing, will start organizations in the near future.

The Standing Committee on Legal Aid is satisfied that it has accomplished more than it had dared to hope for. That the financial contribution from the A. B. A. was long overdue does not detract from its effectiveness. The Committee has demonstrated that a great deal can be accomplished with sufficient money and manpower. The writer is convinced that the cause of legal aid, if left to itself, will grow so slowly that the public will get disgusted and some form of state control of legal aid will be established.

The Legal Aid Committee has found in the past two years that it is not a very difficult matter to interest the bar of a small city in the establishment of a legal aid society. The leaders of the bar have a dinner, many nice speeches are made about those who cannot afford a lawyer and, in a spirit of good fellowship and obligation to the community, a committee is formed to establish a Legal Aid Society. The Committee soon finds that it has no money with which to start an office and that the Community Chest, while friendly and interested, has troubles of its own and will not appropriate money for an agency that has not been operating for a year and thus proved itself. In most cases, the bar soon discovers that it cannot raise sufficient money from its members and since it cannot get any from the Community Chest, the matter is allowed to drift. Possibly the junior bar members form a committee of their own and make up a list of volunteers who are willing to take cases on a charitable basis. This list is then given to the Family Society

and to the secretary of the local bar association and everyone is happy. They now believe that they have a Legal Aid Society, and so they have, of a most inferior and quite temporary kind. It is true that some Community Chests have been very helpful and are willing to take the experience of others as true and back the new Legal Aid Society. In some cities, the bar, being a little more advanced than in some others we need not name, has advanced sufficient money for a "trial run," so to speak.

The only real remedy, however, is for the A. B. A. or one or more charitable foundations to arrange for the employment of not one person of the ability of Mr. Schoepfer, but several, and also to provide enough money to pay for the larger part of the first one or two years' operation of new legal aid offices where it is reasonably certain that the Community Chest will take over after "the need has been demonstrated." Community Chests are no brighter than bar associations, and the fact that a legal aid office is very successful in a city nearby has its drawbacks. They invariably tell you that the situation in their city is different. Why none of them can see that the United States is so highly standardized today that what is true of one city is almost always true of every other, we would not know. Perhaps it is just the perversity of human nature.

To sum up, bar associations will have to go to work on legal aid and provide real money for its advancement or they will eventually live to regret it. I have but little hope that they will take this advice simply because lawyers, like other people, are inherently selfish and they will not be convinced that spending this money will be to their advantage.