

# A NATIONAL BAR SURVEY

By JOHN S. BRADWAY\*

With advancing civilization the bar, in respect to its professional solidarity and effectiveness as an instrument of legal reform and public service has passed through several stages. The fanciful observer, more or less arbitrarily, may compare them with the arboreal,<sup>1</sup> nomadic,<sup>2</sup> pastoral<sup>3</sup> and urban<sup>4</sup> eras of the community at large. The progress has been marked by greater specialization of function,<sup>5</sup> sharper lines of distinction from lay and other professional activities,<sup>6</sup> more exclusive re-

---

\*A.B. (1911), A.M. (1915) Haverford College; LL.B. (1914) University of Pennsylvania; Professor of Law, Duke University School of Law; author of numerous articles on legal aid work and other legal subjects [Ed.]

<sup>1</sup>The arboreal period of the American Bar [1608-1750 (circa)]. See Charles Warren, "History of the American Bar," for the prejudice by church and laity against lawyers. Statutes and competing arbitration procedures combined to make the life of the lawyer uncertain. Many practitioners supplemented their earnings by non-legal businesses. E. P. Gates, "The Lawyers of the American Revolution," 39 Am. L. R., p. 84 (1905).

<sup>2</sup>The nomadic period [1750-1830 (circa)]. See Charles and Mary Beard, "Rise of American Civilization," Vol. 1, p. 100; James T. Adams, "Provincial Society, 1690-1763," p. 313. Social prominence increases with the increasing commercial and industrial life of the cities. Small bar associations are formed. The lawyer still takes many clients. Circuit riding is customary.

<sup>3</sup>The pastoral period (1830-1908). See Charles and Mary Beard, "Rise of American Civilization," *supra*, Vol. 1, p. 638; Carl R. Fish, "The Rise of the Common Man," 1830-1850, p. 59, for the growth of the corporation; p. 156, for the decline in morals. On this point see also James Bryce, "The American Commonwealth," chap. 97 "The Bar." The growth of the lawyer with one client or a small group of corporate clients and his abandonment of the general field of practice is characteristic. The idea of fees rather than public service as a test of success is suggested. See, for example, the change in the point of view of the court in the following three Pennsylvania cases: *Mooney v. Lloyd*, 5 S. & R. 411 (1819); *Gray v. Brackenridge*, 2 Pen. and W. 75 (1830); *Foster v. Jack*, 4 Watts 334 (1835). The adoption by the American Bar Association of the Canons of Professional Ethics in 1908 is a formal end to the period.

<sup>4</sup>The urban period (1878- ) is marked by the rise of group consciousness exemplified by the bar association, the recognition of the presence of external pressure, competition and criticism and the need to do something about it; the improvement in legal education, admission to the bar and discipline; the increased attention to preventive, as distinguished from remedial, law. See 46 "Reports of A. B. A.," 656, for record of proceedings of the first meeting of the Section of Legal Education and Admissions to the Bar (1921).

<sup>5</sup>Law as an undifferentiated part of social control is discussed in B. Malinowski, "Crime and Custom in Savage Society" (1926); and E. S. Hartland, "Primitive Law."

<sup>6</sup>For a compilation of the statutes dealing with unauthorized practice, see Hicks and Katz, "Unauthorized Practice of Law, a Handbook for Lawyers and Laymen," 1934.

For an example of the process in a state, see the following New York statutes: 1862—An early statute in the state of New York prohibiting the practice of law without a license was passed April 24, 1862. It provides:

"Section 1: No person shall ask, demand or receive, directly or indirectly, any compensation for appearing as attorney in any of the courts in the city and county of New York, nor be permitted to make it a business to practice as an attorney in any of said courts unless

he shall have been regularly admitted by the supreme court of the state of New York, to practice as an attorney and counsellor in all the courts of this state.

"Section 2: Any person violating the provisions of this act, shall be guilty of a misdemeanor, punishable by not less than one month's imprisonment in the county prison, or by a fine of not less than one hundred dollars, or more than two hundred and fifty dollars, or by both such fine and imprisonment; and any judge of said courts, who knowingly allows or permits any person not regularly admitted to practice in the said courts, shall be guilty of a misdemeanor; punishable in the same manner as herein provided; but this act shall not prohibit any person from appearing in his own behalf, in any of said courts."

1876—The Code of Remedial Justice (The code of civil procedure) chap. 61, sec. 63, follows section 1, above, substantially in meaning, but not in wording, the most important change being the substitution of "in the courts of record of the state" for "in all the courts of the state." Section 6 follows section 2, above, substantially in wording except that the minimum fine of \$100 in the 1862 provision is the maximum in the 1876 provision.

1879—Section 63 of the 1876 provision was amended by changing the "attorney and counsellor" to "attorney or counsellor."

1898—The registration act for attorneys (Laws of 1898, chap. 165, sec. 4), made it unlawful after January 1, 1899, to appear in any court of record of the state or any court in the county of New York or Kings, or in any way advertise or assume legal connections (without any mention of receiving remuneration therefor) without taking necessary steps to become a licensed attorney. (1) The attorney must be duly and regularly licensed and admitted to practice in courts of record in the state. (2) He must take an oath to support the Constitution. (3) He must take a special statutory attorney's oath attesting his admission to the bar, the form of which is fully and specifically set out. Any violation of this constituted a misdemeanor the penalty for which is not provided.

The Laws of 1898 (effective June 1, 1898) chap. 316, amended sec. 63 of the Code of Civil Procedure by adding "or before any magistrate" after the words "appearing as attorney in a court."

The Laws of 1898, chap. 316, amended sec. 64 of the Code of Civil Procedure by raising the minimum fine to \$100 and broadening the definition of the court to include magistrates.

1899—The Laws of 1899, chap. 225, sec. 2, amended the Laws of 1898, chap. 165, by adding after "and admitted to the practice of the courts of record of this state," "or in case of persons licensed and admitted prior to July 1, 1827, without having first been duly and regularly licensed and admitted to practice as attorney of or in the then supreme court or as solicitor in chancery or of the court of chancery."

1909—Birdseye's Eomming and Gilbert's Consol. Laws of 1909, chap. 88, sec. 270, reenacted chap. 225, sec. 2 of the Laws of 1899, and sec. 271 reenacted chap. 316 of the Laws of 1898. Sec. 280 was added by chap. 483 of the Laws of 1909. This section provides that no corporation shall practice law under penalty of a \$5,000 fine with the exception that this prohibition shall not apply to a business lawfully engaged in the examination and insurance of titles to real property nor to organizations organized for benevolent or charitable purposes. Chap. 12, sec. 2(a) prohibits the incorporation for the purpose of carrying on the practice of law or the collection of debts or accounts. (Added by chap. 484, Laws of 1909).

1910—Chap. 327, sec. 271 of the Laws of 1910 amended chap. 88, sec. 271 of the Laws of 1909 by first including all cities of the first and second class instead of New York City alone, and second, by exempting from its provisions offices of societies for the prevention of cruelty.

1911—Chap. 317, sec. 280 of the Laws of 1911 amended chap. 88, sec. 280 of the Laws of 1909 by including voluntary associations.

1916—Chap. 254, sec. 280 of the Laws of 1916 amended chap. 317 of the Laws

of 1911 by adding that the provisions of this section shall not be construed to prevent a corporation from furnishing any person lawfully engaged in the practice of law such information and clerical services as would be lawful except for the provisions of this section (the lawyer assumes full responsibility for any harm resulting from such assistance).

1917—Chap. 783 of the Laws of 1917 amended chap. 88, sec. 270 of the Laws of 1909 to read:

"Section 270. *Practicing or appearing as attorney-at-law without being admitted and registered.* It shall be unlawful for any natural<sup>1</sup> person to practice or appear as an attorney-at-law or as attorney and counsellor-at-law for another in a court of record in this state or in any court in the city of New York,<sup>2</sup> or to make it a business to solicit employment for a lawyer, or to furnish attorneys or counsel or an attorney and counsel to render legal services,<sup>3</sup> or to hold himself out to the public as being entitled to practice law as aforesaid, or in any other manner, or to assume to be an attorney or counsellor-at-law, or to assume, use, or advertise the title of lawyer, or attorney and counsellor-at-law, or attorney-at-law or counsellor-at-law, or attorney, or counsellor, or attorney and counsellor, or equivalent terms in any language, in such manner as to convey the impression that he is a legal practitioner of law or in any manner to advertise that he either alone or together with any other persons or person has, owns, conducts or maintains a law office or law and collection office, or office of any kind for the practice of law, without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state, or, in case of persons licensed and admitted prior to July first, eighteen hundred and forty-seven, without having first been duly and regularly licensed and admitted to practice as attorney of or in the then supreme court or as solicitor in chancery or of the court of chancery, and without having taken the constitutional oath and without having subscribed and taken the oath of affirmation required by section four hundred and sixty-eight of the judiciary law and filed the same in the office of the clerk of the court of appeals as required by said section. Any person violating the provisions of this section is guilty of a misdemeanor and it shall be the duty of the district attorneys to enforce the provisions of this section and to prosecute all violations thereof."

<sup>1</sup>Word "natural" new.

<sup>2</sup>Words "in the city of New York" substituted for words "in the county of New York or in the County of Kings."

<sup>3</sup>Words "or to make it a business to solicit employment for a lawyer, or to furnish attorneys or counsel or an attorney and counsel to render legal services," new.

1919—Chap. 417, sec. 271, the Laws of 1919 amended chap. 88, sec. 271 of the Laws of 1909 by extending the prohibitions of this section to third class cities.

1923—Chap. 787, sec. 7 of the Laws of 1923—re-enacted chap. 12, sec. 2(a) of the Laws of 1909 which was added by chap. 484, the Laws of 1909, above.

1930—Cahill's Consol. Laws of N. Y., 1930, chap. 41, sec. 270, re-enacts chap. 783 Laws of 1917, above. Sec. 271 re-enacts chap. 417 of the Laws of 1919, above. Sec. 271 (a) was added (Laws of 1930, chap. 397) to extend the provisions of this section to include any transaction involving real estate either *inter vivos* or testamentary among the exclusive proclivities of the lawyer; sec. 272, as amended by chap. 397 of the Laws of 1930, sets forth the penalties for the violation of sections 270, 271 and 271(a), and sec. 280 re-enacts chap. 254 of the Laws of 1916 above, and chap. 60, sec. 7, re-enacts chap. 787 of the Laws of 1923, above.

1933—Chap. 50, sec. 271 of the Laws of 1933 (as set forth in the 1933 supp. to the N. Y. Consol. Laws) amended chap. 783, sec. 271 of the Laws of 1917 (Cahill's Consol. Laws of 1930, chap. 41, sec. 270) by extending the prohibition to practice in any court in the state.

1934—Chap. 534, sec. 280 Laws of 1934 (as set forth in the 1934 supp. of the

sponsibility for development in its own field,<sup>7</sup> and an increasingly efficient internal structure.<sup>8</sup> In each period the bar has made efforts toward some goal. In the past the individual lawyer has probably tended to regard the welfare of the client as the primary professional objective with loyalty to the court and to the profession following in the order named.<sup>9</sup> In the present transition from pastoral to urban conditions, there is greater need than ever for emphasis on public service.<sup>10</sup>

Some writers would have us believe that the progress toward this particular goal has come to a full stop.<sup>11</sup> They point to the traditional conservatism of the lawyer,<sup>12</sup> his preoccupation with the details of pri-

Consol. Laws of N. Y., chap. 41, sec. 280) amended chap. 254, sec. 280 of the Laws of 1916 (Cahill's (1930) chap. 41, sec. 280) by extending the prohibition to include any assignment of a claim.

<sup>7</sup>For a few examples, see *State v. Cannon*, Sup. Ct. of Wis. (1932) 206 Wis. 374, 240 N. W. 441; Henry M. Dowling, "Inherent Powers of the Judiciary," 21 A. B. A. Jour., p. 635; Frank E. Atwood, "Organization of State Bars by Judicial Order," 21 A. B. A. Jour., 533, Aug. 1935.

<sup>8</sup>The history of the bar association development falls into four stages. The first stage, the colonial bar association, is described by Charles Warren in his "History of the American Bar," *supra*. The second stage is the decline of the bar association. See, regarding this, Alfred Z. Reed, "Recent Progress in Legal Education" (1926) The Carnegie Found., Bul. 3, p. 2. See also Alfred Z. Reed, "Training for the Public Profession of the Law," Carnegie Found., Bul. 15, p. 57 (1921). The third stage is significant because it marks the rise of the American Bar Association and a number of state bar associations beginning about 1870. See Alfred Z. Reed, "Recent Progress in Legal Education," *supra*, pp. 4 and 10. The fourth stage beginning about 1920 is significant because of the rise of the incorporated and integrated bar as contrasted with the voluntary bar association.

State Bar Acts, Annotated, revised edition, 1934, published by the Conference of Bar Association Delegates, a section of the A. B. A.

<sup>9</sup>Sharswood, "Professional Ethics," 3d ed. p. 9; Warville, "Legal Ethics," 2d ed. 1920, p. 21.

<sup>10</sup>Wm. L. Ransom, "Constructive Work of the American Bar Ass'n.," 21 A. B. A. J., 701 Nov. 1935.

<sup>11</sup>1, Encyc. Britannica, 777 at 780:

"Dissatisfaction with the legal profession has been acute during recent decades. The bar has lost its one time leadership because it has ceased to lead, to make a social contribution commensurate with its political pre-eminence." Francis S. Philbrick.

A. A. Berle, Jr., "The Modern Legal Profession," 9 Encyc. of Social Sciences, 340, 345:

"The legal profession has been regarded as the intellectual tie between functioning economic and social institutions on the one hand and organized legal administration on the other. This relation admits of two possibilities. One is that the profession merely does what the institutional set up appears to demand, the other is that it can assist in transforming the underlying potentialities in ethical and economic attitudes into actual results in the form of social and legal organization. In the United States the profession has tended strongly to the former function; in England and on the continent, to the latter."

<sup>12</sup>Traditionally, the public has viewed the lawyer in an unflattering light. Donald F. Bond, "The Law and Lawyers in English Proverbs," 21 A. B. A. J. 724, Nov. 1935.

vate practice,<sup>13</sup> the great labor and discouragements attendant upon the creation and continued operation of remedial machinery. They urge consideration of the social and economic forces buffeting the bar and argue from the conflict that the individual lawyer's tendency today is in the direction of commercialization<sup>14</sup> to the point where the distinction between a profession and a business is lost sight of; specialization<sup>15</sup> to a degree approaching disintegration, because there will be no common denominator of experience to hold the group together; regimentation<sup>16</sup> through the large law office and the legal department of the corporation to such an extent that the individual general practitioner as a community leader is no longer in the main line of advance. Such writers go far to suggest that the profession as a whole, instead of a determined, close knit body, driving toward a goal clearly seen, is a ship adrift in the fog. There is no captain on the bridge,<sup>17</sup> little steam in

<sup>13</sup>Morris Gisnet, "A Lawyer Tells the Truth" (1931)—Introduction by Norman Thomas:

"I do not know any profession, not excepting the Christian Ministry, in which the gap between its ethical canons and the practice of its members is so wide and hypocrisy so great."

<sup>14</sup>Commercialization: Harold J. Laski, "The Decline of the Professions" (Nov. 1935), *Harpers Magazine*, p. 676. Re Corporation Lawyers:

"All their interests are affiliated to those of the class they serve. In that service the good of the public largely shrinks from their horizon. They too become rich. Their habits of life become dependent upon their ability to preserve their clients. They play precisely the same part in the modern business world that the mercenary soldier, plying his sword for hire, played before the advent of national armies. Their reward is wholly a function of their success; and their success is incompatible with the public good."

<sup>15</sup>Specialization: K. N. Llewellyn, "The Bar Specializes with What Results?" *Annals of the Amer. Acad. of Pol. and Soc. Sci.*, vol. 167, p. 177 (May 1933).

<sup>16</sup>A. A. Berle, Jr., "The Modern Legal Profession," *supra*, p. 342.

For material on the effect of business conditions upon the modern law office, see Elliott B. Cheatham, "Cases and Materials on the History and Organization of the Bar," pp. 1, 242 and following (1933).

<sup>17</sup>At the meeting of the American Bar Association in July 1935, a series of papers were presented urging upon the membership the need for a better organization of the bar. Two points of importance here were made: (1) Only 27,000 of the 175,000 lawyers of the United States are members of the American Bar Association; (2) the American Bar Association, being unrelated to the state and local bar associations, cannot speak for the bar of the country, 21 A. B. A. J. 522 and following.

James Grafton Rogers, "The Dream of a New Legal Profession for America," 21 A. B. A. J. 141, March 1935; Will Shafroth, a series of articles, 21 A. B. A. J. 37, 86, 159, 221, 307, 387, 422, 567, 647.

For information regarding the attendance at the American Bar Association meetings, see 59 Reports of A. B. A. 739.

See an address by Wm. L. Ransom before the State Bar of California, Sept. 19, 1935, "A Representative and Improved Organization of the Legal Profession in the United States," published by the A. B. A., p. 10.

See an unpublished address by Wm. O. Douglass, "The Lawyer and the Federal Securities Act," delivered before the Duke Bar Association, April 22, 1935:

"One theory of Bar Associations teaches that their leaders are

the boilers.<sup>18</sup> The crew is hanging over the rail fishing.<sup>19</sup> The owners unheeded protest against the delay,<sup>20</sup> expense<sup>21</sup> and uncertainty<sup>22</sup> of the voyage.

#### LEGAL SURVEY

The truth or falsity of this picture is not, for the moment, important. The significant fact is that the criticisms are being made. That they

---

the high priests of the profession who intone oracular (though platitudinous) doctrine so that the ethics and morals of non-members may be unsullied and so that all shysters—like devils—may be frightened into obscurity. This theory makes their incantations instruments of high public service.

"Another theory of Bar Associations treats these incantations less reverently. It is more concerned with the morals of its high priests than with the attempts of the high priests to make conformists out of those of lesser rank and all non-members. And it leads clearly to the conclusion that these high priests were active agents in making high finance a master rather than a servant of the public interest. They accomplished what their clients wanted accomplished, and they did it effectively, efficiently, and with dispatch. They were tools of agencies for the manufacture of synthetic securities and for the manipulation and appropriation of other people's money. In doing this they followed the tradition of the guild. In fact they were applying the teachings of their professors—they never took seriously the true nature of their public trust."

<sup>18</sup>Julius Henry Cohen, "The Law—A Business or a Profession," *The Banks Law Pub. Co.*, N. Y. 1916, chap. 18: "As the layman Sees the Lawyer."

<sup>19</sup>See the Durham (N. C.) *Sun* for Nov. 5, 1935, under caption, "State Expects Long Wait for Reynolds Cash," purporting to quote Director of the State Revenue Department, Division of Accounts and Collections:

"Still another factor, and probably the biggest, is that this case is too big a gold mine for the lawyers for them to permit it to be settled by agreement. The result is that they are going to carry it through every court they can and delay any settlement just as long as possible. For this Reynolds estate case is just like taking milk from a cow with a milking machine for the lawyers and they are going to get all the milk they can from it before turning over what is left to the heirs."

<sup>20</sup>Delay: There is an extensive literature naming delay as one of the causes of popular dissatisfaction with the administration of justice. Robert H. Jackson, in addressing the New York Bar Association in 1933, said:

"It is a general observation of press and laymen that our courts are from one to four years behind time and that justice is denied by unreasonable delays. The door of the court is always legally open, but the doorway is impassable because jammed with long-suffering suitors."

In all discussions of legal reform the evil of delay is emphasized. It has become an axiom that justice delayed is justice denied; Franklin D. Roosevelt, "The Road to Judicial Reform" (1932) 16 *Marq. L. R.* 227 at 228. See also an editorial in the *Saturday Evening Post*, vol. 206, p. 22 (Feb. 10, 1934).

<sup>21</sup>Expense: Kenneth Dayton, "Costs, Fines and Expenses in Litigation," *Annals of the Amer. Acad. of Pol. and Soc. Sci.*, vol. 167, p. 32, May 1933; Arthur L. Goodhart, "Costs," 38 *Yale L. J.*, p. 849, May 1929.

<sup>22</sup>Uncertainty: Report of the Committee on Establishment of a Permanent Organization for the Improvement of the Law, Proposing the Establishment of the American Law Institute, *Proceedings of the American Law Institute*, vol. 1, at p. 6.

may be unfair to the great body of public spirited members of the bar, who unselfishly devote their time to the advancement of justice and the improvement of the prestige of the profession in the eyes of the public, does not always occur to the layman.

If the individual lawyer comes to regard such charges as a challenge, they will have served a fine purpose. They disclose the presence of a public relations area of the bar and suggest a voyage of discovery. The adventurous explorers will find themselves in uncharted waters.<sup>23</sup> The first step in good seamanship is to set an official leadsman in the chains, install a sounding machine and order an official lookout in the crow's nest. Respect for the dignity of the profession will limit the use of the publicity fog-horn, but a set of first class charts is indispensable. If public service, instead of private, individual gain through commercialization, specialization, and regimentation, is to be an increasingly important goal, it will be approached only by conscious effort and intelligent planning. Effort is useless and planning impossible without a basis of facts. Because accurate, dependable facts are not available the average lawyer can only generalize in endeavoring to answer questions such as the following: (1) What is the present position of the bar with respect to the public confidence necessary for community leadership? (2) In which direction should it advance to make progress toward public service? (3) What steps should be taken to reach the goal? (4) What are the reasonable consequences to the bar of failure to take vigorously in hand its relations to the public?

In general, one can obtain a fair secondary picture of the public criticism of the lawyer through newspapers,<sup>24</sup> magazines<sup>25</sup> and question-

<sup>23</sup>The public relations field of the bar is being approached tentatively by bar association committees. For example, The Washington State Bar Committee, 21 A. B. A. J., p. 756; Report of the Public Relations Committee of the Penna. Bar Assoc., 40 Rep. of Penna. Bar Assoc., p. 188; Legal Aid and Public Relations, J. of Amer. Jud. Soc., vol. 19, No. 4, Dec. 1935, p. 108.

<sup>24</sup>The writer addressed a request to a national press clipping service for items containing criticism of the bar or of lawyers. The results during the period November 1, 1935 to November 20, 1935, were some seventy clippings. Typical of the headlines were the following:

*Lawyer's Duty to Court:*

Lawyer Rebuked by Justice.

Jury Fixing Case Heard here Soon.

Perjury Charge Filed in Divorce.

Ex-magistrate Disbarred with Four Attorneys.

Testifies Against Lawyers. Says Lawyer Paid Her for False Story.

*Specific Offenses:*

Embezzling Lawyers Apply for Pardons.

Lawyer Hit in Ambulance Chasing Case.

*General:*

The Double Standard Among Lawyers.

<sup>25</sup>A survey of the various indices of periodicals for the last five years yields some material. The following list of topics is suggestive:

H. L. Mencken, an editorial in the *American Mercury*, vol. 27, pp. 392-393, Dec. 1932:

"If half that has been said against Dr. Capone is true he deserves to be hanged as high as Haman. But it must be plain that hanging him, the state of the law being what it is, would be almost as difficult as hanging John D. Rockefeller, Jr., Rabbi Stephen S. Wise, Babe Ruth, or any other notoriously virtuous and valuable man."

Geo. G. Nathan, *The Bar*, *The American Mercury*, vol. 18, p. 372 (Nov. 1929):

"If one thing is evident today it is that the legal profession as it currently presents itself in the United States is in need of a quick and very drastic overhauling. . . .

"Under the thin cloak of the law they (shyster lawyers) practice a form of banditry that, bereft of the cloak, would land them in the coop instantaneously."

Mitchell Dawson, "Frankenstein, Inc." (March 1930) 19 *The Amer. Mercury*, p. 274. (An arraignment of corporate law practice).

Harry D. Nims, "How to Speed Justice" (May 1934) *The Forum*, vol. 91, p. 273.

Alice Hamilton, "What About the Lawyers?" (Oct. 1931) *Harpers*, Vol. 163, p. 543.

"... for to my mind lawyers are much more deserving of arraignment than doctors. . . . But the laws of evidence require that the simplest story be interrupted, chopped into particulars, and messed up until both witness and jury are confused. . . . I have been assured by lawyers that it is quite possible for a man to attain to the highest legal position in the land without ever having changed his mental attitude on any important point since he graduated from law school. And if this is not an indictment of the profession, I should like to know what it is."

Jerome Beatty, "Justice Cracks the Whip" (June 1934) *The American Magazine*, vol. 117, p. 72. (Contrasting the speedy justice in Los Angeles with the delay in other cities.)

M. V. Atwood, "The Law Lags Behind" (Apr. 19, 1933) *Christian Century*, vol. 50, p. 523:

"The law, on the other hand, has shown scarcely a glimmer of social consciousness."

(Quoting Joseph B. Eastman before the A. B. A.)

"I suggest that the legal fraternity is largely responsible for these unhealthy and even poisonous conditions. . . . I suggest finally that the American Bar Association furnishes a most appropriate forum for such a discussion. . . . Isn't a wholly new concept of the functions of the lawyer and of the law what is needed?"

Jerome Beatty, "Guardians of Crime" (Sept. 1934) *The American Magazine*, vol. 118, p. 81:

"Crime pays! It does not often pay the criminal. It pays his attorney."

John T. Flynn, "Other People's Money" (March 7, 1934) *The New Republic*, vol. 78, p. 101:

"A lawyer's life can be a happy one—on two sides of the one case—an impartial commission."

Paul Y. Anderson, an article in *The Nation*, vol. 135, p. 393:

"It is not necessary for me to dwell on the obvious fact that the lawyers are responsible for most of the evils of government. . . ."

"Bar for Sale," an editorial in *The Nation*, vol. 132, p. 117, Feb. 4, 1931:

"Lawyers are merchandise sold off the shelf to the highest bidder."

Louis Cochran, "Dollar Grabbers at the Bar," *Outlook and Independent*, vol. 160 p. 111, Jan. 27, 1913:

"The usual routine is for the lawyer to form an alliance with several justices of the peace who live and fatten on their court costs and to file all of his suits with these favored ones; . . ."



naires to representative laymen. The material thus secured is of great value as a preliminary survey. Beyond that point its effectiveness as a basis of remedial measures is less. The public relations field of the bar involves many imponderables. The individual client and the individual lawyer in the individual case constitute the forum in which public relations problems arise. A survey to provide data for constructive work in such a field should have several unique characteristics; for example, continuity of operation so that we may learn not only that we are fighting, but whether we are winning the battle; source material, directly in area of the closest attorney-client relationship; professional service objective, so that the criticism of personal gain may not be an obstacle.

The various surveys covering legal matters which have been, and are being, made are directed to other goals than this. A classification is possible with respect to the field in which the survey is made, the objective of the study and the material used. As to the first of these there are three groupings: the field of substantive law,<sup>26</sup> the field of administrative law,<sup>27</sup> and the field of the bar itself.<sup>28</sup> The third is of primary interest here. It is necessary to list the various declared objectives of current important surveys in the field of the bar under

---

William Seagle "America's Outworn Criminal Codes" *Current History* vol. 40, p. 431, July 1934.

John Barker Waite, "Is the Law an Ass?" (May 1933) *Atlantic Monthly*, vol. 151, p. 591:

"Able men can make deficient law effective; but the best law can not make incompetent men efficient."

But even this does not include such sources as the cartoon, the comic supplement, the novel or the biography of the colorful, but not the typical, lawyer.

<sup>26</sup>The most conspicuous example of a study in this field is the work of the American Law Institute.

<sup>27</sup>The number of surveys in this field is great. A few typical examples: (a) as to the way in which the law operates generally, the Institute of Law of Johns Hopkins University. The beginning of the Institute may be found in 6 *Amer. Law School Rev.* 336; and the work is described in 16 *A. B. A. J.*, 312. See also *New York Times*, May 26, 1933, p. 22, col. 8. (b) General surveys of the machinery for administering justice, such as "Principles of Judicial Administration," by W. F. Willoughby, published by the Institute of Governmental Research of the Brookings Institution, Washington; and (c) public studies in particular fields of law, as, for example, the Cleveland Crime Survey, the Missouri Crime Survey, the Illinois Crime Survey, the Uniform Crime Reports of the Federal Bureau of Investigation, U. S. Dept. of Justice.

<sup>28</sup>Lloyd K. Garrison, "Results of the Wisconsin Bar Survey," 8 *Amer. L. Sch. Rev.*, p. 116, Apr. 1935.

The more significant of the bar surveys are the following: the Wisconsin Bar Survey, the Missouri Bar Survey, the proposed National Bar Survey. For an example of such a survey in the field of legal education, see Will Shafroth and H. C. Horack, "Report of the California Survey Committee," published by the State Bar of California, 1933. Karl N. Llewellyn, "Some Comments on the New York City Bar Survey," 8 *Amer. L. Sch. Rev.*, p. 135. See the Report of the Committee on Cooperation with the Bench and Bar, 8 *Amer. L. Sch. Rev.*, p. 185.

certain rather arbitrary headings: (a) objectives interesting to lawyers because they deal with financial returns such as overcrowding,<sup>29</sup> competition by lay agencies,<sup>30</sup> the income of lawyers,<sup>31</sup> the correlation, if any, between the grades in law school and material success at the bar,<sup>32</sup> what aid can the bar association render to the lawyer,<sup>33</sup> uniformity in minimum fees,<sup>34</sup> unemployment of lawyers;<sup>35</sup> (b) objectives which take into consideration the public viewpoint, such as the cost of legal business to the public,<sup>36</sup> the legal business of the public which is not taken care of by the lawyer,<sup>37</sup> the extent to which the lawyer specialist is discoverable by the layman who needs him;<sup>38</sup> (c) objectives of a miscellaneous character such as relation of preliminary education to specialization, income distribution, unemployment, standardization of business.<sup>39</sup> The value of these objectives is not in question here. But the facts they disclose will not provide a basis for dealing with the questions propounded above.

The material gathered for most legal surveys is too restricted in scope to give the intimate and yet comprehensive and continuous moving picture called for here. The limitations are to a single geographical area,<sup>40</sup> a single type of legal case,<sup>41</sup> a single inspection of the material.<sup>42</sup> Again, the sources from which material is gathered have become too stereotyped. They include records of courts,<sup>43</sup> administrative tribunals<sup>44</sup> and occasionally lay agencies.<sup>45</sup> But they do not often

<sup>29</sup>Wiley B. Rutledge, "A Survey of the Welfare of the Missouri Bar," 8 Amer. L. Sch. Rev., p. 128, (Apr. 1935).

<sup>30</sup>See the Wisconsin Bar Survey (note 28, *supra*).

<sup>31</sup>Charles E. Clarke, "A Proposed National Survey of the Bar," 8 Amer. L. Sch. Rev., p. 138 (Apr. 1935).

<sup>32</sup>See the Wisconsin Bar Survey (note 28, *supra*).

<sup>33</sup>See the Missouri Bar Survey (note 29, *supra*).

<sup>34</sup>See the Missouri Bar Survey (note 29, *supra*).

<sup>35</sup>See the proposed National Bar Survey (note 31, *supra*).

<sup>36</sup>See the proposed National Bar Survey (note 31, *supra*).

<sup>37</sup>See the proposed National Bar Survey (note 31, *supra*).

<sup>38</sup>See the proposed National Bar Survey (note 31, *supra*).

<sup>39</sup>See the proposed National Bar Survey (note 31, *supra*).

<sup>40</sup>The surveys in the administrative field and the bar field have only attempted to analyze the needs of a single state or city such as the Cleveland Crime Survey, and the Wisconsin Bar Survey.

<sup>41</sup>Most of the administrative law surveys have been limited to the criminal field and there has been a further restriction in that only felonies were considered in most of the crime surveys.

<sup>42</sup>Practically all surveys are based on a single inspection. There is no checking up process to see if there has been any improvement. To achieve maximum efficiency a survey should be continuous.

<sup>43</sup>See Leon C. Marshall and Geoffrey May, "The Divorce Court," Johns Hopkins Press, vol. 1, Maryland, 1932; vol 2, Ohio, 1933.

<sup>44</sup>See, for example, W. T. Leonard, a general view of Workmen's Compensation in the United States and Canada, U. S. Bureau of Labor Statistics, Bul. No. 577, p. 307 (1932); J. A. Parks, "Workmen's Compensation Progress," U. S. Bureau of Labor Statistics, Bul. No. 602, pp. 22-32.

<sup>45</sup>Volume of business of lay agencies:

go to the place where the most significant contact between the lawyer and the client takes place—the law office.<sup>46</sup>

The lawyer, his expenses, the volume of his business, his material success, his professional achievements, all these constitute only one side of the picture. The client needs to be studied and his reactions to the legal process noted. It is comparatively easy for the lawyer to set up standards by which to measure the results of his own efforts. The temptation is to adopt the philosophy used in criticizing the surgeon that the operation may be successful even though the patient dies. One of the tasks of a new sort of survey would be to create a measuring rod for the layman and educate him to use it intelligently. By so doing a large part of the criticism against the administration of justice in general and the bar in particular will be disposed of. This task of creation and education has been too much neglected.<sup>47</sup>

---

Sources from which to determine the volume of legal business transacted by lay agencies are not numerous. A list of the number of estates handled by a trust company, the number of titles examined by a title insurance company, the number of claims collected by a collection agency, would be revealing. The following material, taken from cases in which bar associations prosecute lay agencies under statutes prohibiting the unlawful practice of the law, is illustrative.

Before the Illinois State Bar Association brought suit against the People's Stockyard State Bank, that institution was practicing law on a large scale. It handled about 200 estates a year; participated in eight to ten foreclosures each month, drew 150 to 200 wills each year. It drafted contracts of sale and rendered title opinions. *People ex rel. Illinois State Bar Association v. People's Stockyard State Bank*, 344 Ill. 462, 176 N. E. 902 (1931).

Upwards of 23,000 people joined the Association of Real Estate Taxpayers of Illinois and contributed approximately \$350,000 in fees. This organization's purpose was to prosecute suits in order to secure a more equitable distribution of the tax burden. By joining the organization the member authorized the association to use his name in any legal action to prevent the collection of any inequitable tax. *People ex rel. Thomas J. Courtney v. The Assoc. of Real Estate Taxpayers of Illinois*, 354 Ill. 102, 187 N. E. 823 (1923).

The trust division of the American Bankers Association reported that in 1929 there were 36,193 trusteeships handled by banks, and that the number of trusteeships in 1930 increased to 48,813. . . . From Report of the Section on the Unauthorized Practice of the Law, by John G. Jackson, vol. 59, Reports of A. B. A., p. 154 (1934).

<sup>46</sup>In the main the surveys which go to the lawyer's office for information look to it for data showing the financial results of his law practice rather than the nature, extent and quality of his service to the community.

The proposal of the National Bar Survey to interview lawyers and lay persons is an admirable thought. If it were planned to make such a service continuous, it would, in large measure, cover the proposals here. The distinction is one which, in the medical field, is represented by the collection of vital statistics on the one hand and the recent national survey as to the High Cost of Medical Care on the other. The proposal here is to set up a device for the collection of legal vital statistics.

<sup>47</sup>The nearest approach to this is the occasional layman who addresses a bar meeting, for example: Beardsley Ruml, "The Social Function of Law and Lawyers," 7 Amer. L. Sch. Rev., p. 1022, Apr. 1934; Edwin H. Hughes, Alan Raymond, and Victor Olander, "The Duty of the Law School to the Profession," 7 Amer. L. Sch. Rev., p. 102.

The problem to be considered in this paper is reduced to the following situation. Public criticism of the bar is a serious factor in a competitive civilization. The public relations field of the bar is inadequately organized. There is no adequate legal machinery to bring to the profession and the public a statistical picture of the facts. The existing and proposed surveys, while important, do not meet the present need. A new plan is indicated.

### THE PROPOSED SURVEY

The proposed survey may be described and distinguished from other studies in respect to objective, material and machinery.

The present objective is to provide a method and administrative machinery for gathering certain fundamental facts about the administration of justice. The facts sought should be types bearing a reasonable relation to the supreme<sup>48</sup> problem of the legal profession—how to increase and improve its service to the public. The term "facts" should be interpreted broadly to include viewpoints. The results of the operation of the proposed device should be a set of statistics portraying realistically what is actually happening.

The objective may be described visually as the assembling of a set of pictures of two sorts. First: like the contents of the old family album, should come the "still," photographically precise, views<sup>49</sup>—the facts at a given instant, a cross section of events, the subject, as it were, posed, organized, a little artificial. A basic survey is a necessary exploratory search for landmarks—a point of departure. Second: like a modern motion picture, a comprehensive, continuous series of daily snapshots recording, with the fidelity of the stock ticker, the unending stream of events as they occur.<sup>50</sup> A supplement to the basic survey will provide a long time view of the problem.

Looking more closely at the subjects of the proposed "still" pictures

---

<sup>48</sup>Constitution of the American Bar Association, Article I:

"Its objects shall be to advance the science of jurisprudence; *promote the administration of justice and* uniformity of legislation and of judicial decision throughout the nation, uphold the honor of the profession of the law and encourage cordial intercourse among the members of the American bar."

<sup>49</sup>For example, the Cleveland Crime Survey gives a vivid picture of the administration of justice in Cleveland, but only during the first half of the year 1921.

<sup>50</sup>It is, perhaps, unnecessary to record instances where motion pictures of a particular event are used afterwards in slow motion for detailed study. In the field of athletics the value of such a record to the participants is well recognized. In the field of science, also, many processes too fast or too complicated for the unaided human eye, or too slow for human patience, are brought into visible form.

to determine the composition which will be most useful to bar and public, it appears that they fall into three general classifications—the state of the substantive law, the state of the administrative machinery and the state of the lawyer.

The first and second of these constitute a background against which the third will stand out in relief. In the matter of the substantive law, the American Law Institute is facing the problem of uncertainty,<sup>51</sup> but it does not include a device for ascertaining, directly, the popular impression on the question, how much substantial justice is accomplished in the operation of particular rules.<sup>52</sup> It is certain that many a litigant, who has lost his case, feels that the rule of law as applied to his problem is unjust.<sup>53</sup> The resolution of such a highly subjective bias is beyond the scope of the present article. It is possible, however, that there are instances where rules work hardship<sup>54</sup> upon groups of people who are now inarticulate, or at least unheard by those whose duty it is to improve the law. The proposed "still" pictures should include a sufficient number of samplings of the public at large to determine, with a degree of accuracy, the presence and extent of such instances, groups and rules. The present plan does not extend beyond securing the facts. The creation of standards by which to test the

<sup>51</sup>See note 22, *supra*.

The purpose of the Restatements is to declare what *is*, and not what *ought to be* the law.

<sup>52</sup>For example, statutes have required the construction of all statements in life insurance policies as representations, rather than as warranties, to avoid inequitable results worked by rules of law pertaining to warranties. W. R. Vance, *Insurance* (2d ed.) 1930, p. 394. Another outstanding example of remedial statutory enactment is the wide adoption of Workmen's Compensation Acts to avoid the hardships worked on the employee by the common law rules of exemption of risk, contributory negligence and the fellow servant doctrine. F. V. Harper, "Law of Torts" (1933) 412.

On the procedural side, efforts to short circuit technical rules which were felt to result in injustice are to be found in the establishment of municipal and small claims courts. Ames, "Origin and Jurisdiction of the Municipal Courts in California," 21 *Calif. L. R.* 117 (1932); P. R. Nehemkis, Jr., "The Boston Poor Debtor Court," 42 *Yale L. J.* 561 (1933).

<sup>53</sup>Herman Oliphant, "The Public and the Law: The Three Major Criticisms and Their Validity" (Jan. 1933), 19 *A. B. A. J.* 46 at 47; "Law and Fair Play" (contributed) (July 2, 1935), 5 *Fortnightly L. J.*, 39; Max Radin, "A Juster Justice, A More Lawful Law" (1935), *Legal Essays in Tribute to Orrin Kip McMurray*, p. 537.

<sup>54</sup>For example, the inadequacy of rules relative to consumer-credit relations has resulted in rigid statutes providing a maximum rate of interest to be charged for the lending of money. Where, as in the case of small loans, the rate of interest is not adequate to permit reputable capital to compete with the loan shark, the prospective borrowers are reduced to a state of serfdom. They are afraid to raise the issue because if they should prove usury against the lender he would not be available to lend them money the next time they were in need. See Louis N. Robinson and Rolf Nugent, "Regulation of the Small Loan Business," *Russell Sage Foundation* (1935).

social worth of the rules and the social justification for complaints registered as to the quality of the legal process is a separate task. The subsequent superstructure of legal reform to be based upon the facts is also a matter for consideration elsewhere. The present argument proceeds upon the premise that the legal profession can not know how to chart its course until the facts as to the social utility of the substantive law are available. If the results indicate that all is well the survey will have justified itself. The bar may point with pride. If, on the one hand, there are rules which work substantial injustice, the public may expect the bar to lead the movement for reform. In such event the bar may view with alarm. The first step is to secure the facts.

The state of the administrative machinery has been the subject of much investigation.<sup>55</sup> It is clear that many reforms are called for. Uncertainty of the litigation procedure,<sup>56</sup> staggering expense,<sup>57</sup> intolerable delay,<sup>58</sup> and undue complexity (which provides for the adjustment of the small claims and legal difficulties of the common man,<sup>59</sup> the same ponderous legal machinery which is regarded as essential for the determination of those matters which are regarded as legally most significant) are the more obvious problems calling for a remedy. A set of figures which would make clear the seriousness of the situation, provide nationally for a comparison of data, reveal by their uniformity the lights and shadows of the obstacles in the way of reform, would give realistic impetus to the movement for adapting legal machinery to the needs of a modern community.

Both the substantive and administrative law provide a background for the figure of the lawyer. The nature of the efforts to study him has been set forth above. The present purpose is an evaluation in terms of social utility. His relationships with the lay public and other professional groups may be measured.

The problems in a changing social order are, for example, what role should the lawyer fill;<sup>60</sup> how well does he fill it quantitatively and qualitatively; what devices has he for improving the quality of his work,<sup>61</sup> and readapting it to changed conditions;<sup>62</sup> how well do they

---

<sup>55</sup>See note 27, subsec. (b) and (c), *supra*.

<sup>56</sup>Study of Civil Justice in New York, 17 A. B. A. J. 631 (Oct. 1931). See also note 52, *supra*.

<sup>57</sup>See note 21, *supra*.

<sup>58</sup>See note 20, *supra*.

<sup>59</sup>Marc A. Rose, "Law and the Little Man," vol. 5, *Today*, p. 3 (Nov. 23, 1935).

<sup>60</sup>Rogers, "The Dream of a Real Legal Profession in America" (Apr. 1935) 8 *Amer. L. Sch. Rev.*, p. 147.

<sup>61</sup>After the lawyer has been admitted to the legal profession the bar has generally been content to let the lay public take charge of initiating procedures for determining standards. In consequence unless the lay client moves toward a

function? A rigid self examination may be a morbid introspection with no purpose except smug satisfaction. Again, it may be a healthy setting of one's house in order, a rededication to professional ideals, a constructive search for ways to render a more complete service. It may be a periodic accounting of a public servant to the master he is bound to serve with utmost fidelity.<sup>68</sup>

These three sets of "still" pictures, when secured, will form a point of departure. With them the landmarks of the field may be recognized. And yet their usefulness is evanescent. Each succeeding day finds the actual conditions slightly changed from the previous day. The survey is out of date before its results can be published. Even if a duplicate daily survey might be made, practical considerations of trouble, time and expense suggest the desirability of another sort of device for keeping the initial facts up to date. If the "still" picture is taken as often as decennially, like the census, it will give impetus and direction to such supplemental device, which may operate continuously in the interim.

The "motion picture" is descriptive of the nature of this continuing

---

disbarment proceeding the bar association itself usually does not act. Courts punish for contempt committed in the presence of the court. They also punish for contempts not in their presence committed, but brought to their attention by the lay public. Such wholesale reliance upon the layman's initiative to do a task, which logically is at least half a professional task is an inherent weakness in bar structure.

*Bryan's* case, 24 N. H. 149 (1851) (Incompetence no basis for disbarment on ground that statute imposed no requirements as to the knowledge of law). *Smith v. State*, 14 N. Y. 228 (1829) (by dictum, court may withdraw license because of attorney's loss of learning or mental capacity). See also *People ex rel. Chicago Bar Assoc. v. Charme*, 288 Ill. 220, 123 N. E. 291 (1919) (no disbarment because of lack of diligence or good judgment); Also *Re Boland*, 140 Wash. 148, 248 Pac. 399 (1926) (an attorney can not be disbarred or suspended for a single act of negligence not amounting to gross incompetency); *People ex rel. Chicago Bar Assoc. v. Wing*, 284 Ill. 647, 120 N. E. 451 (1918); *Gould v. State of Fla.*, 127 So. 309 (1930) ("It would be a severe remedy to disbar an attorney for carelessness, inattention to duty, ignorance of his client's rights, and the remedies to enforce them, or even for an occasional equivocation in an effort to appear better informed and more alert than his client suspects. . .") Inattention to duty accompanied by deceit or imposition has been held ground for disbarment or suspension. See 69 A. L. R. 707.

<sup>68</sup>The bar association providing a forum for the discussion of current problems and to a limited extent initiating legislation is the agency which should be studied in this regard. (Compare the resources of the medical profession, which, at its conferences devotes large amounts of time to considering new ideas in the medical field, provides institutes and other devices for keeping the doctors in touch with the latest professional advance.)

<sup>69</sup>For cases holding that the lawyer, as an officer of the court, is a quasi-public official, see (1) *In re Scott*, 292 Pac. 291 (1930 Nev.); (2) *In re Bergeron*, 107 N. E. 1007 (1915 Mass.); (3) *In re Farmer*, 131 S. E. 661 (1926 N. C.); (4) *People ex rel. Karlin v. Culkin*, 162 N. E. 487 (1928 N. Y.); (5) *In the matter of Adolph M. Schwarz*, 132 N. E. 921 (1921 N. Y.). See preamble to the Canons of Professional Ethics of the American Bar Association.

supplement. A statistical record comparable to a news reel will result. The figures may be plotted. Graph curves will indicate trends, improvements, retrogressions. If, for example, a group of people appear in the initial survey as victims of the unscrupulous employer who refuses to pay wages,<sup>64</sup> various types of remedial legislation may be tried and their respective values determined by the increase or decrease in the number of cases in which laborers, whose wages are unpaid, present themselves to a lawyer, or other point of contact, to secure relief. Such information will be far more accurate than the guess which one may hazard at present. If, for example, court costs and fees are revealed initially as in a chaotic and irrational condition,<sup>65</sup> the effect of various remedies will appear to a degree, as the number of persons, whose progress toward justice is barred by court costs, rises or falls in the supplemental statistics. If, for example, individuals express opinions in the initial survey indicating criticism of lawyers,<sup>66</sup> the motion picture record of ensuing complaints will show whether educational measures are successfully modifying the popular impression.

The facts, which are the material of the proposed study, will be useful for defending the legal system and the profession against attacks; providing timely information for those who have a right to know; establishing, maintaining and readapting standards in a changing social order; initiating necessary reforms.

#### MODELS AND PRECEDENTS

The main features of the present proposal are not novel. Among business men, statistics of social and economic conditions play a significant part.<sup>67</sup> The uses to which they are put, the reliance placed

---

<sup>64</sup>See 52 Rep. A. B. A., 324, for Model Statute for facilitating the enforcement of wage claims.

<sup>65</sup>See *Second draft of the Poor Litigant's Statute*, and *Appendix to the Report of the Committee on Legal Aid Work of the American Bar Association* (1925), 50 Rep. A. B. A., 456. Arthur L. Goodhart, "Costs" (May 1929) 38 Yale L. J. 874.

<sup>66</sup>See Evan, "Responsibility and Leadership" (1934) 59 A. B. A. Rep. 278, 284; Jackson, "The Lawyer: Leader or Mouthpiece" (1935) 20 Mass. L. Q. 49 (a reprint of an address by Robert H. Jackson, Chairman of the National Conference of Bar Association Delegates, at Milwaukee, August 27, 1934); "Racketeering Lawyers" (1935) 69 U. S. L. Rev. 166 (a judge's viewpoint on the present low standard of the bar); Douglas, "The Lawyer and the Federal Securities Act" (an address made before the Duke Bar Association on April 22, 1935); Evans, "The National Bar Program" (1934) 36 N. C. B. A. Rep. 86, 91.

<sup>67</sup>John Loeser, "Counting Business Noses," vol. 5, *Today*, p. 8 (Feb. 15, 1936).

The use of commercial services in the business field needs little supporting authority. The names Babson, Dun, Bradstreet, suggest the nature of such services.

Some of the commercial organizations are beginning to supply material in the legal field. Of this sort are such services as Hubbell's attorneys' lists; the advance sheets of the decisions of the appellate courts of the various states; the various reporter systems; the legislative information services; the daily



upon them, the money invested in securing them, the publicity given them daily and annually are matters of public knowledge. To physicians, public health records,<sup>68</sup> vital statistics,<sup>69</sup> practitioners' private notes of cases,<sup>70</sup> hospital charts<sup>71</sup> are fundamental. In the field of social work the technique of gathering data from the lay public,<sup>72</sup> the building up of case records and the interpretation of the facts secured has been brought to a high degree of effectiveness. To the bar such progress in recording professional activities is a challenge. For the proposed survey, the lawyer does not have to originate or pioneer to any great extent. He need only borrow tried ideas, tested skills, hard won experience, and combine them for his own ends.

If in this interprofessional borrowing a single study is to be given recognition above the rest, it is the one on the high cost of medical care.<sup>73</sup>

and weekly bulletins indicating what is the law. If the public relations field of the bar were as well supplied as the technical side of its work, there would be no need for the proposed survey.

<sup>68</sup>See, for example, E. E. Kleinschmidt, "Purpose and Function of School Health Records," 50 Public Health Reports, 281 (March 1, 1935); Allon Peebles, "A Survey of Statistical Data on Medical Facilities in the United States" (1929), Committee on Costs of Medical Care, Pub. No. 23, p. 48.

<sup>69</sup>"Statistical Abstract of the United States," 1935, pp. 80-94.

<sup>70</sup>T. R. Ponton, "Suggested Way to Make Case Studies," 40 Hospital Management, 9 (Nov. 1935); C. A. Aldrich, "A Method for Keeping Adequate Clinical Records," 47 Am. J. of Diseased Children, 1051 (May, 1934).

<sup>71</sup>M. Rear, "Problems of Unit Record System Handling Five Thousand Records," 38 Hospital Management, 39 (Sept. 1934); Caroline R. Martin, "The Value of the Work of a Central Statistical Bureau," 35 Transactions of the American Hospital Association, 592 (1933).

On the growth of recognition in the medical profession of the need for public confidence, see Shryock, "Public Relations of the Medical Profession in Great Britain and the United States," vol. 2, *Annals of Medical History*, p. 308; and Shryock, "The Origin and Significance of the Public Health Movement in the United States," vol. 1 (New series) *Annals of Medical History*, p. 645.

<sup>72</sup>Interview: A Study of the Methods of Analyzing and Recording Social Case Work Interviews—Studies in the Practice of Social Work No. 1 (1928).

On the "motion picture" type of study in the social work field, see note 24, *supra*.

<sup>73</sup>The final volume entitled *Medical Care for the American People, the Final Report of the Committee on the Costs of Medical Care*. That study, constituting a five-year program, proposed:

"1. Preliminary surveys of data showing the incidence of disease and disability requiring medical services, and of generally existing facilities for dealing with them.

"2. Studies on the Cost to the family of medical services and the return accruing to the physician and other agents furnishing such services.

"3. Analysis of specially organized facilities for medical care now serving particular groups of the population."

The Five-Year Program of the Committee on the Cost of Medical Care. Publication No. 1, Feb. 13, 1928.

The method of attack may be roughly divided into two parts:

I. The determination of statistics and other information already available of a satisfactory quality. Examples:

A. The present "Health Status."

1. Mortality statistics.

From this extended canvas the legal profession may learn important lessons. A "still" picture survey of a profession is possible. The expense and trouble are not insuperable obstacles. Volunteer cooperation from interested groups in the general public will aid materially. The lay persons interviewed will respond. Official fact depositories will open their doors.

Perhaps the most valuable result of the report was the raising of criticisms upon the recommendations.<sup>74</sup> It was urged by the majority of the committee that permanent local medical centers be set up to supply facts and leadership. The critics recognized the importance of the agency, but were opposed to the thought of extra-professional control. From this the proponents of the present plan may well decide that continuing local fact gathering agency is more acceptable

- 
2. Morbidity statistics.
  3. Surveys of disabling illnesses.
    - a. Life insurance surveys.
    - b. U. S. P. health surveys.
  4. Surveys providing for detailed examination of persons not disabled. (Industrial surveys).
  5. Special estimates (i.e., venereal diseases).
  6. General needs.
  - B. The Present "Facility Status."
    1. Statistics showing distribution per 1,000 population of practitioners and agencies.
    2. Opinions and estimates of the adequacy of present practitioners and agencies.
  - C. Present Distribution and "Cost Status."
    1. Reports on amounts paid by families per year for medical service.
    2. Reports on amounts paid for specific illnesses.
    3. Estimates of income in relation to the cost of medical service.
    4. Return accruing to the physician and other agents furnishing medical services.
    5. Cost and adequacy of "special organized services." (Clinics, etc.).
  - II. A determination of statistics and information essential but as yet unavailable.
    - A. Typical of information obtained at first hand is "The Incidence of Illness and the Receipt and Costs of Medical Care among Representative Families," by I. S. Falk, Margaret C. Klem, Nathan Senai. (Reported in Publication No. 26, Jan. 1933).
    - B. The Methods.
      1. Selection of area depended upon
        - a. Interest in the project.
        - b. Presence of areas suitable (typical).
        - c. Availability of (local) nurses, etc., willing to collect the basic information.
      2. Selection of families—typical families selected by house to house canvass.
      3. The work. A few field workers visited the section, interviewed the nurses, and when possible the families, and made clear the directions, etc. (Average time per community, two days).
      4. The chart. Kept on monthly basis. The (local) nurse worker filled it in from information supplied by the family.

<sup>74</sup>See, for example, minority reports in the Final Report of the Costs of Medical Care, Publication No. 28 (1932) pp. 151-203.

to the profession, if it is sponsored by the bar, rather than by lay endowments or other public or private agencies. The suggestions for "Ministries of Justice" indicate that the same idea is no novelty in the legal field.<sup>75</sup>

Another interesting point to the reader of the medical report is the extent to which physicians, hospitals, nurses and others recognize the importance of medical statistics.<sup>76</sup> This was of great value to the committee making the survey, in reducing resistance to the idea. The proponents of the present study cannot follow blindly the medical model. A preliminary period, for overcoming the inevitable inertia of the lawyer toward the unaccustomed proposal of legal statistics, is probably an essential part of the plan. The lawyer's traditional rugged individualism,<sup>77</sup> his monopoly of legal business,<sup>78</sup> his historic eminence in building the legal foundations of the nation<sup>79</sup> have placed him in a unique and somewhat artificial position. The necessity for winning public support has not been so pressing upon him as upon physicians.<sup>80</sup> To ask a traditionally favored group to measure the strength of the cold blasts of competition, to inquire into the extent to which it receives popular favor or to look itself squarely and unemotionally in the face, will involve much preliminary effort. The bar will not accept, without proof of value, the labor and trouble incident to statistical studies such as are advocated here. Tactful persuasion, a gradual process of peaceful penetration will probably produce more satisfactory results than a program of "high pressure" salesmanship.

Similarly, the public is not accustomed to investigators and questionnaires collecting legal data and a natural, even if annoying, resistance must be overcome before the idea becomes a part of the unconscious thinking of the community. National uniformity of records,<sup>81</sup>

---

<sup>75</sup>E. R. Sunderland, "The Purpose, Organization and Powers of a Judicial Council," 41 Rep. Penna. B. A. 392 (1935); M. W. Acheson, Jr., "A Minister of Justice," 31 The Legal Aid Review, 8 (1933); B. N. Cardozo, "A Ministry of Justice," 35 Harv. L. R. 113. But note the public character of these agencies. They are not primarily bar association responsibilities.

<sup>76</sup>See especially Allon Peebles, "A Survey of Statistical Data on Medical Facilities in the United States," Committee on the Cost of Medical Care, Publication No. 23 (1929); I. S. Falk, C. R. Rorem and M. D. Ring, Committee on the Cost of Medical Care, Publication No. 27, 1932.

<sup>77</sup>Charles & Mary Beard, "The Rise of American Civilization" (1927) vol. 1, pp. 100 *et seq.*

<sup>78</sup>See Hicks and Katz, "Unauthorized Practice of the Law, A Handbook for Lawyers and Laymen," A. B. A. (1934).

<sup>79</sup>See Bryce, "American Commonwealth," Chapter on "The Bar," *passim*.

<sup>80</sup>See note 71, *supra*.

<sup>81</sup>The importance of national records is indicated by the extent of the statistics gathered by the Federal Government. The U. S. Bureau of Labor Statistics reports and the annual Statistical Abstract of the United States are examples.

another essential, is not to be secured without widespread lay and professional agreement as to data and methods.

The present proposal, therefore, calls for a long time program. Sections of it may be begun in any county where conditions are favorable. The complete nationwide collection of data will be achieved as a result of years of earnest, devoted, tireless preliminary drudgery by the proponents. It is more important, now, that the bar start thinking about the selfish value of a comprehensive, continuous self examination, than that it commit itself irrevocably to any specific program, however attractive. As the need is more accurately seen the means of supplying it will be clearer.

#### MATERIAL TO BE GATHERED

The objective of the study reveals the presence of two interrelated figures—the Client and the Lawyer. The material to be gathered may be classified roughly as it bears upon the client, the lawyer and the connection between the two. A third topical heading of a miscellaneous character, would be the Resources of the Legal Field. The actual data to be secured with respect to each classification will be the subject of much diverse opinion. A preliminary agreement is essential to uniformity and orderly progress. The present proposal merely suggests the type of questions and certain reasons for asking them.

#### *Material as to the Client*

A personal interview with 120,000,000 people is beyond reasonable expectations. In contacting a lesser number a preliminary grouping and sampling process is necessary. There are many bases for grouping. Perhaps the most significant is ability to give accurate first hand impressions. On the count the grouping may be: a group of present clients; a group of those who at one time were clients; a group of those who should have sought legal advice and did not; a group of those who have few, if any, legal problems. These classifications will emerge as the study progresses. Their importance is clear when viewpoints are to be included. The foundation for the viewpoint is a factor. Those who have had direct contact with the law can give primary material. Others will base their ideas upon secondary material—the law as seen through the pages of books, newspapers, and motion pictures. In a realistic survey such considerations are fundamental.

A further sampling which should precede the survey may be along social and economic lines. One set of groups may be based on annual income; another on a cross section of racial and industrial interests. A determination of the legal needs of each group is the first part of this

study. The pauper<sup>82</sup> and the wealthy corporation<sup>83</sup> do not move in the same fields of law. The Indian,<sup>84</sup> the immigrant,<sup>85</sup> the racial minorities generally,<sup>86</sup> widows and orphans<sup>87</sup> are examples of stereotyped outlying client groups whose legal needs should be studied. It will not be proper in all cases to assume that the list of needs recited by the client is a complete catalogue. He may not know, or may fear to divulge, information. Collateral data, much of it non-legal in character, may be necessary to round out the picture; but some sort of estimate should be constructed. Then, in the second part, the client may be interrogated as to the extent to which the lawyer's services are available to meet the need as seen by the client.

The adjective "quantitative" as applied to an evaluation of the service rendered, suggests that the bar may not be functioning to any appreciable degree in respect to certain classes of clients. It has been urged, for example, that the American equivalent of the English "lower middle class"<sup>88</sup> is largely without legal facilities.

The adjective "qualitative" is used to suggest the thought that the professional competence of some lawyers varies greatly from the standard for that community. As to some, it cannot be said that their

---

<sup>82</sup>The statistics of the National Association of Legal Aid Organizations show the following figures:

*Number of cases lapsed because of inability of client to pay court costs.*

YEAR		
1924	—	54
1925	—	53
1926	—	72
1927	—	37
1928	—	43
1929	—	56
1930	—	72
1931	—	166
1932	—	247
1933	—	715
1934	—	694

<sup>83</sup>Stetson and Leathers, "Some Legal Phases of Corporate Financing, Reorganization in Finance" (Macmillan, 1930).

<sup>84</sup>Meriam, "The Indian: The Problem of Indian Administration," pp. 743-811 (Johns Hopkins Press, 1928).

<sup>85</sup>Kate Holladay Claghorn, "The Immigrant's Day in Court" (1923); particularly Chapter 11, "Means of Adjustment." See also the "Interpreter Releases" of the Foreign Language Information Service.

<sup>86</sup>A series of celebrated cases during the past few years have indicated the extreme efforts being made by racial minorities to secure adequate representation.

J. C. Petrie, "Different Fates of Black and White Criminals" (1933) 50 *Christian Century*, p. 1651; T. Sellim, "Race Prejudice in the Administration of Justice," 41 *Amer. Jud. Soc.*, 212 (Sept. 1935).

<sup>87</sup>Psalm LXXXII.

<sup>88</sup>W. S. Weiss, "Why Not a Legal Clinic?" *Consumers' Research Bulletin*, vol. I, No. 8, June 1935.

clients receive adequate representation.<sup>89</sup> As to others the attorney's devotion to the interests of the client exclude all considerations of public policy.<sup>90</sup>

The specific questions to be asked the client revolve about two major ideas. The first is embodied in such questions as—Does the layman, taking everything into consideration, feel that his reasonable legal needs, as a member of a community, are being cared for quantitatively and qualitatively by the bar.

The second idea to be embodied in a question, is concerned with the possible obstacles which may hinder or even prevent clients from approaching lawyers. Ignorance,<sup>91</sup> fear,<sup>92</sup> hostility,<sup>93</sup> poverty,<sup>94</sup> and other matters may create impassable barriers. There are indications

<sup>89</sup>One example of a possible lack of adequate representation may be found in cases in which the court appoints an attorney who does not have sufficient time to prepare the case. See, for example, the *Scottsboro* cases (*Powell v. Alabama*, 287 U. S. 45, 1932). Another example is that of the incompetent lawyer. Cases illustrating action against lawyers for negligence in professional work are: (for loss to his client resulting from ignorance of settled rules of law and of practice) *Krumboli v. Kinkel*, 123 N. E. 205; *Enterline v. Miller*, 27 Pa. Super. 463; *Goodman v. Walker*, 30 Ala. 482; (for loss resulting from poorly drawn documents) 43 A. L. R. 932; (for loss resulting from negligence in title examination work) *Watson v. Muirhead*, 1868, 57 Pa. 161; *Lowell v. Groman*, 180 Pa. 532; *Savings Bank v. Ward*, 100 U. S. 195; 5 A. L. R. 1585; (from faulty office system) *In re Blatt*, 246 N. Y. Supp. 77 (1930). See in general 5 A. L. R. 1385-9; 7 L. R. A. 669; 24 A. L. R. 1025-41; 43 A. L. R. 932; 47 A. L. R. 267-69; 69 A. L. R. 705-09.

<sup>90</sup>Beatty, "Guardians of Crime," 118 Amer. Mag. 181 (Sept. 1934); I. M. Wormser, "Legal Ethics in Theory and Practice," 167 Annals of Amer. Acad., 193 (May 1933). The lawyer-criminal is a recognized figure.

<sup>91</sup>The records of legal aid societies are full of cases where the applicant, through ignorance, brought a problem to the legal aid attorney too late to justify action. The Statute of Limitations has run, the release has been signed, the contract or the deed has been executed. Naturally, those cases never appear in the reported decisions of the courts.

<sup>92</sup>J. M. Lashley, "How Rates the American Lawyer?" 36 Commercial L. R., 535 (Oct. 1931).

<sup>93</sup>The statistics of the National Association of Legal Aid Organizations show the following figures:

*Number of cases involving complaints against attorneys.*

YEAR		
1924	—	976
1925	—	776
1926	—	765
1927	—	1,537
1928	—	1,240
1929	—	1,127
1930	—	1,628
1931	—	1,856
1932	—	1,633
1933	—	1,745
1934	—	1,709

<sup>94</sup>The extent of poverty in the United States can be estimated only in a general way. (1) Unemployment relief. See Statistical Abstract of United States (1935) pp. 326-7, 261. (2) Red Cross, *ibid.*, 155.

that the public makes extensive use of lay agencies to handle legal problems.<sup>95</sup> If so, the bar should be interested in knowing why.

Obviously, before any reform measures are initiated on the basis of such facts, it will be necessary to set up many different norms. The normal quantity of legal work in a community may be determined roughly if all barriers are lowered between client and attorney. Variations from year to year would attract attention and call for investigation. The present non-existence of such figures makes it difficult for the bar to realize their significance.

The quality of legal work in a community is a more difficult problem. If the figures show much public criticism, standards must be set up before measurements can begin. At present there are two sets of standards—lay<sup>96</sup> and professional.<sup>97</sup> A blending of the two is indicated in the interests of harmony and efficiency of administration. To start with the lay standard as a general rule and gradually limit it by the introduction of exceptions based on the professional outlook would seem to be the most reasonable method of dealing with the lay public.

The material to be gathered as to clients will present more problems to the statistician than will the other matters recommended here. Yet, no study of the professional relationship is complete without a state-

<sup>95</sup>Hicks and Katz, "The Practice of Law by Laymen and Lay Agencies," 41 Yale L. J. 69. Also see Unauthorized Practice News.

<sup>96</sup>See footnotes 11 to 22 inclusive, *supra*. Also footnotes 24 and 25.

The Durham (N. C.) *Sun* for Thursday, October 3, 1935, has an editorial entitled "Professional Omnipotence," in which the following is stated:

"There is already widespread misgiving over the power placed in the hands of the medical caste, just as there is considerable quiet uneasiness over the situation in the legal profession—not simply among laymen, but among many members of the respective professions.

"The lawyers, among them the North Carolina Bar, are being exceedingly arbitrary. The North Carolina Bar is already facing the same accusation that Dr. Kitchin presents against the doctors, that it is deliberately endeavoring to reduce the number of members within the ranks of the profession behind what some have dubbed a smoke screen, 'better qualified men.' The bar, too, possesses the power to grant or deny licenses and the high percentage of 'failures' in the examinations which have taken place since the authority was lifted from the hands of the North Carolina Supreme Court seems to many to give substance to the suspicion. The movement to raise educational requirements is already erecting terrific barriers against all but the monied."

<sup>97</sup>The diverse ideas within the profession itself are illustrated by the following: Harold J. Laski, "The Decline of the Professions" (Nov. 1935) *Harper's Mag.* 676; W. L. Ransom, "Which Road for the Legal Profession?" 22 A. B. A. J. 21, 23; Wm. Piel, Jr., "The Student Viewpoint Toward Clinic Work," 8 *Amer. L. Sch. Rev.*, 228 (May 1935); Report of the Committee on Curriculum, Proceedings of the 32d Annual Meeting, Handbook of the Association of American Law Schools (1934) p. 178; Robert H. Jackson, "The Bar and the New Deal," 8 *Amer. L. Sch. Rev.* 152.

ment as to the client's viewpoint. The bar cannot afford to ignore the fact that the lay public is in a socially stronger position than the experimental guinea pig, to judge the specialized intelligence, which is dealing with it.

#### *Material as to the Lawyer*

The material to be gathered as to lawyers looks at the same attorney-client relationship from a different viewpoint. Here we start with the professional standard of quantity and quality as the general rule and gradually modify it, by the inclusion of such exceptions as may do away with antiquated conceptions or aid in enabling the lay public to understand the reason back of the rule. There seems to be no reason why information should not be expected from every lawyer. His outlook would vary with his law practice, social and economic position and other factors; but his reactions would be primarily material. The first questions would group themselves around the central idea—what is modern law practice?<sup>98</sup> The actual work done by lawyers has never been comprehensively studied.<sup>99</sup> Accurate generalizations regarding it are at present impossible. The lack of a common denominator of professional experience, in a period of extreme specialization, is a serious structural weakness. Ignorance of the field is a reflection upon the professional conscience. Indifference to the situation in a competitive civilization may be a major strategical blunder.

The second set of questions would deal with a problem of quality, what skills and special techniques are necessary for a lawyer to possess if he is to do standard work. There has been all too little interest in the fact that the public demands upon the lawyer require a protean ability. In giving legal advice certain characteristics are desirable. Often, quite different ones are necessary to cope with the exigencies of drafting legal documents, adjusting cases on a conciliation basis, litigating, promoting legislation, engaging in miscellaneous creative activities. If a lawyer does not have a particular skill, his activities in a field where that skill is essential, are bound to be sub-standard. An accurate knowledge of the demands made upon the modern lawyer by

---

<sup>98</sup>For cases defining law practice, see *In re Duncan*, 83 S. C. 186 (1910); *In re Cooperative Law Co.*, 198 N. Y. 479 (1910); *People v. People's Stockyard State Bank*, 344 Ill. 462 (1931). It is significant that these definitions arise out of fact situations where there is a conflict between a member of the bar and a lay agency. There seems to be no case laying down the rule as to the limitation of the activities of the lawyer who is not in conflict with a lay agency.

<sup>99</sup>Efforts in this direction are illustrated by such courses as: Elliot B. Cheatham, "The Legal Profession, Cases and Other Materials" (1933) (Mimeographed at Columbia Law School); and William G. Hale's course, "Administration of Justice," at the University of Southern California.



his clients is fundamental. The task of bringing closer together the lay and professional ideas of a suitable standard in such matters is beyond the scope of this article.

Information about the lawyer must be secured in large part direct from the law office. Some data may be available in court records and in the minds of clients. The preliminary task is to secure the cooperation of the profession. Otherwise, such an intimate study will be impossible.

### *Material as to the Resources of the Legal Field*

The phrase "resources of the legal field" as related to the lawyer deserves comment. If one starts from the premise, that all the professions are established to solve human problems, a field of activity may be allocated to each. If each field is conceived of as circular, the effectiveness of the professional service beginning with a maximum at the center shades off imperceptibly until at the periphery it reaches zero. The lay test of effectiveness is, at present, one of social expediency. The significance of the lay standard of judgment appears in those portions of the field where there is an overlapping. The lay public, when offered alternative remedies, chooses the one which to it seems most useful. In the portion of the legal field which overlaps business and other professional activities, competition is keen. If a business agency can draw a better will, search a title more expertly, collect a debt more expeditiously, adjust a controversy with greater speed and economy, the bar will have to face the fact that the public prefers to go elsewhere.

If the bar, in this overlapping portion of its field is able to develop more effective resources than its competitor, it will prevail. If it is not able and willing to create, readapt, keep abreast of the times, the energy and initiative of the competitor will be recognized. The problem of the resources of the law and what the lawyer can do with them have a very practical bearing upon the future of the profession.

The bar, during the recent depression, has come to grips with the problem.<sup>100</sup> Its reactions have been interesting. Prominent among them is the legislative<sup>101</sup> or judicial<sup>102</sup> "no trespassing" sign. Another

<sup>100</sup>Henry Weihofen, "Practice of Law by Non-Pecuniary Corporations: A Social Utility," 2 U. of Chic. L. R., 119.

<sup>101</sup>For statutes regulating the practice of the law, see 1 Ala. Gen. Acts, 1931, p. 606; Ark. Acts of 1929, vol. 2, Act 182, sec. 1; Ga. Laws of 1931, No. 36, p. 191; Ill. Smith-Hurd Rev. St. of 1933, chap. 13, sec. 10; La. 1932 Gen. Stat., sec. 442; Mass. Ann. Laws of 1933, chap. 221, sec. 41; Mo. Ann. Stat. 1932, sec. 11, 692; N. C. Pub. Laws of 1931, chap. 1571, sec. 1.

<sup>102</sup>See Hicks and Katz, "Unauthorized Practice of Law," *supra*.

is group propaganda.<sup>103</sup> It would seem that in the long run social utility and not the legislature or the court will decide how the public demand for improved service is to be met.<sup>104</sup> It is the part of wisdom for the bar to anticipate reasonable popular demands and to render such efficient service in its own field as to discourage competition.

To determine what are the practical limits of the resources of the

<sup>103</sup>For examples as to educational campaigns one may refer to those conducted by insurance companies in the public health field, the work of the United States Public Health Service, as represented in Supplement No. 102 to the Public Health Reports entitled "Some Public Health Service Publications Suitable for General Distribution"; and the State Public Health Departments.

See also Holmes, "The Ambulance Chasing Panacea," 12 Marq. L. R., 193 (1928); Brennan, "The Bugaboo 'Ambulance Chasing,'" 36 Commercial L. J. 232 (1931); Knauf, "Ambulance Chasing and Related Evils," 7 St. Bar J. (Calif.) 22 (1932); Rollo Bergeson, "The Divorce Mill Advertises," 2 Law and Contemporary Problems, 348 (1935); a series of radio broadcasts by the members of the American Bar Association over the Columbia Broadcasting System during the spring of 1933, published by the University of Chicago Press.

On group advertising, see "Lawyers Prepare for Group Advertising," 16 Jour. Amer. Jud. Soc., 89 (1932); "Telephone Directory Advertising by Lawyers," 7 Jour. Los Angeles Bar Assoc., 273 (May 1932).

Vinton A. Holbrook, "Advertising by Lawyers," 30 Law Notes, 188 (Jan. 1927):

"... many attorneys, while avoiding the expense of advertising, gain all of its benefits by having their pictures appear on the front page of the daily, in company with the villain of the hour, whom they have been retained to defend. This is only one of many such subterfuges. . . .

"So long as banks and trust companies advertise so long as the government of the United States displays large posters inviting the young men to become members of the Navy and enter government employ, so long as even the churches engage in live publicity campaigns, why should not the legal profession become abreast of the times by judiciously placing before the public facts and figures which will dispell ignorance and prejudice against the profession and at the same time save the public from needless loss and harm?"

"Lawyers Prepare for Group Advertising," 15 Jour. of Amer. Jud. Soc., 165 (April 1932):

"More ambitious Bar Associations realize the vital importance of favorable relations with the public. . . .

"Favorable public relations, which the bar is beginning to crave . . . is in a fair sense the *ultimate* of professional ambition."

Arnold Praeger, "Foundation for Public Relations Work," 16 Jour. Am. Jud. Soc., 89 (June 1932):

"If we work to improve conditions in our own ranks and are able to stimulate a closer observance of the canons of ethics and common honesty by the members of the bar in this state, and inform the public of the great work the bar as a whole is doing, in time we will make an impression and should gain some measure of public confidence and respect."

Clarence T. Chase, "Creating Good Will Through Publicity," 6 Mo. Bar J., 177 (Oct. 1935), an address delivered at Regional Conference of American Bar Association Representatives in Conjunction with the Annual Meeting of the Missouri Bar Association, Springfield, Mo., Sept. 28, 1935.

<sup>104</sup>The first step in this improved service is a stronger bar association. For a proposal to this end, see "Plan for Bringing about a Representative and Improved Organization of the Legal Profession in the United States," 22 A. B. A. J., 83 (Feb. 1936).

law and the standards of efficiency to be applied to the different types of legal service in contrast with extra-legal offerings is beyond the scope of this paper. It is enough to describe the method by which the areas of conflict may be brought statistically into the laboratory to serve as the basis for an evaluation process. Here again lay and professional standards will not coincide and the collection of opinions from representatives of the law, the client group and the competing extra-legal group will be necessary.

These three types of information—as to the client, as to the lawyer and as to the resources of the legal field will provide a basis for much activity. The acquisition of the facts may result in such widely different developments as a modification in the field of legal education,<sup>105</sup> a re-

---

<sup>105</sup>If the material collected by this survey is used as a basis for directing the course of legal education two striking results are possible. The data as to nature of case will show clearly what sorts of legal problems are being brought to the bar in different sections of the country. Thus, a law student may study the chart of the cases in the city in which he plans to practice and select his courses accordingly. Such a procedure is as rational as many of those now adopted.

The data as to disposition of cases would lead naturally to a re-grouping of courses along lines of essential legal techniques and service to the client instead of the scholarly and, in some cases, rather arbitrary, traditional fields of substantive law. An elementary course might inform the student what types of human problems could not be handled satisfactorily by the law and should be referred to other professional domains. The first year might well be taken up with the lawyer in his capacity as an adviser. Facts, analytical method, creative method suggest suitable, but not exclusive, fields of inquiry. What facts are legally significant, how to gather them, how to evaluate and organize them; such topics deserve consideration. Analytical method is essential, and not novel, but a creative process of synthesis should be taught as a balance. The lawyer in contrast to the judge and the legal scholar must build, plan legal campaigns, initiate procedures. Analytical training presupposes something to tear down. The lawyer should know how to create something which cannot readily be torn down. If any time in the first year remains it may be devoted to the study of the law office and the time element.

In the second year might be placed training in the prelitigation procedures—conciliation, arbitration, drafting briefs and legal documents. Under the head of conciliation comes instruction in how to deal with people. The courses in form might include material now studied in contracts, wills, property, sales, corporations, but with emphasis on the drafting of documents so adequate that litigation should not arise regarding them. Legal Ethics, as a way of professional life, would also be appropriate.

In the third year might come courses in litigation procedures and such fields of substantive law as are justified by the percentages of cases in the community in which the student plans to practice.

Such a realistic course might be followed by an examination over a period of months in handling actual cases with real clients and responsibilities such as develop the maturity of viewpoint of the practicing lawyer. The student should have at hand all the tools of the practicing lawyer and not be required to depend upon memory for statute or case laws, the course and the test being based upon the acquisition, and facility in the use of techniques and skills rather than a body of knowledge.

The examining board might well consist of law teachers, practicing lawyers and enough laymen to include the factors significant to clients. Those planning a career as legal scholars might follow the courses as at present conceived.

organization of the legal profession according to skills or types of public demand,<sup>106</sup> substantive and procedural reforms,<sup>107</sup> an educational program designed to acquaint the public with the facts, and the creation of a set of standards.

#### THE MACHINERY FOR THE PROPOSED SURVEY

Fact gathering machinery is no novelty. Examples of the survey for the initial material have already been referred to.<sup>108</sup> Examples of the permanent motion picture type of collection include the stock ticker, the bureaus of vital statistics, and, in the legal field, the judicial council<sup>109</sup> and the ministry of justice.<sup>110</sup> The process, whether for the initial survey or the "motion picture," calls for four steps. Someone must be in contact with the stream of legal affairs. As items pass a record, a viewpoint or a set of figures, must be made of them. That record must be made available to a central statistical office. That office must organize and interpret. The task of setting up machinery for two surveys of the sort proposed includes three stages—an initial

<sup>106</sup>Benjamin Wham, "The Barrister and the Solicitor in English Practice: the Desirability of a Similar Distinction in the United States," 21 A. B. A. J., 486; (Aug. 1935); Sir Dennis Herbert, "The Law as to Solicitors" (1932). See also discussion at the 1935 meeting of the Law Society on the subject of education for the position of solicitor as reported in Herbert Warren, "Legal Education," 79 Solicitor's Journal, 708 (Sept. 1935).

<sup>107</sup>"Civilizing Civil Procedure," 16 J. Am. Jud. Soc., 22 (June 1932); "Delimitation of 'Procedure' in the Conflict of Laws," 47 Har. L. R. 315 (Dec. 1933); D. J. L. Davies, "The English New Procedure," 42 Yale L. J., 377 (Jan. 1933); W. W. Cook, "'Substance' and 'Procedure' in the Conflict of Laws," 42 Yale L. J., 333 (Jan. 1933). See results of the Cleveland Crime Survey. (Reginald Heber Smith, "The Criminal Courts," Cleveland Survey of Criminal Justice, Cleveland, 1921); Homer G. Powell, "How the Cleveland Judges Solved Their Problems in the Administration of Justice," 10 Texas L. R., 449 (1932); "Court Supervision Wins in Cleveland," 12 J. of Am. Jud. Soc., 11 (1928).

<sup>108</sup>In the governmental field: Statistical Abstract of the United States.

In the medical field: see note 73; *supra*. Also Lewis Webster Jones and Barbara Jones, "Medicine—Economic Organization," 10 Encyc. Soc. Sci. (1933) 292, 293:

"Emergency medical care . . . is a necessity more urgent even than food or shelter, and the demand for this type of attention is necessarily inelastic; it will ordinarily be exercised regardless of the financial sacrifice involved."

A neglected duty of the bar is to enlighten the public on the point that improved legal services are worth what they cost.

In the social work field: similar studies in the sociological field are made annually by active social agencies from their own records. As to method one may refer to M. C. Elmer, "Social Statistics" (1926); Robert S. and Helen M. Lynd, "Middletown" (1929); Shelby M. Harrison, "The Springfield Survey, a Study of Social Conditions in an American City," Russell Sage Foundation, 1918.

In the business field: The daily quotations from the stock market.

In the legal field: See notes 28, 29, 31, *supra*.

<sup>109</sup>E. R. Sunderland, "The Purpose, Organization and Powers of a Judicial Council," 41 Rep. Penna. B. A., 392 (1935).

<sup>110</sup>See note 75, *supra*.

period during which problems of uniformity, of grouping and similar matters are thrashed out; the initial survey to collect a "still" picture from clients, lawyers and agencies who have data bearing upon the subject; the setting up of a permanent fact gathering agency.

The preliminary stage includes the following steps: (a) national sponsorship of the movement, agreement to provide uniformity of statistics, planning as to sanctions; (b) statewide sponsorship, uniformity and sanctions; (c) local sponsorship, uniformity and sanctions.

The proposed survey can hardly be accomplished unless there is sustaining it a national sponsor. The American Bar Association<sup>111</sup> is the only agency, which, in sponsoring such a survey, will command national respect and cooperation from both lawyers and laymen. The first piece of machinery, then, is a committee of the American Bar Association charged with the task of promoting the national study. The composition of this committee should be arranged with a view to the problem of securing similar sponsorship in the various state bars.

One major task of this committee of the American Bar Association is to secure agreement as to the specific information to be gathered. Uniformity is essential for comparative purposes and for the collection of representative national figures. It is possible here only to suggest a series of tentative questionnaires to clients,<sup>112</sup> to lawyers,<sup>113</sup> to court

---

<sup>111</sup>A statement of the other possible agencies indicate (1) the need for their cooperation, (2) the inadvisability of entrusting the whole burden to them. Governmental organizations, private endowments, the Association of American Law Schools, are all composed largely of persons at least once removed from the practicing lawyer. The medical report indicates the need for cooperation from the profession to be studied. Agencies in the field of legal reform, such as the American Judicature Society, have not the finances to undertake the work, and many of them are not sufficiently representative of the profession.

<sup>112</sup>The information from the client may be obtained in the following manner:

1. The classes to be studied should be agreed upon. Preliminary informational material should be sent to representatives of these classes along the channels through which they ordinarily obtain information.

2. A reasonable number of representatives of each class should be selected. Additional material should be sent such persons. Only thus will they be prepared for the final interview. Newspaper publicity indicating what is intended.

3. A personal interview should be had between a representative of the committee and each individual. While the interview will itself determine much of what is secured there is considerable information as to the type of question being asked in current surveys. See notes 26 to 46, *supra*, inclusive.

It seems likely that the following questions will include the major points:

- A. What legal problems do you and people of your group have?
- B. What do you do with these problems?
  1. Nothing.
  2. Take them to a business agency for solution.
  3. Take them to a lawyer.
  4. Take them to a specialized court.
  5. Other solution.
- C. If you go to a lawyer, do you go—
  1. Before trouble?

2. After trouble?

3. Why?

D. If you do not go to a lawyer, why not?

E. Do you know of any abuses which should be remedied by law, but which are not? Name them.

<sup>122</sup>The individual lawyer, immediately upon the conclusion of each specific piece of legal work, herein spoken of as a "case," would make out a report blank and send it to a central agency for collecting facts. The facts to be gathered by such a device are of importance, primarily, because, if they are too many, too complicated, too personal, the individual lawyer will be less willing to cooperate. The facts requested should be few, simple, easily recorded and completely impersonal. The time of the lawyer or his clerk should be saved in every possible way. The form on which he makes his reports should be standardized to the point that to a large extent he need only check the appropriate heading.

The following facts appear not too cumbersome for the initial experiment:

(1) Designation of the lawyer and of the client. There are many reasons why the names of the lawyer and client should not appear on the report form. Each could be known by a number, or symbol. The key to the symbol could be kept by the local bar association or by the Clerk of Court to be produced only upon order of the court. The anonymous character of the reports should do much to overcome fears that confidential communications might be disclosed. The task of the lawyer here is to see that his key number and the key number of the client both appear on the card.

(2) Statement of the time when the case came into the office and the time when it was finished. This information is important as locating the "case" with respect to other legal business in the community in comparative statistics. The task of the lawyer here is to record dates.

(3) Source of case. This information is desirable as indicating the extent to which the legal profession is reaching the legal needs of the community. But it will be hard to persuade lawyers to reveal the channels through which business comes to them. It would seem wise to dispense with this item, at least initially.

(4) Nature of case. This data could be gathered with less difficulty, though, in complex situations where several matters are involved, it might be difficult to disentangle the threads and classify arbitrarily. Yet a little ingenuity, the use of a few standard classifications of types of case, some experimenting and a set of forms may be evolved covering all the customary tasks which a lawyer performs. The task of the reporting attorney will be to determine under which of two or three likely headings the case falls and pick the appropriate one. Sometimes there will be a type of problem with a number of incidental minor problems growing out of it. For example, in a divorce case the reporting card might bear a distinctive color to aid in a classification. Under the heading "Nature of Case" would appear the word "Divorce." "Custody of Children," "alimony" might be added for convenience and checked when appropriate.

(5) Disposition of Case. This seems the most important item of all. The information should be easy to gather from the reputable and more efficient offices. They would not fear criticism as to the extent of their work, and the material is already in such form that the clerk could readily check the card. While many items might be listed under this heading, it would seem sufficient, in the experimental period of the plan, to include a rough outline, such as the following:

a. Case disposed of by giving client advice and nothing more.

b. Case disposed of by giving client information as to

(1) law

(2) facts

c. Case disposed of by adjustment between the parties without court action.

d. Case disposed of by litigation.

e. Case disposed of by drafting and lobbying new legislation. The attempt to describe in greater detail what is done in each type of case may well await experimentation with this simpler outline. The lawyer here need merely check the appropriate line. This combination of actual results accomplished and extent of labor or skill employed should be valuable.

The reporting card might bear a distinctive color for the nature of case; be of a size not larger than 3" x 5"; and have printed upon it the following data:

1. Attorney's No. _____	2. Client's No. _____
3. Time case came into office _____, 19 —; Time closed _____	
4. Nature of Case. (For example, DIVORCE Property settlement Alimony Custody of children)	
5. Disposition of Case a. By giving client advice _____. b. By giving client information as to law ____ facts _____. c. By adjustment out of court _____. d. By litigation _____. e. By legislation _____.	
[Check the appropriate heading and send this card to (Name of county fact gathering agency)]	

This would take little time, be quite impersonal, and yet give some fundamental information as to the attorney-client, relation. National figures would be interesting. But, even though one may take issue with the primary value of the specific bits of information proposed here, and desire to substitute other matters, no insuperable obstacle is raised. The device for collecting the data may be used equally well for many different sorts of advice. Uniformity is the only really essential point. Otherwise, no comparisons are possible.

How is the lawyer to be induced to make these reports? Two extreme methods are suggested. By a process of persuasion, through addresses and articles, bar associations may appoint committees, individual lawyers may volunteer to experiment with the idea, and some figures may be secured. The publication of the first set of figures, even though scattered and inadequate, is sure to arouse interest and if the plan is followed through with care there seems to be no insuperable reason why it should not in time be accepted as a desirable form of activity by all reputable lawyers. Once the fashion is set, everyone will keep the records as a matter of course. A bar association committee may be helpful in encouraging those who hesitate or forget.

The other method is by compulsion. A uniform statute adopted in the various states requiring the lawyer to give information of this or similar import under penalty of fine or imprisonment is a possibility. A rule of court enforced by contempt procedure would be another. But the method of compulsion, while it may seem to reach more quickly the results indicated, is hardly a basis for a cooperative enterprise having as its goal the greater prestige of the bar. Other devices less extreme than these two will readily suggest themselves. The project is essentially a long term program, not a temporary outburst of enthusiasm which is to be forgotten the next instant. Nor is it the type of survey to be made once for all. Its success will depend in the long run, upon the extent to which the bar comes to believe in the value of the results. The proponents of the plan must be on the alert during the early years to demonstrate to the individual lawyer the practical value of the data.

The objectives outlined in this article are but one aspect of the uses to which information thus gained may be put. This fact gathering device is available for at least one other significant task—the evaluation of the work of the lawyer. If a reasonable standard of excellence of work can be discovered, it may be possible to record the percentages of lawyers who do better or worse than average work. To obtain this extra information two additional reports may be requested by the county fact gathering agency.

If the case is one in which litigation is involved the judge may prepare a simple report in which he indicates whether the particular lawyer in the particular case has done an average job, a better than average job, or a less than average job. If the lawyer is to be named, the card may contain the following information:

Date of Report and of trial of case _____	
Name of case _____ v. _____	
Attorney for Plaintiff _____	
Conducted case:	
above average	_____
Average	_____
below average	_____
Attorney for Defendant _____	
Conducted case:	
above average	_____
Average	_____
below average	_____
Signed _____	
Judge	

If the judge, for any reason, hesitates to "grade" the lawyers who appear before him, he may keep a record of their work for a period and submit an impersonal report. In this event the report of the judge might be in the following form:

Report on ability of lawyers from _____ (date) to _____ (date)	
Number of cases tried before me _____	
Number of lawyers appearing and with regard to whom I am able to express an opinion _____	
Number of lawyers who did work above average	_____
" " " " " average work	_____
" " " " " work below average	_____
Signed _____	
Judge	

Thus, some check is maintained on the quality of court work.

If the case is one in which no litigation is involved the most reasonable and inexpensive way of keeping in touch with the quality of the work seems to be through the client. If the client is dissatisfied and knows that he is free to take action he may file with the grievance committee of the bar association his complaint. All such complaints with the endorsement of the grievance committee as to whether or not they are justified may be forwarded to the county agency. Perhaps an impersonal report by the grievance committee over a period, without mentioning names, would meet with more approval. Such a report might include the number of complaints against lawyers; the nature of those complaints, what was done about them, and the extent to which the committee thought the complaint was justified. A contest between counties to keep this number growing less each year might well increase ethical standards and practical efficiency. Certainly, it would be a valuable safety valve for the clients.

Such a plan as the above may well warrant a trial. Granted a desire by lawyers, judges, legal scholars, bar associations and law students to secure a moving picture of law practice, photographic in its clarity, the method of securing the facts appears reasonable. It avoids the terrors, expenses, misunderstandings and expensive follow up of the questionnaire method. It is based on the wish of the lawyer himself to know what is going on in his field, not on the interest, however keen, of a small group of investigators. It offers opportunities for the bar to make, and maintain, a record of its work and thereby stimulate professional pride. No doubt experimentation will demonstrate many better methods than those suggested above. All that is necessary here is to portray a reasonably practical plan for discussion.



officials,<sup>114</sup> to administrative tribunal officials,<sup>115</sup> to business and extra-legal professional agencies.<sup>116</sup>

Another major task of this committee is to see that sanctions are rendered available. Cooperation in answering questionnaires voluntarily may be secured from the client, the lawyer and the business and extra-legal professional agencies by an advance program of educational publicity. The public officials from whom information is sought may be restricted by law in the nature and extent of facts which they can reveal. Where the cooperation between the possessor of the desired information and the collector depends upon legislative amendment rather than good will, the drafting of statutes should be someone's duty. By placing the responsibility for sanctions on a central national committee, administrative advantages and uniformity are secured. It is always possible to adapt the general suggestion to the local situation. To expect the drive, necessary to accomplish a national survey, to come from any local group is contrary to experience.

After the national committee is functioning, a counterpart should be set up in each of the state bar associations. These vary greatly in strength and much adjustment may be necessary to persuade the group to appoint state bar committees, to assume state sponsorship, to accept the ideas of national uniformity and to work actively for sanctions. Yet it would seem essential that each state have a responsible agency backing the study and performing the initial tasks.

Each county bar association—or in the less thickly settled areas a

---

<sup>114</sup>In general the data as to the "case" may include the *source*, the *nature* and the *disposition*. Data as to the parties may be elaborated to the point at which they refuse to answer questions or the recorder is exhausted. It would seem adequate to determine the economic and social position by such simple questions as:

*Economic Questions.*

Income.

Dependents.

*Social Questions.*

Age.

Married, Divorced, Single.

Citizen, Alien, Being Naturalized.

<sup>115</sup>Similar information to that indicated in note 114, *supra*.

<sup>116</sup>Before this data can be collected it will be necessary for the American Bar Association to work out a list of activities in which both lay and legal agencies are engaged. The main headings of that list are clear. They include the matters mentioned in Hicks and Katz, *Unauthorized Practice of Law*, *supra*. The next step would be to secure cooperation from notaries public, trust companies, adjustment companies, justices of the peace, realtors, title companies in computing and recording the work they do in this overlapping field. Again the source, nature and disposition of the case would seem adequate. The economic and social status of the parties would probably be all that could be secured. In fact, it may be impossible to secure more than the facts about the case.

The foregoing data can hardly be gathered so long as the bar is in active competition with these lay agencies.

group of county bar associations—should then appoint a committee to perform locally the three tasks of providing sponsorship, arranging for uniformity of records and securing sanctions. When this county-wide group of committees is established, the preliminary stage of the work will be complete.

#### THE INITIAL SURVEY

The initial survey, starting in each county, has immediate objectives. In dealing with the lay public it is endeavoring to measure the social distance between attorney and client.<sup>117</sup> To this end there are five steps for the local bar committee to arrange: A preliminary educational campaign to inform those about to be approached of the purpose and nature of the study; a selection of persons considered by the local committee as reasonably representative of the community; the selection and training of a group of investigators to see the representative persons and gather the data; the actual collection of information; the delivery of the collected data to a statistician.

The statistician with a staff of clerks would be charged with the duty of assembling, organizing, interpreting and writing the report. A copy should be sent to the state bar committee which in turn would place all the county reports in the hands of a statistician to be assembled, organized and interpreted for the state. In similar fashion the American Bar Association Committee, with a statistician, would compile the national figures. The data required from the lawyers, court officials and public officers could be gathered with the same group of investigators. Thereafter, it would follow the same routine to a national report.

The most significant part of this progress would be the interpretation of the figures. Interpretation might proceed along three lines: a collection of data showing the present situation; a series of recommendations for remedial action; and a preliminary survey to determine the nature of the permanent study.

#### THE PERMANENT STUDY

The machinery for the permanent study will be largely a continuation of the machinery of the initial survey. The bar association committees, national, state and local, will continue their supervisory functions. The statisticians and staffs in their permanent offices will carry on. Only

---

<sup>117</sup>"The Lawyer's Service to the General Public, a Symposium," 7 *Am. L. Sch. Rev.* 1017 (1933); H. P. Chandler, "What the Bar Does Today"; Beardsley Ruml, "The Social Function of Law and Lawyer"; Will Shafroth, "Can the Law School Lead Us Out of the Wilderness?"; Leon Green, "The Law Professor, the Lawyer's Brain Trust"; K. N. Llewellyn, "Where Do We Go from Here?"

the group of outside investigators will be lacking. Information, under the pressure of the various sanctions will flow into the local office from lawyers and courts.

The accessibility of the office to the lay public,<sup>118</sup> the knowledge of its work, gradually progressing through the community, and the effect of the sanctions, should be adequate to persuade a goodly number of persons with grievances to come in and record the fact. After all, the bar is not trying to build up a case against itself. Data from lawyers,<sup>118a</sup> court officials<sup>118b</sup> and other sources, legal<sup>118c</sup> and extra-legal, could also be collected daily, either by voluntary cooperation or legislation. This material, collected daily, would be available for state and national compilations—a continuous, comprehensive, uniform picture of events.

This machinery should suffice. Experience will indicate improvements as to material and method. In time objectives may be modified. Yet, in some such fashion, the facts may be secured. What is done with them is beyond the scope of this article. In the hands of bar committees, state legislatures and legal scholars they will be a realistic basis for constantly readapting the administration of justice to the needs of a changing community. Certain objections should be faced.

#### SPECIFIC PROBLEMS ARISING IN CONNECTION WITH THE PROPOSED SURVEY

Traditionally, information given the lawyer by the client is confidential and there will be an instinctive reaction of the bar against any proposal which attempts to lift the veil. At the same time no adequate picture of law practice can be secured unless the investigators know accurately what goes on within the four walls of the law office. Referring again to the medical field, it may be noted that information between patient and physician is jealously guarded by the latter; yet anonymous medical statistics from the doctor's office are available and most valuable. The information gathered from the lawyer in like manner can, and should, be rendered statistically anonymous.<sup>119</sup>

<sup>118</sup>For a description of the operation of this office, see note 113, *supra*.

<sup>118a</sup>, <sup>b</sup>, <sup>c</sup>, would be collected in the manner described in notes 113, 114, 115 and 116, *supra*.

<sup>119</sup>V. V. Becherer, "*Die Herausgabe von Krankengeschichten*" ("The Right of a Physician to Publish Case Histories"), 31 Med. Klin. 899 (July 5, 1935).

Canon 37, of the Canons of Professional Ethics of the American Bar Association suggests the line to be drawn between confidential and non-confidential data by using the words "for the private advantage of the lawyer or his employees or to the disadvantage of the client, without his knowledge and consent." There appear to be no cases declaring that rendering a statistical record of legal matters handled, without in any way referring to the client by name, is a violation of the attorney's duty.

See note 113, *supra*.

A second problem arises because the administration of justice is a matter of public as well as professional interest. The man in the street demands that his voice be heard in the councils which pass upon the social usefulness of the process. In the past, various experiments have been along these lines. The jury is the traditional example. Lay judges have been appointed. Lay commissions have been set up. The legislature, often at the instance of the profession, has encroached considerably upon the judicial department of the government defining and protecting the practice of the law,<sup>120</sup> prescribing qualifications for admission,<sup>121</sup> discipline<sup>122</sup> and disbarment,<sup>123</sup> chartering bar associations.<sup>124</sup> The bar should remember that oncoming legislatures instigated by laymen, may impose less acceptable fiats. Yet the lay viewpoint must be considered. The most practicable solution seems to be the inclusion of lay representation in professional groups. For example, if the committee of the local bar association which is sponsoring the surveys should include in its membership a certain number of laymen, much might be gained in reassuring the general public. Such a procedure would permit an interchange of ideas as a necessary preliminary to a more complete understanding. If the value of complaints was to be considered, or proposed reforms discussed, the inclusion of the lay members would be a national policy.

Finally, there are three objections which, as a matter of course, accompany new proposals. The individualistic lawyer does not like the idea of regimentation.<sup>125</sup> The enterprise, as proposed, calls for the expenditure of a substantial sum of money.<sup>126</sup> The plan of a legal survey is still something of a novelty.<sup>127</sup>

<sup>120</sup>H. S. Caulfield, "Regulation of Practice of Law," 5 Mo. Bar Jour., 101, July 1934.

<sup>121</sup>"Legislative Attempts to Control Admission to the Bar," 10 N. Y. Univ. L. Q. Rev. 214 (Dec. 1932).

<sup>122</sup>"Validity of Bar Acts Sustained," 4 Mo. Bar J., 27 (Feb. 1933); R. A. Rogers, "Disbarment, Suspension and Discipline of Attorneys in Nebraska," 12 Neb. L. R. 150 (Nov. 1933).

<sup>123</sup>M. E. Lawson, J. S. Lehy and Allen McReynolds, "Disbarment, a Legislative or Judicial Power, The Cannon Case," 3 Mo. Bar J. 39 (May 1932).

<sup>124</sup>Excerpts from speeches of C. H. Beardsley and Alger Melton, "How State Bar Acts Work," 4 Mo. Bar J., 25 (Feb. 1933).

<sup>125</sup>For a discussion of the loosening of the old bonds, see Anonymous, "Don't Be a Lawyer" (Jan. 1936) The Amer. Mercury, 30 at 32.

<sup>126</sup>Costs of Administrative Law Surveys are as follows:

Cleveland Crime Survey	\$ 50,000
Missouri Crime Survey	65,000
Chicago Crime Survey	100,000

The expenses of legal aid surveys are insignificant in contrast to this. The annual costs of operation of legal aid societies is now about \$481,000. 59 Rep. A. B. A. 499. It is impossible to determine just how much goes toward the collection of statistics. Most of it is cared for by an efficient clerical system

## CONCLUSION

The solution of these problems and the adoption of the proposal will depend upon the extent to which the bar realizes the social and economic pressure now being brought to bear upon it. No plan is perfect. It should be judged from the standpoint of whether its advantages overcome its disadvantages. It would seem reasonable to assume that a profession which has a comprehensive, continuous record of the quantity and quality of its work, thereby has an advantage in a modern competitive civilization. The bar may well employ some of its energies along these lines. They compare favorably, if one uses a standard of public service, with defensive efforts by legislation and court action to protect the traditional preserves of the lawyer. In the long run, popular confidence can hardly be gained unless the facts are available. The bar should be able to prove conclusively that it is performing its duty to the public in excellent fashion. At present it cannot do so.

Here is a situation and a proposed remedy. There is in the field of law one outstanding illustration of a successful permanent fact-gathering agency such as is proposed here. The legal aid societies of the country for the past fifty years have kept records, and these are becoming increasingly valuable for the precise purposes which seem to call for the proposed survey.<sup>128</sup> The extension of this idea will supply the "motion pictures." Interprofessional borrowing will provide all that is necessary for the initial survey. The two studies together will produce a mass of information in which public and profession are interested. Both have the right to such data. The uses to which it may be put lie beyond the scope of the present article. It is enough here to have set forth some of the needs for such data and a way to secure it. The bar has a duty toward the public and the administration of justice. This is one step in the discharge of that duty.

---

which records the required data incidentally. By a cooperative movement among the law offices, the bar associations, the courts and the other agencies, the material required by the survey suggested here could be obtained at a nominal cost.

If the plan proved too expensive to be handled by the legal profession itself, it is very likely that the statistics gathered would have a sufficiently high commercial value to interest some publishing company in taking over the whole enterprise with the privilege of selling the annual statistics to libraries, bar associations and other interested groups.

<sup>127</sup>Time will run against this objection.

<sup>128</sup>For a bibliography of legal aid literature, see 57 *Rep. A. B. A.*, p. 515, and the publications of the National Ass'n of Legal Aid Organizations.

# Boston University Law Review

Published Quarterly by the Boston University Law School, at 150 Fremont Street,  
Worcester, Mass., and  
11 Ashburton Place, Boston, Mass.  
Editorial Offices, 11 Ashburton Place, Boston, Mass.

---

**\$2.00 per Annum; Foreign \$2.50; Single Copies, 70 cents**

---

FACULTY ADVISOR—ARTHUR L. BROWN

## FACULTY EDITORS

HOMER ALBERS	ERLAND B. COOK	FRANK L. SIMPSON
RAYMOND C. BALDES	FELIX FORTE	ORVIL W. SMITH
HARRISON J. BARRETT	JOHN E. HANNIGAN	P. DENNISON SMITH, JR.
ARTHUR L. BROWN	MELVIN M. JOHNSON	OSCAR STORER
HAROLD M. BOWMAN	CHARLES A. ROME	

## UNDERGRADUATE EDITORS

GUY VERNOR SLADE, *Chairman*

WILLIAM DURFOR ENGLISH, *Associate Chairman*

LOUIS PAUL HAFER, *Associate Chairman*

Richard Francis Barrett	John E. Higgiston, Jr.	Albert L. Rosen
John F. Beamis, Jr.	Manuel Katz	Alfred L. Rottenberg
Samuel Bornstein	John J. Kerrigan, Jr.	Frances D. Schoenbach
George R. Cohan	Jesse M. Koppe	Hyman C. Silverstein
George J. Elbaum	Olin E. Neidlinger	Anne Snider
Burton A. Finberg	Frank Rolli	Myron S. Winer

## UNDERGRADUATE ADMINISTRATIVE OFFICERS

HENRY FRIEDMAN, *Business Manager*

FRED P. PIGNATO, *Associate Business Manager*

---

*The Editorial Boards, although desirous of offering freedom of expression to contributors, are not necessarily in agreement with the statements and modes of expression of views in the columns of the BOSTON UNIVERSITY LAW REVIEW.*

---