



The Rushcliffe Report

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The University of Chicago Law Review, Vol. 13, No. 2. (Feb., 1946), pp. 131-144.

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THE UNIVERSITY OF CHICAGO LAW REVIEW

VOLUME 13

FEBRUARY 1946

NUMBER 2

THE RUSHCLIFFE REPORT

ALEX ELSON*

IT IS part of the American creed that every person, regardless of economic status, religious belief, race, or color, is equal before the law and equally entitled to the protection of the law. Lawyers take great pride in this belief. They engage in beautiful rhetoric expounding the virtues of our way of living, speak feelingly of the long struggle which preceded our present achievement, and almost invariably bring in some reference to the Magna Charta, the Constitution, and particularly the due process clause. But in the complicated structure we call law it goes without saying that equal protection of the law must assume an equal opportunity to receive the advice and guidance of the expert in the law, the lawyer, and an equal opportunity to enter the halls of justice without danger of eviction for want of cash to pay court costs, out-of-pocket expenses, and living expenses while the judicial process unfolds. That we fall short of our cherished beliefs will be generally conceded by most of the bar. True, to some extent spurred on by lay critics, the bar has taken stock of the situation almost every year in the last quarter of a century and has made strides here and there in meeting the problem. But despite this awareness of the problem and the progress made, the gap between our ideal and reality has grown wider as our society has become more urbanized, more mechanized, and more complicated. Our blindness to the realities of the situation cannot rationally be reconciled with established inventories of the situation. Each year statistics are published on the extent of legal aid work in the United States.¹ These reports are generally ignored although they show year after year that more than 100,000,000 Americans do not have access to any form of organized legal aid.

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¹ See annual reports of Legal Aid Committee, American Bar Association, appearing in American Bar Association Reports, and Annual Proceedings, National Association of Legal Aid Organizations.

We have in the main borrowed our concept of due process from England. The English and American ideal of equality before the law is basically similar. Both countries have independently tried similar methods to meet the problem.² It looks now as if England is again leading the way. During the war interest in legal aid except for members of the armed forces lagged in the United States. In England, while buzz bombs were wreaking terrific havoc, while the civilian was silently suffering extreme deprivation of physical wants, a committee of outstanding members of the English bar and leaders in social reform sat down to examine realistically and without flinching the gap between the bar's preachments and its practices.³ After numerous meetings and considerable investigation, the Rushcliffe Committee made its report in May, 1945, to the Lord High Chancellor and to the Parliament.⁴

For the most part, legal assistance in England has been given by private organizations or gratuitously by members of the legal profession or by minor officials of the courts or by trade unions. The only extensive type of legal assistance financed by the state has been payment of assigned counsel in criminal cases and provision for legal aid for members of the armed forces. With reference to existing methods of giving legal aid, the committee concludes:

... it would be impossible to expect any extension of gratuitous professional services, particularly as there appears to be a consensus of opinion that the great increase in legislation and the growing complexity of modern life have created a situation in which increasing numbers of people must have recourse to professional legal assistance. . . . It follows that a service which was at best somewhat patchy has become totally inadequate and that this condition will become worse. If all members of the community are to secure the legal assistance they require, barristers and solicitors cannot be expected in future to provide that assistance to a considerable section as a voluntary service.

² These methods have included private legal aid societies, voluntary defenders, assignment of counsel, in forma pauperis provisions, legal assistance officers for the members of the armed forces, gratuitous advice by members of the legal profession on an unorganized basis, information centers, reformed procedural rules, small claims and other specialized courts, and the development of special administrative agencies to deal with specific problems.

³ This committee, led by Lord Rushcliffe, was appointed on May 25, 1944, "to enquire what facilities at present exist in England and Wales for giving legal advice and assistance to Poor Persons, and to make such recommendations as appear to be desirable for the purpose of securing that Poor Persons in need of legal advice may have such facilities at their disposal, and for modifying and improving, so far as seems expedient, the existing system whereby legal aid is available to Poor Persons in the conduct of litigation in which they are concerned, whether in civil or criminal courts."

⁴ Report of the Committee on Legal Aid and Legal Advice in England and Wales (CMD 6641, H.M.S.O.; copies available by writing to Yorkhouse, Kingsway, London, W. C. 2). A detailed analysis of the Report appears in 95 *Law Journal* 192 and 199 (1945).

The principal recommendations of the committee for legal aid, which it defines as assistance in conducting or defending proceedings in court including court fees, witnesses, and other expenses, are summarized as follows: (1) Legal aid should be available in all courts and in such manner as will enable persons in need to have access to the professional help they require.⁵ (2) This provision should not be limited to those who are normally classed as poor but should include a wider income group. (3) Those who cannot afford to pay anything for legal aid should receive this free of cost.⁶ There should be a scale of contributions for those who can pay something toward costs. (4) The cost of the scheme should be borne by the state, but the scheme should not be administered either as a department of state or by local authorities. (5) The legal profession should be responsible for the administration of the scheme, except that part of it dealt with under the Poor Prisoners' Defence Act (Poor Prisoners' Defence Act provides for the assignment of solicitor and counsel by the court and compensation for such solicitor and counsel). (6) Barristers and solicitors should receive adequate remuneration for their services. (7) The Law Society should be requested to frame a scheme on the lines outlined in the detailed recommendations providing for the establishment of Legal Aid Centres in appropriate towns and cities throughout the country.⁷ (8) The Law Society should be answerable to the Lord Chancellor for the administration of the scheme, and a central Advisory Committee should be appointed to advise him on matters of general policy. (9) The term "poor person" should be discarded and the term "assisted person" adopted.⁸

The committee's recommendation with reference to legal advice, which it defines as advice on legal matters, drafting of simple documents, and negotiations apart from litigation, but not including conveyancing or probate matters or the drafting of wills, is stated as follows:

⁵ The committee would have legal aid extend to all types of cases including civil cases. Legal aid would include full court fees as well as counsel fees.

⁶ Generally, the committee regards anyone with an income of three pounds a week or less for a single person or four pounds a week or less for a person with dependents as eligible for free assistance.

⁷ The administrative plan outlined by the committee contemplates a division of the country into areas. An area committee would be appointed for each area and would be given the obligation to assure adequate service both as to advice and litigation. Local legal aid committees would be established by the area committees. Both area committees and local committees would have paid secretaries. Members of local committees would receive no remuneration except expenses. Area committee members would receive compensation. Local committees would grant legal aid certificates. Appeal from a refusal to grant a certificate would lie to the area committee. A person granted a certificate would choose a solicitor and, where necessary, a barrister from a panel.

⁸ Rushcliffe Committee Report *op. cit. supra*, note 4, at 23.

All applicants for legal advice should be given legal advice on payment of a fee of 2s. 6d. subject to the following:

- (1) this fee may be remitted in suitable cases;
- (2) where it is apparent that the applicant is able to pay the costs of getting the advice in the ordinary way, legal advice may be refused.

In cases of emergency, a person needing legal advice should be able to apply to the Secretary of a Local Committee who might either deal with the matter himself or if he thinks it a proper case, refer it to a solicitor upon the advice panel. The person seeking advice should then attend that solicitor, who would advise him and would be paid a fee of 7s. 6d. from the funds of the Area Committee.

Each Area Committee at its Headquarters should have an office open during all reasonable hours for the purpose of giving advice. In addition, in each centre of population in its Area, where a whole time office can be justified, the Area Committee should set up a branch office for legal advice.

Whole time paid solicitors would be employed in these offices for this purpose. In centres of lesser population, the Area Committee would organize advice sessions on regular days and would arrange (through Local Committees) for a solicitor to sit there during the advertised hours and such solicitor would be paid a fee of so much per session.

The committee recommends that the entire cost of the plan for giving legal aid and legal advice should be borne by the government and estimates that the cost of the administration of the scheme will be slightly under £200,000 per annum. The plan proposed by the committee contemplates that the Law Society will submit an estimate to the Lord Chancellor's Department of the amount required throughout the whole of England and Wales. The Lord Chancellor will then make a payment in a lump sum to the Law Society, and the Law Society will allocate that money to various area committees according to their needs.⁹

What is most provocative about the report and what stands out as a challenge to this country are the four changes fundamental if the ideal of equality before the law is to be made a reality.

1. Legal aid is not a charity stemming out of private philanthropy but is a right which the state has a duty to foster and protect. In this respect the report would even change terminology and discard such terms as "poor person" and "pauper."

2. There is an obligation to establish a nationwide system for giving legal advice and for providing legal representation in all courts, the cost to be borne by the state.

3. The relationship of attorney and client should be maintained even though there is state assistance with all the protection surrounding the

⁹ This summary does not do justice to the report, which contains a most thorough and detailed analysis and elaboration of each of the recommendations. Made at a time when the country was still at war it is a remarkable document.

relationship and the professional obligations that go with it. This is assured through administration of the plan by the organized bar.

4. The obligation to provide assistance is not limited to the lowest income group but includes persons who would not ordinarily under existing means tests be eligible for assistance.

The Rushcliffe Report compels an examination of existing facilities in this country for giving legal assistance. How far do we fall short of the mark, and would recommendations such as those contained in the report have validity in this country? There are approximately 109 organizations in this country consisting of legal aid societies, bar association committees, public bureaus, departments of social agencies, and law school clinics which serve a little more than 36,000,000 of the population. Twenty-five cities of over 100,000 population have no organized legal aid service. Even where there are organized legal aid bureaus there is serious doubt of the extent to which they serve the population. It is generally admitted that the oldest and largest legal aid society in this country is the New York Legal Aid Society. New York, in addition, has other organizations giving legal assistance. Recently a very comprehensive survey was made of legal aid work in New York City.¹⁰ After this survey was completed and in his conclusion of the report, Louis Fabricant, Attorney in Chief of the New York Legal Aid Society, wrote:

Certain facts are too clearly defined to be seriously challenged.

The first is the constant recurrence of a tremendous number of cases in which people feel unable to manage a solution of legal problems affecting themselves, their families, or the livelihood or liberty of some of them. This is the field in practice of legal aid, in technique of the Bar, and in essence a major though hardly recognized problem of political philosophy.

Organized and unorganized legal aid is meeting only a fraction—even though a considerable fraction—of the problem. The forces operating to attain equal justice are not adequate at any point.

In addition to legal aid in civil cases in this country there are plans for assignment of counsel in criminal cases in practically every state in the country and for voluntary and public defenders in criminal cases. The voluntary and public defenders, existing for the most part in cities which have legal aid bureaus giving assistance in civil cases, serve a population of a little more than 17,000,000. So far as the assignment system goes, the assistance it provides is incomplete and for the most part inadequate. In only a handful of states is assignment of counsel mandatory. That compensation which is provided is with a few notable exceptions insufficient

¹⁰ "Legal Aid in New York City," (1944), under the direction of Col. Edmund Ruffin Beckwith of New York.

to assure competent counsel, and in almost half of the states no provision for compensation is made at all. Only a few states provide for cash disbursements in preparation for trial. Even where the state law makes provision for assigned counsel if requested, counsel will be assigned only in certain courts and it is unusual to find a state law providing the accused with an attorney to represent him from the beginning to the very end of the proceedings. In a great majority of states provision is made for counsel only in the regular criminal trial courts. In nearly all the states counsel is assigned at or just before the trial despite the clear desirability of early assignment of counsel so that there can be adequate preparation. In many states the lawyers selected are either young and inexperienced, or lawyers who make it their business to hang around the courts expressly to receive appointments. It is the exceptional case where able counsel is appointed.

The war has brought into operation the largest legal aid organization we have ever had in this country—the legal assistance offices provided by both branches of the armed services. During the war these offices have provided assistance to more than 10,000,000 men and women in the armed forces and handled, in 1943, approximately 2,000,000 cases. The magnitude of this achievement becomes clear when we contrast it with the total recorded number of cases handled by all legal aid agencies throughout the country from their inception up to 1933—approximately 3,213,170. Unfortunately, this is a wartime organization and will probably not continue for long.

While we do not have a complete picture of the extent of legal aid service in this country, such statistics as we do have, and to which reference already has been made, clearly indicate that the great majority of the population in the country does not have available to it organized legal assistance.

It is possible to conjecture as to the reasons why we have not made greater progress in providing legal assistance in this country and for the situation in which we now find ourselves.

In the first place, the need for providing legal assistance on a systematic, planned basis has not been generally recognized in this country as a function of government on either a national or state basis.¹¹ It has been recognized on a local basis by a small number of governmental agencies which operate legal aid bureaus or have public defenders.¹²

¹¹ The only exceptions exist in the State of Washington, where by state law county bureaus may recognize the need for legal assistance and make appropriation for that purpose, and in Connecticut where the public defender plan is statewide.

¹² Hartford and New Haven, Connecticut; Kansas City, Missouri; Dayton, Ohio; and Dallas, Texas, have municipal bureaus. The State of Connecticut; Columbus, Ohio; City of Los

The very nature of the federal-state relationship tends toward fragmentary consideration of the problem of legal assistance. The need for assistance in the state courts and for legal advice outside the courts is not a function which up to this time has been considered as possibly a federal function. Hence, no governmental agency in this country has given consideration to the problem of legal assistance from a national viewpoint. The only agencies which have consistently and regularly given attention to the legal aid problem from the national viewpoint have been private organizations. These are voluntary organizations and while they have had outstanding individuals giving generously of their time their work has not been effective to date.¹³

Secondly, neither the bar nor the community has been willing to assume complete responsibility for the problem of providing legal assistance.¹⁴

In the third place, the attitude of the bar itself has contributed to the

Angeles and County of Los Angeles, California; Oakland, California; Omaha, Nebraska; Providence, Rhode Island; St. Louis, Missouri; and San Francisco, California, have public defenders.

¹³ Aside from the National Association of Legal Aid Organizations, which represents the specialists in legal aid work, the bar is active nationally through the Legal Aid Committee of the American Bar Association and through the National Lawyers Guild. The American Bar Association committee works closely with the National Association of Legal Aid Organizations, but can only act as directed by the governing body and has been handicapped by lack of cooperation on the part of that body. For example, when the Legal Aid Committee of the American Bar Association recommended and urged the Association to make provision for a budget which would enable the employment of one full-time person to promote legal aid work throughout the country, this modest request was denied. 65 A.B.A. Rep. 190 (1940). Referring to the action of the delegates tabling the recommendation for a paid assistant, the committee stated in their 1940 report: "The committee is convinced that this recommendation should have been approved. As is pointed out in the interim report, the work of this committee begins where the work of most of the other committees ends and involves an amount of time and effort, brain work, and roadwork which the individual members of the committee cannot possibly give to it. Nevertheless, the committee does not press the point at this time because it appreciates that before adequate funds can be made available for this work there must be a distinct change in the financial policy of the Association. Instead of diffusing funds among multifarious activities, many of whom do not improve the administration of justice or the public reputation of the Bar, we believe the Association should confine its expenditures to a few select activities of proved importance and value. We further believe that legal aid work should be one of them." *Ibid.*, at 191. The request for funds has been again eloquently reported in the committee's 1945 report. Advance Program, 68th Annual Meeting, American Bar Association, Cincinnati, Ohio, December 17-20, 1945, p. 21.

¹⁴ This point was well articulated by Harrison Tweed, when he said: "There is a sort of a feeling as I see it both on the part of the community and on the part of the Bar that legal aid is in the hands of some third party and that legal aid organizations and legal aid workers constitute a separate entity of their own, but they are doing all right, so why should anyone worry about the matter? The community says the legal aid organizations are operating as well as they ever did and why isn't that well enough? The Bar says you have got all your legal organizations. They are wonderful things. You are able fellows doing a lot for humanity and you deserve a lot of thanks. Why should busy lawyers bother about you? So legal aid seems to fall between two stools." Report of the Standing Committee on Legal Aid Work, 69 A.B.A. Rep. 259, 260 (1944).

failure to provide adequate legal assistance. In part this is due to the circumstance that with increased urbanization of population many city lawyers have lost touch with the masses of people. But in some communities, including those in predominantly rural areas, the bars, not fully conversant with the policy of legal aid bureaus, have been hostile or indifferent to their establishment. Fearful that legal aid bureaus may make inroads into their practice, lawyers have preferred to permit the injustice which follows the failure to provide systematic planning of legal assistance. This sometimes is justified on the ground that the generosity of the individual practitioner is sufficient to take care of the problem.¹⁵

Even more important is the circumstance that many lawyers have become involved with the problems of their paying clients and tend to think less and less of the broader problems or responsibilities of the profession. There is no reason to believe that the indictment of the profession made by Albert M. Kales as long ago as 1909 is not equally valid today. At that time he said:

There is grave reason to believe that the slow progress made in law reform and the reform in judicial organization and procedure in the large centers of population where it is most needed is due to the fact that the solicitors and client care-takers represent and almost wholly compose the profession. . . . The more important and able the lawyer the more he is in touch with the most important business interests of the community and the more clear it is that he cannot propose or advocate any reform of an extensive character which will not be unwelcome to some particular client's interests. These are the men who stand as leaders of the Bar. Their clients are not interested in reform.¹⁶

Today one can still say without real challenge that there is only a small handful of competent, honest lawyers who are willing and ready to make voluntarily a fight for civil liberties and personal rights and for adequate protection of all persons irrespective of their economic status, race, or religion.

A further reason for the slow progress is that the difficulties attendant upon providing the legal assistance for the population of the country by private means are staggering. To get the funds which have been made

¹⁵ In this connection, it has been said: "It is fairly obvious to anyone who will take the time to think the matter through, and it has been demonstrated again and again by students of the subject, that individual practicing lawyers, no matter how well disposed and generous of their time, cannot adequately take care of all the poor and all the legal troubles particularly in the larger cities. Nevertheless, there are still lawyers that believe this loyalty to the profession demands that the contrary be assumed. . . . It is all too plain that that is due either to ignorance or self-interest. The lawyers who take this position either do not know the facts or else they fear that in some manner that has never been elucidated, organized legal aid will take paying business away from practicing lawyers." 65 A.B.A. Rep. 189 (1940).

¹⁶ Kales, *A Comparative Study of the English and the Cook County Judicial Establishments*, 4 Ill. L. Rev. 303, 319-20 (1909).

available to date has been a heart-breaking task, and yet those funds are admittedly inadequate.¹⁷

It is obvious that philanthropy is grossly inadequate to meet the need. Yet resistance to reliance upon the governmental agencies is very strong and it is assumed that if there is governmental assistance on a wide-spread basis we will have socialized law.¹⁸

We may ask, in the light of what has happened despite a quarter of a century of emphasis upon private support of legal aid work, whether the best answer is through private sources such as the community chest, or the university. Is there any necessary conflict arising from the circumstance that legal aid work is financed by public funds if the administration of the program remains in the hands of the bar?

Finally, despite our protestations to the contrary, in general the individual who seeks free legal assistance is regarded as seeking charitable assistance.¹⁹

¹⁷ How dismal the situation is can best be put in terms of the 1940 Report of the Legal Aid Committee of the American Bar Association: "Financial support which the Carnegie funds gave to the cause for a number of years and which was rewarded with such splendid results has been withdrawn even to the extent of permitting *Justice and the Poor* to go out of print. No other foundation except the Russell Sage Foundation has given to national legal aid in any considerable amount. Only in one year—1938—has the American Bar Association appropriated more than \$1,000 to the work of this committee which, at a minimum, requires five times that amount to do the work which must somehow be done." 65 A.B.A. Rep. 187, 189 (1940).

¹⁸ In discussing the problem as to whether socialized law is a possibility, John S. Bradway says: "If the legal profession is serious about its opposition to socialized law, it should be alert. If it sits still, we may expect that sooner or later voices will be raised calling public attention to a situation described as 'intolerable,' and the bar may find itself maneuvered into the position of a reactionary group obstructing much needed reform. The layman will see, or will think he sees, the need for a change in our legal system and may become impatient with those apparently standing in his way. Organized legal aid work, as described here, is an accepted professional activity; more effective than the present volunteer system; less expensive than a socialized program. If organized legal aid service is set up in every county in the United States, a very potent argument in favor of socialized law will have been anticipated and the question whether the average poor man is obtaining his legal rights can be answered by statistics. At the same time the bar will have made many good friends. Its own idealism will have had a chance to demonstrate itself in dignified manner. The administration of justice will be improved." Bradway, Will "Socialized" Law Be Next?, 29 Jour. Amer. Jud. Soc. 13, 17 (1945).

Bradway does not define what he means by socialized law. It is not clear whether the financing of legal aid work, assuming its administration would be in the hands of the bar, proposed in the Rushcliffe report, would in his eyes bring about socialization of the law and the legal profession. Bradway further says: "The coming of the legal aid organization raised the question—where was the money coming from to support the enterprise? It was clear always that the policies should be made and enforced by the bar, but if the money to support the work was supplied by some other group, the policies of that other group sooner or later would have to be taken into consideration. The best answer has been the Community Chest and University, neither of which have objectives which might conflict with the best interests of the bar. In some cities the work has been financed from the public treasury." Ibid.

¹⁹ This concept is perhaps unwittingly expressed in the 1940 Report of the Legal Aid Committee of the American Bar Association where it is stated: "Legal aid is the great organic charity of the bar and its growth is largely attributable to the work and the money which lawyers have contributed." 65 A.B.A. Rep. 187, 191 (1940).

The second most important challenge by the Rushcliffe Committee is presented by the provision for legal advice to those whose income is above eligibility standards of legal aid bureaus. The committee calls attention to the fact that many individuals with low incomes are as much in need of legal assistance as are those classified as poor. However, since they are not dependent upon the community for financial aid and therefore not classifiable as poor they do not receive legal assistance. The Committee recommends giving legal advice to this group without specific income limitation, leaving it to the local area committee to protect against abuse.

In this country a similar area of need has been recognized. It is generally agreed within the legal profession that in principle, in one way or another, this need should be met. The acknowledged need takes in assistance going beyond the legal advice recommended by the Rushcliffe Committee. The problems involved have received considerable articulation in the past decade,²⁰ but to date little progress has been made in their solution. The legal profession has sanctioned reference plans whereby bar associations will on request supply the name of a lawyer who will give legal advice on a stipulated low cost basis. But only a handful of cities have such a plan available,²¹ and so little publicity has been given that the public is generally unaware of its existence.²² In Philadelphia a neighborhood law office plan to provide low cost service by a group of lawyers outside the principal business area has been in effect since 1939.²³ Thus far there has been no attempt to establish a centrally located low cost law office.²⁴

²⁰ For a collected bibliography on the subject, see 1940 Report of Committee on Legal Service Bureaus, 65 A.B.A. Rep. 261-62 (1940); see also reports of the Legal Aid Committee, 66 A.B.A. Rep. 321 (1941); 67 A.B.A. Rep. 291 (1942).

²¹ This service is available in Los Angeles, Chicago, St. Louis, Cleveland, Cincinnati. For attitudes of local bar associations, see 1941 Report of Committee on Legal Service Bureaus, 66 A.B.A. Rep. 329-30 (1941). In Chicago, Cleveland, and Cincinnati, the plan has been extended to preparation of income tax returns.

²² Bar associations in Cleveland and Cincinnati for several years and in Chicago last year extended the plan to preparation of income tax returns on a low cost basis and in that connection for the past two years engaged in active publicity. The Los Angeles Bar Association has also been active in publicizing the plan. The Committee on Professional Ethics and Grievances of the American Bar Association has approved publicity through newspaper advertising, news columns, and similar methods. Nevertheless, the conclusion of the Legal Service Committee of the American Bar Association in its 1941 Report, 66 A.B.A. Rep. 323 (1941), that, "we have scarcely touched the surface of the problem of acquainting the low income group with the existence of facilities to afford them legal service on a fee basis within their means," still stands as true.

²³ For description of plan, see letter from Robert D. Abrahams, chairman, Neighborhood Law Office Committee, Philadelphia Lawyers Guild, to Chairman of Special Committee on Legal Clinics, 65 A.B.A. Rep. 455 (1940); Abrahams, *The Neighborhood Law Office Experiment*, 9 *Univ. Chi. L. Rev.* 406 (1942).

²⁴ Proposals for a Legal Service Bureau for the Metropolitan Area of Chicago 1 *Nat. L. Guild Q.* 149 (1938); Plan for the Establishment of a Legal Service Bureau for Meeting the

The slow rate of growth raises the question whether the organized legal profession understands the need and desires to see that need met.²⁵ Since the legal profession has never wholeheartedly and generally supported legal aid work, it would be surprising if the response were different to plans for providing low cost legal service to the lower-middle income group. Just as in the legal aid movement, there is a wide gap between intellectual appreciation of the necessity for meeting the need, which the leaders of the legal profession possess, and the actual effort which is necessary to meet the need.

We are faced today with an even more acute problem than was present during the fermentation of the thirties. The underlying factors have not changed.

1. Despite the effective work of bar committees on unauthorized practice of the law, lay agencies are operating successfully and on a wide scale in certain fields basically requiring the skill of an attorney, such as tax problems, title examination, traffic violations, collections, and the preparation of trusts, wills, leases, and other legal documents.

2. Less than two per cent of people in the group having an annual income under \$2,500 consult lawyers. This group includes the bulk of the population. There is a latent and untapped demand and need for low cost service.²⁶

Needs of the Low Income Groups (1939), submitted by the Committee on Legal Service Bureaus of the National Lawyers Guild, Chicago Chapter (privately published); Low Cost Service Plans Proposed, 20 Chi. Bar Rec. 233 (1939). The A.B.A. Special Committee on Low Cost Legal Service Bureaus has rejected this plan, apparently through misunderstanding. The assumption is made by the Committee that the low cost legal service office would be operated at the expense of the public and be conducted much like a free legal aid bureau. The Committee seems confused by the name "Legal Service Bureau," 67 A.B.A. Rep. 291 (1941). The plan for a legal service bureau does not contemplate public financing. On the contrary it contemplates a centralized office providing low cost legal service with a volume of work sufficient to provide adequate compensation to the lawyers who serve on the staff. The chief difference between the neighborhood law office plan which is approved by the A.B.A. Committee, in conjunction with other types of legal service, and the legal service bureau plan is that the latter would be located in the downtown area and would have a staff sufficiently large to make possible specialized handling of legal problems.

²⁵ This problem is recognized and given expression in the mid-winter report (1945) of the Legal Aid Committee of the American Bar Association. The committee states: "At the bottom lies the query whether the bar, acting through this Association, is prepared, first, to cast off its traditional timidity and self-consciousness, then to inform the public of the importance of consulting lawyers in business and personal affairs instead of taking chances or the advice of notaries, realtors, accountants and insurance agents, and, finally, to see to it that men and women all the way up and down the income scale can easily and confidently and for fair compensation obtain the legal help they need. If the answer is in the affirmative, the first step should be to make an honest and intelligent and properly financed effort to establish legal aid throughout the country." Advance Program, American Bar Association Meeting, Cincinnati, December 17-20, 1945, p. 23.

²⁶ Report of Committee on Legal Services, 66 A.B.A. Rep., 321 (1941).

3. The majority of lawyers still practice on an individual basis and are not organized to give low cost service. Instead they compete for the law business of the less than ten per cent of the population in a position to pay for their services.²⁷

4. While the economic condition of the bar during the war has improved, in part because of the withdrawal of younger lawyers into the armed services, the prospect for the future is bleak and a matter for serious concern.²⁸ With the general decline of litigation and law business, lawyers as a whole and particularly returning veteran lawyers have more time available to render legal service to the low income group and a need for the additional income which would come from this source.

In broad terms and from a long-time viewpoint the significance of the Rushcliffe report is that the bar of England at this time is willing to consider the need for legal assistance as a fundamental problem requiring immediate national consideration. Up to the present time our achievements in the field of legal aid have been substantial but have provided a solution to only a small fraction of the problem. We have made only a timid start in providing legal service to the lower-middle income group. The question which faces this country and the legal profession in particular is whether looking ahead we can rightfully afford to improvise as we have in the past and to devise makeshift provision for the great need which exists. We are entering a period of reconversion involving rapid transition of economic forces, movement of a large part of the population from war plants back to normal employment and the adjustment of numerous and vital factors in our social life and economic structure. It is a period in which we may expect the growth of many problems having legal implications affecting a large part of our population. The Rushcliffe report presents the challenge: Shall we go on as we have in the past or shall we, as has been recommended for England, grapple realistically with the problem in an attempt to solve it on a comprehensive and ambitious basis? It is, of course, true that the problem in this country is vastly more complicated than in England. Aside from the circumstance that our population is more than three-fold that of England, we are faced with the intricacies of federal and state relationship. But what is the solution? It is clear from our past experiences that we cannot rely on private contributions or the efforts of the legal profession itself to meet the situation and that state and local governments are slow to respond to the need. We need to approach the problem nationally. There are at least two alternatives if we look for federal assistance.

²⁷ *Ibid.*

²⁸ See reports of the Committee on Economic Condition of the Bar, American Bar Association, 63-69 A.B.A. Reps. (1938-44).

The first is a system of federal grants-in-aid. Our history has shown that the greatest inadequacies of the federal-state relationship have shown up in our attempts to deal with the underprivileged. For this reason, among others, a system of grants-in-aid has developed to encourage state action, particularly in states that are financially impoverished. We have a history of federal grants-in-aid for education, for maternity benefits, for public housing, for relief, for old-age assistance, and for assistance to dependents, blind persons, and physically and mentally handicapped children. A modest federal appropriation, something less than the cost of a small battleship, for aid to the states in developing legal assistance would be a great step forward. If grants made out of such an appropriation were tied to a requirement that the states similarly stimulate local communities, a comprehensive system of legal aid to the poor and legal representation to those with low incomes would develop, and equality before the law would become something more than a mouth-filling phrase.

The second alternative would follow the plan outlined by the Rushcliffe Committee for England. Bills pending before Congress²⁹ propose a comprehensive plan of health insurance and protection. The plan contemplates an administration and financing not unlike that suggested by the Rushcliffe Committee for handling legal assistance except that the Rushcliffe Committee does not call for periodic payroll deductions. The Rushcliffe Committee did not consider that its proposal would bring about socialization of the profession. Its requirement that the plan be administered by the profession is intended as a safeguard against this possibility.

The chief barrier to adequate consideration of this alternative is the confused thinking usually engendered by the boggy of labels such as "socialistic." We are a government of law relying upon the legal process instead of anarchy and the basic assumption is that every individual in our society must resort to the legal process to seek relief from wrong or aggression and likewise may be proceeded against if he himself has overstepped. It is difficult to conceive of any undertaking on the part of government which is more properly a governmental function than that of making certain that all persons have equality of treatment in the legal process which they must thus accept as members of the community. As has been so well said by Reginald Heber Smith:

There can be an honest difference of opinion as to whether the state owes an affirmative duty to its citizens to keep them in good health. There can be no argument against the proposition that the state is bound to see that its citizens receive justice. That, and

²⁹ Wagner-Murray-Dingell Bill, S. 1050, 79th Cong., 1st Sess., introduced in the Senate May 24, 1945, by Senators Wagner and Murray; introduced in the House of Representatives by Representative Dingell, H.R. 2393, 79th Cong., 1st Sess. (1945).

defense against foreign aggression, are the two primary reasons why government exists. The state insists that its people use the courts and gives them no alternative. If a man defrauds you of \$100 you cannot break into his house and steal it back. You must bring an action in the courts. If the state, having so ordained, then tolerates a situation where *in fact* a large group of its citizens cannot avail themselves of court procedure because it is costly and they are poor, trouble is bound to ensue.³⁰

The problem facing this country today is so serious that this alternative deserves most careful consideration.

In any event, what is clearly indicated now as the initial step is that a committee of leading American lawyers and leaders in the field of legal aid work and legal reform should be appointed to make the same kind of intensive and imaginative study of the adequacy of legal representation in this country as that made in England. To give the committee status it should be appointed by the Attorney General or by the Supreme Court of the United States. The committee should be authorized and encouraged to make recommendations.

We can, of course, muddle along for another twenty-five years or more as we have in the past; that is, we can do so if the public is willing to lie low and make no outcry. But we can no longer do so with our eyes shut. If the legal profession remains indifferent to the problem, it will be because it chooses to remain indifferent. Injustice and deprivation will be the toll, and our practices will continue to fall far short of our preachments. Of course, the initiative for reform may be taken out of the hands of the legal profession by lay groups, as is beginning to be the case in the field of medicine. In either event the result will be a continuing diminution of the prestige of the bar, of the courts, and of the entire judicial system.

³⁰ Economics of the Legal Profession 119-20 (A.B.A., 1938).