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EQUAL ACCESS TO JUSTICE: THE CHALLENGE AND THE OPPORTUNITY

A Thesis

Presented to

the Faculty of the Department of Political Science

The University of Richmond

In Partial Fulfillment

of the Requirements for the Degree

Master of Arts in Political Science

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by

Richard Lyons Korink

August 1967

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Dean of the Graduate School

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CHAPTER I

THE INDIGENT AND THE LAW

The power to make it impossible for any man, woman or child to be denied the equal protection of the laws, because he or she is poor is an essential part of the administration of justice in a democracy.[1] Simply by definition the indigent defendant is destitute of material possessions, but he often will also be lacking in intelligence, in education, in the rudimentary social graces and in the common qualities of good behavior. Though he may be very personable and likeable, or occasionally well-educated, much more often than not, it is safe to say that the law officer who arrests him, the district attorney who prosecutes the case against him, the judge who hears the case, the attorney who defends him, the jury which decides his fate, the parole officer who later works with him, the social worker who seeks to solve his problems and the minister who advises him spiritually, would ordinarily not mix with him socially, culturally or in business and know him only because of the mentioned function which brings them in contact with him. Yet the public at large, the press, and the courts have demonstrated a growing interest in the legal rights of this less fortunate segment of our otherwise affluent society; if for no other reason

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1. Family and Children's Service, Legal Aid Bureau Report, Richmond, Virginia, p. 1.

than that the indigent defendant is a created human being.[2] The purpose of this presentation is to examine the present status of the law and see how it is being applied to the indigent defendant.

The question of the legal right to have an attorney has a long history, but in the terms of the whole of history, it has only recently been settled. In ancient Greece, the professional lawyer as we know him did not exist, although the leaders of a town would frequently come to the defense of one of the community accused of a crime through the means of a fraternity-type organization which attempted to supply legal counsel and advice to its members. Strangely to us, the rationale for the failure to supply professional legal advice was the idea that the rights of the citizen would somehow be thwarted by the actions of a lawyer seeking to defend him.[3]

Nor does most of the English history of the rights of the accused generally and of the indigent defendant in particular commend itself to a modern sense of justice and humanity.[4] Though according to English common law an accused charged with a misdemeanor always had the right to retain counsel or ot have counsel appointed and a defendant charged with a felony or treason was allowed a lawyer to determine a question of law; fair trials in criminal prosecutions were almost

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2. Council for the Indigent Accused in Wisconsin, J. M. Winters. Marquete Law Review, 49:1 (Summer 1965).

3. The Legal Profession in Ancient Athens, 29 Notre Dame Law. 339 (1954).

4. Benefit of Counsel in Criminal Cases in the Time of Coke, 6 Miami Law Quarterly 546 (1952).

impossible and often were nothing more than legal murders. This resulted from the introduction of criminal procedure, justified by canon law principles and royal absolutism, which weakened the rights of the accused to counsel, by denying him the right to be represented by counsel in capital cases.[5] The state or more properly the Crown, viewed such rights as a threat to its authority and therefor gave magistrates the power to examine prisoners secretly and through inquisitorial procedures, often under torture. These examinations were the real trials in the significant state cases from the fifteenth to eighteenth century. Prisoners were not permitted such basic rights as the right to confront witnesses or allowed to call witnesses on their behalf. The prohibitions were justified on the canon law principle that the prosecution must make his case so plain, that it was useless to look at any evidence to the contrary. These limits on the liberties of the accused were further buttressed by the concept of the Crown's "extraordinary powers," which could in times of emergency override tne common law.[6]

The fact that trials in capital cases were unfair is illustrated by the case of the Rajah Nuncomar who was indicted for the forgery of a bond at Calcutta in 1775. The jury was composed of Englishmen living in India. They spoke only English and the Rajah spoke only his native

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5. An Inquiry into the History and Practice in England and and America, 28 Notre Dame Law. 354 (1953).

6. Ibid., p. 361.

tongue. Most of the witnesses for the Crown were also unable to communicate in a language intelligible to the accused. The Rajah requested that his lawyer be permitted to address the court on his behalf. The court refused this plea, charging the jury in there words:

> By the laws of England, the counsel for prisoners charged with felony are not allowed to observe on the evidence to the jury, but are to confine themselves to matters of law....But I told them that if they would deliver to me any observations they wished to be made to the jury, I would submit them to you and give them their full force, by which means they will have the same advantage as they would have in a civil case.[7]

The trial, conducted without full assistance of counsel, could have terminated in only one way; the prisoner was found guilty and hung.

The first relaxation of these injustices in England came with the passage of a statute in 1695, which not only permitted counsel in cases involving treason but also authorized and required the assignment of counsel to defendants accused of such crimes who requested counsel. But it was not until 1836 that English defendants accused of a felony were granted, by statute, the right to make their full defense by counsel.[8] During this century the right to appointment of counsel in nearly all types of cases has become firmly established in England so that today the accused is able to select his own Solicitor and in serious matters his own Barrister, who is paid from the public treasury if the defendant is unable to supply the expenses from his own resources. The services

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7. 5 State Trials 923 (Howell ed. 1809 - 1826).

8. Court Appointed Counsel for Indigent Misdemeants. Arizona Law Review, 6:281 (Spring 1965).

paid for by public funds include technical, scientific, and medical services and extend through a right of appeal.[9]

Of course the American break from England was caused to some measure by the abuses existing at that time, so it is not surprising that the Bill of Rights sought to guarantee the basic rights not available in England, or to make certain that those only partially available would be complete. The early statutes of the American colonies guaranteed the right to counsel and it was included in the state constitutions of twelve of the original thirteen states, although in several of these the right was limited to capital cases and did not guarantee the necessity of supplying counsel to the indigent defendant.[10] The congress had always regarded the right as worthy of protection and the assistance of counsel was assured with the passage of the Judiciary Act of 1789 and the Act of 1790. The Judiciary Act contained the following clause:

> In all courts of the United States, the parties may plead and manage their own causes personally or by the assistance of such counsel or attorneys at law as by the rules of said court... shall be permitted to manage and conduct causes therein.

The Act of 1790 which set up the first federal criminal code stated:

> Every person who is indicted for treason or other capital crime, shall be allowed to make his full defense by counsel learned in the law; and the court before which he is tried, or some judge

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9. The Right to Counsel for the Impoverished Defendant in Britain and Canada, 17 Law Guild Review, 145 (1957).

10. See Powell v. Alabama, 287 U.S. 45, 61-65 (1932) for a list of early state constitutions as to right to counsel.

> thereof, shall immediately, upon his request, assign to him such counsel not exceeding two, as he may desire...[11]

In the federal courts this right was clearly established on December 15, 1791 when the Sixth Amendment to the United States Constitution was ratified. It stated:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Since the Judiciary Act of 1789 was signed the day before the Sixth Amendment was proposed and the Act of 1790 was passed seven months before its ratification, the fact that the Sixth Amendment did not contain any startling changes, in respect to an indigent defendant realizing his abstract right, is understandable. The ratification of the Sixth Amendment was not followed by statutory changes and the acts of 1789 and 1790 remained the sole guides to the legal meaning of the Amendment until 1938 when the Supreme Court undertook to extend the scope of the right to counsel in the case of Johnson v. Zerbst.[12] Before 1938, the Sixth Amendment meant, at the very minimum, that defendants in federal courts had the right to retain their own counsel. There was no feeling before 1938 that defendants who plead guilty or

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11. 1 Stat. 73, 92 (1789); 1 Stat. 112, 118 (1790).

12. Johnson v. Zerbst, 304 U.S. 458 (1938).

who failed to request counsel, had a constitutional right to be advised and offered counsel or that their conviction without counsel was void.[13]

In the 1938 case of Johnson v. Zerbst the Court held that in federal crimes being prosecuted under the federal law, the Sixth Amendment required the appointment of counsel for indigent defendants. Although Johnson was charged with a felony, the decision however was not expressly limited to or extended beyond felons. Even before that the Supreme Court in 1932 had held in Powell v. Alabama, that in state cases where capital punishment was possible there was also an absolute right to be supplied with counsel where the accused was indigent.[14] In the 1942 case of Betts v. Brady it was held that the appointment of counsel for indigents in non-capital felonies was not fundamental and essential to due process. Therefore unless there was "denial of fundamental fairness shocking to the universal sense of justice..." the states were not required to appoint counsel for indigents in non-capital felonies.[15] Thus began the long history of distinctions between applications under the Sixth and Fourteenth Amendments, although there was increasing interest in incorporating the federal rule under the Sixth Amendment entirely into the Fourteenth Amendment to make the

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13. See Beaney, The Right to Counsel in American Courts 32 (1955).

14. Powell v. Alabama, 287 U.S. 45, 53. S. Ct. 55 (1932).

15. Betts v. Brady, 316 U.S. 455, 62 S. Ct. 1252 (1942).

rights the same.[16]

Then, in 1963, the landmark decision of Gideon v. Wainwright was handed down.[17] This case which overruled Betts v. Brady was important. because it obliterated the distinctions over the right to counsel between the federal and state courts. In this case the defendant was charged with breaking and entering a poolroom with the intent to commit a misdemeanor, a felony under Florida law. He appeared in court without counsel and when he requested counsel was told by the judge that under Florida law the only time the judge can appoint counsel is when the accused is charged with a capital offense. He conducted his own defense and was found guilty. The issue which the Supreme Court had to decide was: does the United States Constitution guarantee the right to counsel to a person accused of a crime and tried in a state court? The Court in answering yes to the question stated that from the very beginning our State and National Constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to insure fair trials in which every man stands equal before the law. The Court further stated that the Sixth Amendment provides that in all criminal prosecutions the accused shall have the assistance of counsel for his defense. This, it said, has been construed to mean that in federal courts counsel must be provided for an accused unable to employ counsel

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16. Memorandum on Incorporation of the Bill of Rights into the Due Process Clause of the Fourteenth Amendment, Frankfurter. 78 Harvard Law Review 746 (1965).

17. Gideon v. Wainwright, 372 U.S. 335, 83 S. Ct. 792 (1963).

unless the right is waived. The Court explained that while the Sixth Amendment laid down no rule for the conduct of the states, it was so fundamental and critical to a fair trial and to due process of law, that it was made obligatory upon the states by the Fourteenth Amendment. Not only precedent, but also reason and reflection, the court felt, required it to recognize that in an adversary system of criminal justice any person brought into court, who was too poor to hire a lawyer could not be assured a fair trial unless counsel was appointed for him.

Since the case of Gideon v. Wainwright the Supreme Court has handed down three key decisions which further enlarge a defendants right to counsel. The first of these was the case of Douglas v. California which was decided by the Court the same day as the Gideon case.[18] In this case the Court held that a state must supply counsel for indigents on their one and only appeal as a matter of right under the "equal protection" clause of the Fourteenth Amendment. The second case was the Court's 1964 decision in the case of Escobedo v. Illinois, in which the Court held that incriminating statements elicited from an accused during the process of interrogation were inadmissible, where the police had refused to allow the accused to consult with counsel or had failed to warn him of his constitutional right to remain silent.[19] The third case was that of Miranda v. Arizona which was decided in 1966, in which

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18. Douglas v. California. 372 U.S. 353 (1963).

19. Escobedo v. Illinois. 378 U.S. 478 (1964).

the Court held that an accused is entitled to a lawyer for consultation prior to interrogation and if he cannot afford one, a lawyer must be provided for him.[20]

Though these Supreme Court cases have established that counsel must be provided for the indigent defendant as a matter of due process, they have left unanswered many questions about how this is to be accomplished on a day to day basis across the nation. This problem is magnified by the fact that at the present time not a single state provides for the appointment of counsel to defend all indigents charged with criminal offenses, including non-indictable offenses.[21] To pose but some of these questions. How does the accused learn of his right, and can he waive it? Who is to be considered "indigent"? How soon must the lawyer be available? How is the lawyer selected? Who pays the costs? What type of performance by the attorney meets the requirement? Does every accused person, even if he is charged with a minor offense such as a traffic violation have the same rights? Does the right to counsel require the continued presence and constant advice of the accused's attorney? In the remaining pages of this presentation we will examine closer some of these questions and see what is now being done to implement the law as it now exists.

The base point in evaluating the methods presently employed

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20. Miranda v. Arizona. 384 U.S. 436 (1966).

21. Special Committee of the Association of the Bar of the City of New York and the National Legal Aid and Defender Association, Equal Justice for the Accused 36 (1959). [Hereafter cited as Equal Justice.]

by the states in providing legal assistance to indigent criminal defendants is that due process requires that the indigent have competent counsel for his defense. The question today is no longer whether the states shall address themselves to the defense of the indigent but instead how to provide competent counsel for all indigent criminal defendants. While the solution to this problem would have been difficult at any stage in the country's development, it is particularly difficult today. The explosive expansion of the nation's population, industrial development, urbanization and the complexity and fluidity of economic and social institutions have created exceptional problems in the administration of criminal justice. There has been an enormous increase in criminal offenses with a correlative increase in the need for counsel. It is estimated that over two million people are charged with a major criminal offense each year, and that almost half of those arrested need free legal assistance. It has also been estimated that of the some five million misdemeanants, a smaller proportion, perhaps one-fourth, are also indigent.[22]

At the present date only California and Indiana have gone as far in providing counsel for indigents as has the federal rule. In those cases it was stated that the state constitution makes no distinction between felonies and misdemeanors so the right of counsel exists to the same extent and under the same rules[23] and that all persons accused of

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22. Equal Justice in Practice, Pollock, 45 Minnesota Law Review 737, 738-39 (1961).

23. Bolkovac v. Indiana, 229 Ind. 294, 98 N.E. 2d 250 (1951).

crime in any court in the state have a right to counsel.[24] The states of New York, Georgia, Kansas, and New Jersey have declared that an indigent misdemeanant must receive appointed counsel.[25] Illinois and Pennsylvania seemingly have provided for court appointed counsel for indigent defendants in misdemeanors, but the right has been obscured by the fact that the courts are not required to appoint counsel unless one requests such appointment nor are they required to advise the accused that he does have such a right.[26] The states of New Hampshire, Massachusetts, Maryland, Mississippi, Texas, Florida and Oregon provide counsel in cases of serious misdemeanors.[27] But even in these fifteen states the courts have pointed out that the Gideon rule should not be extended to such crimes as a person in a municipal court charged with being drunk and disorderly or a person given a ticket for a traffic violation.[28]

Today there are four methods presently employed by the states in providing legal assistance to the poor. These are the assigned-counsel

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24. In re Newbern, 3 Cal. Rptr. 364, 350 P. 2d. 2d 116 (1960).

25. People v. Witenski, 15 N.Y. 2d 392, 207 N.E. 2d 358 (1965). Fair v. Balkcom, 216 Ga. 721, 119 S.E. 2d 691 (1961). Dunfee v. Hudspeth, 162 Kan. 524, 178 P. 2d 1009 (1947). In re Garofone, 80 N.J. Super, 259, 193 A. 2d 398 (1963).

26. People v. Garrett, 43 Ill. App. 2d 183, 193 N.E. 2d 229 (1963); Firmstone v. Myers 202 Pa. Super. 292, 196 A. 2d 209 (1963).

27. Defense of the Poor, Silverstein, Louisiana Bar Journal 14:104, August 1966.

28. McDonald v. Moore, Fla. 353 F. 2d 108 (1965); People v. Lettereo, 16 N.Y. 2d 307, 213 N.E. 2d 670 (1965).

system, the public defender system, the voluntary-defender system, and the mixed private system. Though the problem is apparent, the selection and implementation of the system most appropriately designed to provide effective representation is not. Even the most informed authorities disagree. There are those who advocate the privately supported defender system, or, in the alternative, the assigned counsel if the counsel is compensated, but feel that the public defender system is ill-conceived.[29] At the opposite extreme, there are those who feel the public defender system is the ultimate solution of the problem.[30] These systems will now be explained and evaluated separately.

The assigned-counsel system is the method most frequently employed by the states and supplies more representation than all the other systems combined.[31] It is characterized by a case by case approach with the presiding judge appointing counsel, from his own list or one prepared by the local bar association, to serve with or without compensation. In some jurisdictions there is a systematic technique of assignment under which counsel is assigned in alphabetical rotation.[32] Among the advantages attributed to this system are these. This system, it is contended,

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29. The Public Defender: A Step Towards a Police State? Dimmock, 42 American Bar Association Journal 219 (1956).

30. New Hopes for Federal Public Defender Legislation, Celler, 19 Legal Aid Brief Case 28 (1961).

31. Equal Justice, op. cit., p. 48.

32. Ibid., p. 49.

is closer to the traditional attorney-client relationship since each case can be treated separately and it is more likely to supply the requisite loyalty to the cause of the accused.[33] It is further felt that this system, at least on occasion, may supply the accused with a zealous amateur, rather than a bored professional.[34] In rural areas the assigned counsel system is allegedly the only one which can give swift service without undue costs since it requires no elaborate organization.[35] Also in favor of this system is the fact that a greater percentage of the bar is involved and thus necessarily made aware of the various problems in the administration of criminal justice and in the defense of indigents in particular.

The list of objections to the system is much longer. One of the most frequently raised concerns the scope of coverage. Typically the appointive system makes no provision for providing representation in juvenile and domestic relations courts nor does it usually cover the inferior criminal courts.[36] It also is alleged to come into operation too late in the proceedings frequently supplying the lawyer appointed

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33. Ibid., p. 67.

34. A Modern Defender System for New Jersey, Trebach, 12 Rutgers Law Review 294 (1957).

35. Appointment of Counsel for Indigent Accused, 28 Texas Law Review 249 (1949).

36. Equal Justice, op. cit., p. 63.

with inadequate time to prepare.[37] It has also been claimed that the system allows little if any payment for investigation, either by the attorney himself, or more important, by specialists trained in such matters.[38] Another set of objections has to do with the competency of the attorney appointed. It has been suggested that particularly in the larger cities, the prosecutors have become too competent in criminal matters to be challenged by an attorney unskilled in such matters. And it is alleged that the appointments are usually not made on the basis of competence but rather appointments are made of attorneys who are inexperienced and of generally poor quality.[39]

Though the assigned counsel system in theory calls upon the best tradition of the legal profession and at times provides distinguished and effective services, in most areas however it is safe to say the system now needs to be replaced by a means capable of supplying the demands of a complex society. It is recommended that in communities exceeding a population of fifty thousand that consideration be given to the adoption of other means to protect the indigent defendant. In those areas where the system can effectively be retained, it is suggested that compensation for the service of the assigned counsel and reimbursement for expenses incurred would improve the quality and effectiveness of the system.

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37. Right to Counsel in Criminal Cases: Legal Aid or Public Defender, Potts, 28 Texas Law Review 504 (1950).

38. Equal Justice, op. cit., p. 66.

39. Potts, op. cit., p. 503.

The public defender, like the prosecutor, is a government official employed to fulfill the states obligations of equal protection before the law regardless of economic status. Today there are over a hundred public defender offices in existence and of this number sixty-three are located in California, Connecticut and Illinois. The public defender may exist in large or small communities, or may even be statewide, but typically he serves in some of the larger metropolitan areas. Public defender offices are found in cities or counties of only sixteen states.[40] While the use of the public defender need not necessarily be limited to a full-time employee of the government, typically the operation involves at least one full-time attorney with some clerical help. The individual who is the public defender can be selected in one of several ways. He may be elected for a period of four years or appointed by the County Board of Supervisors after a civil service examination as in California.[41] He may also be appointed by a group of judges as he is in Chicago where he serves at the judge's pleasure or by one judge as in Connecticut where appointments are made for one year.[42] The system is financed by public monies: in some instances by budgetary appropriations and in others by a fixed fee retainer. Most public defenders submit a yearly

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40. Expanding Horizons of Legal Services, Paulsen, West Virginia Law Review 67:183, April-June 1965.

41. Equal Justice, op. cit., p. 52.

42. The Administration of Criminal Justice from the Standpoint of the Public Defender, Robinson, 25 Connecticut Bar Journal 263 (1951).

budget request to a local governing body. In Connecticut, funds for all public defenders are originally appropriated by the Connecticut Legislature to the Judicial Department of the State which then provides for payments to the individual defender.[43]

The advantages most frequently alleged for the use of the public defender system include the following. The public defender can come into the proceedings at a much earlier stage than the appointed counsel since he can enter the case before any judge has contact with the accused. This allegedly gives the public defender more time to prepare for his defense or at least as much time as the district attorney has since the two can be brought into the case at the same time. The public defender is allegedly more experienced in his work than the typical appointed attorney. Also alleged is the ability of the system to supply a type of investigation service which is unlikely under any appointive system.[44] On the broader front it is sometimes alleged that the public defender is in a substantially better position to work with the other welfare agencies interested in the same indigent defendants.[45]

Those attacking the system point out that the use of the district attorney for the prosecution and the public defender for the defense

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43. Equal Justice, op. cit., p. 51.

44. Emery A. Brownell, Legal Aid in the United States at 144 (1951).

45. Potts, op. cit., p. 509.

puts the same party on both sides of the controversy, leaving little of the safeguards traditionally felt to be protected only through the adversary system. Closely aligned with this reasoning is the objection that the public defender will trade cases with the prosecutor, getting one defendant to plead guilty to one charge in exchange for a reduction or dismissal on the charge of another accused. The most common criticism today arises from the fear of potential political direction of the system. In communities controlled by a powerful political organization appointments and even elections may result in the public defender office serving a function not intended when inaugurated since his loyalty may be towards the persons who control the appointment or the "purse." In addition to this argument, the system's opponents assert that even in the absence of political domination the system will not protect the rights of the publicly unpopular defendant such as the cop-beater, the rapist or the embezzler of tax funds.[46] Finally it has been suggested that the routine of handling case after case involving indigent defendants in particular will eventually wear on the career public defender so that in the long run he cannot maintain sufficient interest in the frequently abstract legal rights of the accused to perform the function as it should be performed.

It is recommended as a safeguard against the potential of political influence, that a technique of appointment be utilized to prevent subjecting the public defender to outside coercive pressures.

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46. Bromnell, op. cit., p. 146.

Suggested are civil service examinations and appointment with tenure. As for qualitative standards of the system, no inherent structural inability appears to prevent the system from affording competent and enthusiastic representation. This combined with the system's ability to conduct a complete defense because of its full investigation facilities and its ability to afford representation at an early stage of the proceedings make it a valuable system in large cities.

The voluntary defender system is characterized by an organized office engaged in defending indigent defendants and supported totally by private funds and managed fully through private agencies. Unlike the method of the assigned counsel system, the voluntary defender system creates a law office to which the court assigns representation of indigent defendants. The system employs a trained, salaried staff but may also rely on the assistance of private law offices like in Philadelphia or local law students as in Boston.[47] The office is privately controlled and financially supported by independent efforts to secure charitable contributions such as the community chest.

Since this system contemplates an organized office with long term staff appointments, many of the arguments for and against the public defender system are equally applicable to either system. However this system has the advantage of being independent of the government and thus avoiding the objection that the loyalty becomes divided.

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47. Equal Justice, op. cit., p. 50.

It also has the advantage of bringing in the support of the whole community through its fund raising activities. The major drawback arises from the same factor, since its resources depend solely upon the public's willingness to provide adequate funds. The ability of such a system to supply adequate representation may fluctuate with the economic times and such a system may never become successful in supplying counsel at the early stages of the procedure or for lesser crimes because the money is never made available.

The mixed public-private system is of recent origin and as a result it is little utilized. It is in existence in Rochester and Buffalo, New York and is being experimented with in Philadelphia.[48] The mixed system is a combination of the two most lauded systems, the public defender system and the voluntary defender system, it draws from the strengths of the two, while avoiding the most frequently cited weaknesses. This system employs an independent, privately controlled and staffed legal aid organization that receives direct appropriation of public funds to be combined with those of charitable contributions.[49] The statute in New York provides:

> The board of supervisors of any county having a population of over two hundred thousand may appropriate such sums of money as it may deem proper toward the maintenance of a private legal aid bureau or society organized and operating for the aid or relief of needy persons residing within the county.[50]

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48. Equal Justice, op. cit., pp. 76 & 93.

49. Ibid., p. 52.

50. New York County Law 224 (10).

This offsets the crippling restriction of deficient operating capital that impairs the effectiveness of the voluntary defender system. Equally significant is the removal of the most common and potent objection to the public defender system, potential political domination. Presumably in areas other than finance and control, the objections, and favorable comments would be much like those made in regard to the public defender system and the voluntary defender system.

Though it is suggested that the mixed public-private system affords the best method of providing representation to indigent criminal defendants, it is unrealistic to propose a model state statute that utilizes this system alone. The variables of population, projected numbers of criminal defendants, and the condition and attitudes within the local bar association, the legal aid society, and the community are factors which cannot be anticipated or resolved by the endorsement of a single system. It is more realistic and practical to propose that a state statute permit a choice among a diversity of methods. This is the technique employed by congress in the Criminal Justice Act of 1964 in which the federal district courts are provided with alternatives.[51] This approach allows the individual jurisdictions to evaluate their particular situation, and to select the system which meets their needs.

Thus far Virginia as the vast majority of states has relied on the assigned counsel system to provide representation for indigents.[52]

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51. 18 U.S.C.A. 3006 (Supp. 1964).

52. Equal Justice, op. cit., p. 48.

The Virginia laws however only apply to indigents charged with felonies.[53] In Virginia, as in many states, a felony is defined as an offense punishable by death or confinement in the penitentiary, all other offenses being considered misdemeanors.[54] The dividing line is, to say the least, arbitrary and unrealistic. An indigent charged with larceny when the value of the property is alleged to be forty-five dollars is denied court-appointed counsel while he is given counsel when the alleged value is fifty dollars or more.[55] Under Virginia law, a person who is charged with a misdemeanor is given a nonjury trial.[56] If he is convicted, he has an absolute right to appeal to the appropriate circuit or corporation court.[57] The appeal is, in effect, a statutory grant of a new trial in the same manner as if he had been indicted for the offense in the circuit or corporation court.[58] Though Virginia has three legal aid bureaus, located in Arlington, Norfolk and Richmond, whose stated purpose is "to prevent persons from being deprived of

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53. Va. Code Ann. 19.1-241.1 (Supp. 1964).

54. Va. Code Ann. 18.1-6 (1960).

55. Compare Va. Code Ann. 18.1-100 (1960) (grand larceny) with Va. Code Ann. 18.1-101 (1960) (petit larceny).

56. Va. Code Ann. 16.1-123 through 125 (1960).

57. Va. Code Ann. 16.1-132 (1960).

58. Va. Code Ann. 16.1-136 (1960).

their legal rights by reason of their poverty,"[59] they do not accept any criminal cases but only those pertaining to family problems.[60]

In its 1964 session the Virginia Assembly undertook a revampment of Virginia's law in respect to indigents charged with felonies, which greatly increased the indigent's right to representation in this area of the law. Whereas the indigent's former rights were limited for the most part to court-appointed counsel for the trial of his case,[61] the new laws have provided him with a right to counsel for the preliminary hearing[62] and for the appeal of his conviction.[63] In addition, it was made mandatory that every felony trial be recorded verbatim and that the indigent defendant be entitled to a transcript of the record for his appeal.[64]

Despite these improvements there are still many weaknesses in Virginia's system even in respect to her treatment of indigents charged with felonies. Since under Virginia law an accused cannot waive the assistance of counsel when he is charged with a felony[65] very little

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59. Family and Children's Service, Legal Aid Bureau Report, Richmond, Virginia, p. 5.

60. Ibid., p. 6.

61. Va. Code Ann. 19.1-241 (1960).

62. Va. Code Ann. 19.1-241.1 (Supp. 1964).

63. Va. Code Ann. 17-30.2 (Supp. 1964).

64. Va. Code Ann. 17-30.1 (Supp. 1964).

65. Va. Code Ann. 19.1-241 (1960).

effort has been made to determine whether or not an accused person is actually indigent. The standard practice is for the trial judge to interrogate the accused as to his own financial condition and a thorough investigation is seldom, if ever, conducted.[66] Another problem in the system is the apparent local bar association apathy towards the whole problem. This is illustrated by the 1963 American Bar Foundation study which revealed that in all the counties and cities studied not one local bar association or any other organization provided any formal assistance to the judge in the selection of counsel to be appointed to defend persons charged with felonies.[67] Furthermore, the survey did not reveal any kind of public defender or quasi-public defender system in Virginia despite the fact that it was provided for in law.[68] The last and perhaps the greatest irony of all in Virginia's present system is the fact that except for representation at the preliminary hearing, the assistance of counsel is not a free gift to the indigent. If the defendant is convicted the amount allowed by the court to the appointed counsel is taxed against him as part of the costs of prosecution and

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66. Va. Code Ann. 19.1-241.3 (1960).

67. Counties of Bath, Floyd, Henry and Northumberland; Cities of Bristol, Norfolk, Roanoke and Virginia Beach.

68. Va. Code Ann. 19.1-13 (Supp. 1964) incorporates by reference Va. Acts of Assembly 1962, ch. 598, which authorizes the judge of the circuit court of any county in a certain population range to appoint a public defender, who would be compensated in the same manner as individual attorneys appointed by the court. However, if such a system has been put into effect in Virginia, it has not come to the attention of the author.

when collected, is paid to the Commonwealth. Likewise, if the defendant appeals his conviction and the case is affirmed, all costs of appeal paid by the Commonwealth are assessed against him.[69]

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69. Va. Code Ann. 17-30.2 (Supp. 1964).

CHAPTER II

THE PROGRESS OF LEGAL AID IN CIVIL LITIGATION

It is a shocking fact that a legal system which prides itself on the motto "Equal Justice for All" still tolerates, in 1967, a restriction of that justice to people who happen to have no money. Because the poor cannot afford legal fees, they have no lawyers, and because they have no lawyers, they are the natural prey of almost everyone with whom they come into contact: merchants, landlords, employers, and even the welfare workers whose purpose should be to help and comfort them.[1] In civil matters, a survey conducted some years ago by the National Legal Aid and Defender Association among legal aid offices, showed that a national average of at least seven persons out of every 1,000 need a lawyer's help each year, but cannot afford, or think they cannot afford, to hire a lawyer.[2] The percentage, of course, varies from state to state, from city to city, but it is probably higher today. Thus far this presentation has dealt with the law and how it has been applied to the indigent in misdemeanor and felony cases, the remaining

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1. Symposium On Legal Aid, S. Shriver, Washington and Lee Law Review. 23:236, 245, Fall 1966. "Investigators pay a midnight visit to the welfare recipient and find a male friend there. Under a prevailing interpretation of very vague regulations, he is presumed to live with her and to be able to support her. Her welfare is terminated.
A migrant farm worker weeks help from a state agency during a crisis. He doesn't get it because he is a nonresident. As a matter of fact, he is probably a nonresident of every state in which he ever works or lives."

2. Emery A. Brownell, Legal Aid in the United States, p. 79, (1951).

part of this paper will be devoted to the examination of the independent legal aid society and its role in insuring the indigent equal access to justice in civil cases.

The present concept of legal aid dates back to the Legal Aid Society of New York. This organization, incorporated in 1876, grew out of the activity of Arthur von Briesen, who gave advice and legal assistance voluntarily to newly arrived immigrants from Germany. His advice and assistance were so helpful that his fame grew and others in need of advice and legal counsel sought his help. Von Briesen enlisted the assistance of other lawyers, and from this came the Legal Aid Society of New York.[3]

The work of this organization inspired the organized Legal Aid movement in this country. Yet the path of organized Legal Aid was not always smooth since many lawyers failed to support the plan. Thus fifty years ago fewer than 50,000 persons were served by Legal Aid offices, and less than $90,000 was spent in providing this service.[4] There was no Legal Aid Committee of the American Bar Association nor of any state or local bar association. Although the organized bar had some Legal Aid committees and had given de facto recognition to the movement by 1921, legal aid societies struggled along for a long time

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3. Shriver, op. cit., p. 253.

4. Equal Access to Justice, Orison Marden, Washington and Lee Law Review 19:158, Fall 1962.

primarily with such assistance as their own national organization, created in 1923, might provide.[5]

Beginning in 1946 the movement took on a new and dramatic impetus. The American Bar Association, in partnership with the National Legal Aid Association, undertook to provide promotional leadership at the national level. With funds supplied by the bar, by industry and labor, and the Ford Foundation, a national campaign to establish new legal aid offices and to strengthen existing services, was under way.[6] In 1949 as a result of this interest the National Legal Aid Association underwent a strengthening and reorganization.[7] Then in 1950 the American Bar Association set up its Committee on Lawyer Referral Services and after that state and local bar associations adopted and instituted the same device. These reference bureaus were the outgrowth of the Legal Aid society's determination to involve the Bar with the work. These societies had many requests for help from persons who could afford to pay or who had a case which, successfully prosecuted, would generate a fee. The Lawyer Reference Bureau developed from the practice of getting from the Bar Association a list of attorneys who would take referrals, many for reduced fees, from clients who were not eligible

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5. Annual president's report of the National Legal Aid and Defender Association, p. 10, 1958. The organization referred to was the National Association of Legal Aid Organizations, subsequently the National Legal Aid and Defender Association.

6. Marden, op. cit., p. 159.

7. Annual Report, 1958, op. cit., p. 3.

for legal aid.[8]

Finally, the American Bar Association by resolution on February 26, 1951 asked the chairman of the state bar Legal Aid committee in each state to create and execute a legal aid plan through a legal aid society supported through private sources without government aid. Then in 1958 the National Legal Aid Association officially absorbed the Defender Association and gave it major assistance.[9] As a result of this action the name of the Association was changed to the "National Legal Aid and Defender Association" and a separate section for its services was created in the Association.[10]

While there is no distinction between the handling of civil matters and criminal cases so far as the ideal of equal justice is concerned, there are, of course, marked differences in the practice of law in the two fields. As was stated earlier this section will be mainly devoted to what is being done for the indigent in the realm of civil matters since the criminal aspect of the law has been previously covered in detail. For the readers complete understanding it is important however to understand that the generic term "Legal Aid" now covers legal assistance to the poor in both civil and criminal matters.

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8. Shriver, op. cit., p. 235.

9. Though some Defender organizations had been members of the Association since the founding of the original national association thirty-five years prior to 1958, they were not officially connected with it and did not receive assistance.

10. Annual Report, 1958, op. cit., p. 10.

The National Legal Aid and Defender Association is the only national agency in the United States which develops Legal Aid units and encourages the promotion of new Legal Aid organizations for persons unable to pay for legal services.[11] The Associations many activities are coordinated from its headquarters which is located in the American Bar Center in Chicago.[12] From here activities impractical or impossible for its individual members like effective representation in the American Bar Association or joint planning with national social welfare organizations to develop sound working relationships, are handled. The Association also maintains and makes available to its members a file of information on aspects of operation and standards and recommended practices for various types of Legal Aid offices. Such matters as office expenses, financial support, structure of the board of directors or other governing body, personnel policies, staff compensation, scope of service, relations with other agencies, and eligibility requirements for clients are included.[13]

Besides determining these overall standards the Association also engages in a variety of other programs. Among these is the field and consultative service which is designed to assist established Legal

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11. Legal Aid Association Budget Committee Report 1959, p. 101.

12. Legal Aid pamphlet, Sharing Legal Aid Experience, 1966, p. 5.

13. Ibid., p. 7.

Aid services and to improve such services by calling attention to new legal resources and successful techniques. The Association in line with this program arranges for a representative to visit each member office every three years. Another program is the annual Legal Aid Conference attended by executives and staff attorneys of Legal Aid organizations, representatives of bar associations, social agencies and other interested groups. Addresses, discussions and reports on topics of concern are presented, and views and experiences are exchanged. The Association also has a program in cooperation with the Armed Forces designed to assist the development of procedures by which legal assistance can be secured by all members of the Armed Forces and their dependents who are unable to pay fees, and to expedite direct referrals from Legal Aid Assistance Officers at home or abroad. Legal Aid officers estimate that approximately 11,000 such cases are handled annually.[15] Other programs which are undertaken by the Association deal with publications, statistical compilations, publicity and fund raising.

Today a bare eighteen years after the National Legal Aid Association was reorganized there are 252 legal aid offices, which is three times as many as in 1949. These agencies handled more than 650,000 new cases in addition to an undetermined number of open and continuing

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14. Budget Report, op. cit., p. 101.

15. Ibid., p. 102.

files.[16] Also over 200 lawyer referral services have been created, enrolling more than 17,000 lawyers in lawyer referral panels to serve the needs of perhaps 150,000 middle-income citizens annually.[17] In the three decades 1920 to 1950 the rate of growth for both legal aid and defender facilities had been roughly 40 per cent for each ten year period. From 1950 to 1960, however, the rate of growth was over 250 per cent.[18]

A great many other countries have also in recent years established Legal Aid in a variety of forms. In some foreign countries Legal Aid is rendered by the state, much as the well publicized "Socialized Medicine" is in Great Britain. In the United States, however, the position of the National Leg Aid and Defender Association, and of virtually all lawyers taking part in the Legal Aid movement, is that Legal Aid should be under private auspices. There are several general forms of Legal Aid in the United States.[19] Among these are:

(1) An independent Legal Aid Society or Legal Aid Bureau existing as a separate organization and usually affiliated with the local

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16. American Bar Association compilation of "Statistics of Legal Aid and Defender work in the United States and Canada."

17. Shriver, op. cit., p. 241.

18. Emery A. Brownell, Supplement to Legal Aid in the United States (1961), p. 10.

19. Family and Children's Service publication, What Is Legal Aid?, Richmond, Virginia, pp. 2, 3.

Community Chest organization. These independent Legal Aid organizations are generally governed by a Board of Directors composed of interested citizens in the community and usually including a number of prominent members of the Bar. They usually work under an expressed or implied understanding with the local Bar Association.

(2) The Legal Aid Society or Bureau may be a branch of a private social service agency, which itself is usually a member of the local Community Chest organization; such is the case with the Legal Aid Bureau of the Family and Children's Service Society here in Richmond.

(3) A local Legal Aid clinic may be operated in connection with a law school in the community. In this type one or more law professors or local members of the Bar supervise the work of senior or graduate law students.

(4) In many of the smaller communities Legal Aid is administered by a Legal Aid Committee of the Bar Association, who either do the Legal Aid work themselves or they may refer it to a panel of lawyers in rotation.

Irrespective of the form of organization used, the legal problems handled by a Legal Aid society fall generally into well defined channels. Usually the domestic problems do not concern divorce, but rather support, the right of one party or the other to require the spouse to leave the home, custody of the children, and similar matters. In the beginning most Legal Aid societies addressed themselves to what were felt to be actions necessary to protect the client's rights; divorce was not usually considered a right but a privilege. However, it soon became apparent

that there were cases when a divorce was actually a necessity, and where counsel fees could not be paid. Thus Legal Aid today usually does step in and take care of the matter, although organizations often insist that a divorce can not be handled by Legal Aid without a written recommendation and report from a social agency that a divorce in the particular case will serve some useful purpose.[20]

Another phase of family problems is the question of adoption. Legal Aid societies ordinarily limit themselves to family adoption; that is to say, the case must entail the adoption of a child born prior to the present marriage to either the husband or the wife. At times the adoption is by a grandparent, aunt or uncle. For the most part Legal Aid societies will not handle an adoption of a child placed with the client by an adoption agency.[21] There may be exceptions, of course, but generally it is the feeling that a Legal Aid society is not promoting the welfare of the child by encouraging an adoption into a family that could not even pay the court costs to make that child a true member of the family.

The clients that Legal Aid societies never handle are those with a fee generating case, such as a personal injury matter, unless it is minor and directed only to recovering out-of-pocket expenses, such as a small medical bill or damaged clothing.[22] Generally, if

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20. Emery A. Brownell, Outline for Self-Evaluation of Legal Aid Organizations, 1958, p. 2.

21. Shriver, op. cit., p. 260.

22. Family and Children's Service publication, What Is Legal Aid?, Richmond, Virginia, p. 7.

the client feels that he has pain and suffering for which he must receive compensation the case is not for Legal Aid. In such cases as Legal Aid does handle the client is always made to understand that a settlement for out-of-pocket expenses only will preclude him from any further recovery. As a result, tort cases are handled very cautiously and represent only a small part of Legal Aid work and no organizations undertake libel and slander actions.

Next to family problems, contracts are the biggest category of cases handled. This includes wages, landlord and tenant, small loans, installment contracts and the like.[23] Landlord and tenant problems usually form the largest share of this category, and, of course, the society always represents the tenant. A typical installment contract case is the person who buys so many things on the installment plan that his monthly payments exceed his income. The society may get his credits together and work out an arrangement under which payments are spread over a longer period of time. Legal Aid will also represent clients who have had their relief status questioned. Usually these matters can be resolved without formal action being taken against the Relief Board.[24]

Legal Aid, however, does not handle patent and copyright matters. Usually such assistance is not required, since patent attorneys are

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23. News item in the Richmond Times Dispatch, February 7, 1954.

24. Ibid.

almost always willing to gamble their fee for a piece of any patent which appears to have any merit. Legal Aid societies also do not handle real estate transactions or examine titles to real estate since it is assumed any person buying property certainly should have enough money to pay for an attorney's services to assure him that he will have good title. Estate matters are not handled either unless they are very small.[25] It has been the practice in most Legal Aid programs to represent only the individual. If a number of persons come into an office, who individually may qualify for Legal Aid but wish to collectively undertake some single action affecting all of them, every effort is made to direct this group to a private attorney.

These simple acts of justice, petty as they may seem in individual cases, add up to many dollars saved for people who need the money desperately; they keep families together and renew their faith in American justice; they enable people to retain their self-respect, understand their rights and so become better citizens. Good legal counsel is often just as urgent a need for families without means as medical care. The typical Legal Aid Society provides this expert counsel for people who cannot pay a lawyer and when necessary takes over the defense or the prosecution of their cases without charge. These offices also do not compete with the private lawyer in the slightest degree. On the contrary, they relieve the bar of a substantial burden and through the referral of ineligible cases to practicing lawyers through a Lawyer

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25. Shriver, op. cit., p. 261.

Referral Service or bar association, actually build new business for lawyers.

It must be emphasized, however, that the mere existence of Legal Aid offices in a particular city does not mean that the needs of that community are being served. In most cities the services provided are probably incomplete in some degree and in many places the service is totally inadequate. A failure to meet the full need by as little as one person per 1000 of population may mean a denial of equal justice to over 83,500 persons in the cities served by the existing Legal Aid offices every year.[26] Therefore it is important that each community periodically undertake an inventory of its full needs and of the organization's accomplishments in meeting those needs. Such a study should involve representatives of the organization's governing board, the judiciary, the bar association and community welfare planning groups. Typical questions to be considered in these studies are:

(1) Is the present office located in a central place so that it may be conveniently reached by clients?

(2) Is the present staff sufficient in number and quality to give adequate and competent service to all eligible applicants?

(3) Should the territory covered by the present Legal Aid service be enlarged or reduced?

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26. Annual Report, 1958, op. cit., p. 6.

(4) Are the eligibility standards and other intake policies fair and equitable to the bar and community?

(5) Are decent salaries and working conditions provided for professional and clerical employees?

(6) In what respects could relations be improved with the bar association, the Community Chest and other welfare agencies and the public generally?

Legal Aid as presently provided for the poor in Virginia is inadequate.[27] This fact is not supported by definite statistics, since they do not exist, but instead from the observation that today there are only three Legal Aid Societies actively in existence in Virginia. Though a few lawyers in the State have long and often served individual impoverished clients, the organized efforts of the bar in Virginia to extend legal services has not been outstandingly successful. The blame for this must be placed on the same overall conservative power structure in Virginia which has resisted change in every way and form and failed to realize that Thomas Jefferson is dead and that the Civil War is over. This structure which was opposed to woman's suffrage, civil rights for Negroes and other social achievements in the Twentieth Century has up until now also opposed the Legal Aid program.

Things in Virginia are changing, however, as a result of federal efforts to guarantee equal access to justice. The first instance was the court case of N.A.A.C.P. v. Button[28] in 1963 in which the Supreme

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27. News item in the Richmond News Leader, May 25, 1967.

28. N.A.A.C.P. v. Button, 371 U.S. 415, 434 (1963).

Court held unconstitutional as applied to the N.A.A.C.P. a Virginia statute forbidding solicitation on behalf of "any particular attorneys" which had been interpreted to proscribe as criminal a person's advising another that his legal rights had been infringed and referring him to a particular attorney or group of attorneys. The Court said that there "inheres in the statute the gravest danger of smothering all discussion looking to the eventual institution of litigation on behalf of the rights of members of an unpopular minority." Then in 1964 in the court case of Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar[29] the Supreme Court held that an injunction issued under the same Virginia statute, prohibiting a labor union from advising injured members or their dependents to obtain legal assistance before settling claims, infringed rights guaranteed by the First and Fourteenth Amendments. In August of the same year the Federal Government passed the Economic Opportunity Act in line with its war on poverty program.[30] This Act provided for the development and implementation of programs for expanding the availability of legal services. Under this program the local community must pay at least ten per cent of the cost of the program, with the Office of Economic Opportunity paying for the remainder

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29. Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar, 377 U.S. 1 (1964).

30. National Conference on Law and Poverty: The Role of the Federal Government. Theodore M. Berry, American Bar Association Journal 51:746 (August, 1965).

up to 90 per cent. This ten per cent is in addition to the community's previous expenditures for similar services on behalf of the poor, which must continue to be maintained. The local share need not be in cash; it may be in the form of rent-free offices, furniture or other equipment, or professional services.[31]

The effects of these Supreme Court decisions and the Economic Opportunity Act on Virginia's conservative power structure is seen in the Virginia State Bar's decision to appoint Noel S. Clifton[32] to travel around the State as its representative to encourage counties and cities to form societies that would be funded and controlled locally. Noel Clifton who states he is a "progressive conservative" sees his "guideline" as "heading the Office of Economic Opportunity off at the pass."[33] Present plans call for an evaluation of the actively existing programs in Arlington, Norfolk and Richmond and the creation of active programs in Alexandria, Charlottesville, Fairfax, Lynchburg, Roanoke and Winchester. The reasoning behind the Virginia State Bar's decision was stated as follows:

> The Virginia State Bar is moving to stymie federal efforts to finance and control legal aid for the poor. Rather than submit

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31. Ibid.

32. Noel S. Clifton is a native of Danville and formerly worked for the American Bar Association as head of the ABA's Legal Economic Department. He is currently assistant to R. E. Booker, the State Bar's executive secretary.

33. News item in the Richmond News Leader, June 8, 1967.

> to federal regulation and perhaps, interference, Virginia lawyers will turn to a do-it-yourself approach to keep federal anti-poverty money and control out of the law business in Virginia...continued hesitancy on the bar's part will eventually lead to federal intrusion in some form to insure that such services are fully provided.[34]

In the remaining pages of this presentation an effort will be made to trace the development of the Legal Aid Bureau here in Richmond. The reason for its selection is the fact that it is the oldest and most established of the three which exist in the State. Therefore it is felt, by this writer, that a complete understanding of its actual creation and the progress which it has made will be of the most value in comprehending the present status of Legal Aid in the State, since accurate overall statistics and data, at present, do not exist. The information needed for this analysis shall be compiled by using the material from the files of the Legal Aid Bureau of the Family and Children's Service Society, containing correspondence and documents relating to its development.

Legal Aid first appeared in Richmond prior to 1917 to offer some sort of legal counsel to those people who could not afford to pay for the services of a lawyer. Nothing is known of its organization, however, except for the fact that it did exist.[35] Perhaps it was not needed or the occurrence of World War I diverted peoples attention,

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34. Ibid., May 25, 1967.

35. Files, Legal Aid Bureau of the Family and Children's Service Society, Richmond, Virginia.

but at any rate it did not survive except for the idea. The first item of significance in relation to it was the following item which appeared in a Richmond daily newspaper in 1931.

> That the denial of complete justice of poor people unable to pay for legal counsel is an outstanding cause of growing disrespect for law and courts, was expressed by the committee on legal aid at the monthly meeting of the Richmond Chapter of the American Association of Social Workers. The committee believes that serious social problems may often be avoided and the financial rights of clients of social agencies protected through a well organized legal aid office. It was suggested that all possible efforts be made to convince the Richmond Bar Association of the desirability and usefulness of such a bureau and to secure the cooperation and assistance of the association.[36]

Although the files of the Legal Aid Bureau have no written record from 1931 to 1933 it is logical to assume from later bureau correspondence that the idea of Legal Aid was slowly gaining momentum. During this time a young lawyer took care of cases referred to him by any of the society's case workers and the Executive Secretary had made contact with the Secretary of the National Legal Aid Association and had spoken to the Dean of the University of Richmond Law School about the need for Legal Aid.[37] Then in 1934 progress momentarily came to a standstill when a committee report in April indicated that local judges did not feel that there was any great need for the services. The scope of the cases handled at this time was narrow and

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36. News item in the Richmond Times Dispatch, March 29, 1931.

37. Herbert A. Kruegar, The Legal Aid Bureau of the Family Service Society of Richmond, May 6, 1946, p. 8.

the fact that no records were kept apparently made these conservative individuals skeptical about the auspices under which Legal Aid might eventually be launched. As a result of this report the society automaticly killed its own proposal to expand legal services, and soon afterwards the President of the University of Richmond overruled the plan for a legal aid clinic.[38]

Finally in 1935 the Executive Secretary accomplished his objective when Legal Aid became an auxiliary service of the Family Service Society[39] with the Richmond Bar Association's consent. The program called for the coordinating of Legal Aid with the social services already provided for the poor by the Family Service Society. In 1939 the Legal Aid Bureau began to hold regular office hours at the Society's office with a part-time attorney. Since 1940 the bureau's one-man part-time legal staff has been Charles Knight, who gets a monthly salary and has regular office hours on Tuesday and Thursday at the Society's headquarters at 221 Governor Street.[40] Then in 1941 the Legal Aid Bureau became a member of the National Legal Aid Association.

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38. Ibid., p. 13; This plan called for the Executive Secretary to teach an advanced course on the social setting of the law one afternoon a week for one hour. The student would do supervised field work on legal angles.

39. In the early 1960's the name of the Family Service Society was changed to Family and Children's Service.

40. News item in the Richmond Times Dispatch, February 7, 1954.

The Legal Aid Bureau of the Family Service Society of Richmond, with its broad policies laid down by the Board of the Family Service Society, is operating under a set of rules which have been approved by the Executive Committee of the Bar Association of the city of Richmond. These rules in their present form were adopted in April, 1942, to which Hon. Ralph T. Catterall, then President of the Bar Association of the city of Richmond, indicated the approval of the Executive Committee of the Bar Association, and are as follows:

1. The purpose of the Legal Aid Bureau is to prevent persons from being deprived of their legal rights by reason of their poverty.

2. Attorneys of the Legal Aid Bureau will accept legal aid cases only when referred to them by the Family Service Society of Richmond. The Family Service Society of Richmond will make such referrals to the Legal Aid Service only on request of applicants for legal service.

3. Attorneys of the Legal Aid Bureau will not accept legal aid cases in which the applicant could employ an attorney in regular practice, on a contingent fee or otherwise, or obtained the services of such an attorney through court appointment.

4. The Legal Aid Bureau will not accept the following types of cases: criminal cases; applications for workmen's compensation when the amount claimed is

$50.00 or more; negligence cases on behalf of a claimant; collection cases, when the amount of money or promise of collection is such as to make possible the employment of an attorney.

5. The Legal Aid Bureau, in refusing a case, will not, except in cases of manifest necessity, refer the applicant to any specific attorney.

6. Attorneys of the Legal Aid Bureau will not receive or accept remuneration from an applicant or client.

7. The Family Service Society of Richmond may make nominal charges for legal aid services, not in excess of one dollar per case. Where the financial condition of the applicant warrants, the Family Service Society of Richmond will require him to bear his own court costs and charges. Such costs will, where possible, be explained to the applicant in advance.

8. Records and accounts shall be kept in each case at the Family Service Society of Richmond to which the attorneys of the Legal Aid Bureau shall report monthly the names and addresses of all clients assisted, the nature of such legal assistance, and accounts of all moneys recovered, paid in, and disbursed.

9. A copy of the monthly report to the Family Service Society of Richmond will be transmitted on

request to the Executive Committee of the Richmond Bar Association or other committee or individual designated by the Bar Association as its representative in matters of legal aid work.

Since 1942, however, the only significant improvements to the Legal Aid program have been the addition of a volunteer lawyer panel in 1956 and a Legal Referral service in 1964. The lawyer panel is composed of eight volunteer attorneys who serve for a period of six months, since it is felt that this is the minimum time in which a lawyer can become acquainted with the workings of Legal Aid. At the same time an additional panel of eight alternates is chosen to serve on any given afternoon that a member of the original panel may be prevented from keeping a regular appointment at the office in the Family Service Society due to illness, absence from the city, a court engagement, or other unavoidable reason. Under this rotation system, a new panel of eight, with eight substitutes, is chosen for the second six month period. Each volunteer attorney on the eight man panel serves two afternoon periods of two hours each (from 3:00 p.m. to 5:00 p.m.) each month.

The Lawyer Referral service as explained earlier does not render services entirely gratuitously to the client. It deals with that group of persons who are able to pay some small fee, but not an adequate fee and who are yet not entitled to free Legal Aid, because of an ability to pay something for the services they need. In Richmond Legal Referral is not adjunct to Legal Aid but independent of it since the

only job which the society does in connection with the program is to refer prospective clients to competent lawyers. The present fee is $12.00 for a half-hour interview.[41] The Bar Association of the City of Richmond assumes the complete responsibility for the operation of the service. The Bar pays a proportionate part of the salaries of persons on the society's staff who work with Lawyer Referral doing such jobs as interviewing persons before giving them an appointment. The fees that are collected under the plan are received in the name of the Lawyer Referral Service and are turned over in toto to the Richmond Bar Association.[42]

The present proposal is gradually to expand Legal Aid services in Richmond by extending the office hours during which attorneys will be available for consultation and advice in the office maintained at the Family Service Society, 221 Governor Street. Services are now available on Tuesday, Wednesday and Thursday afternoon from 3:00 to 5:00 and further extensions of office hours are proposed from time to time as the need becomes apparent. It is also planned to publicize the increased availability of Legal Aid services through the newspapers and other mass media, as well as through the churches and by placing suitable notices in places like the Civil Justice and Juvenile Courts.

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41. Statement by Mrs. Francis Farmer, Legal Aid Bureau secretary, personal interview, June 21, 1967.

42. Letter to Board of Directors of Family and Children's Service Society from the Law offices of Bouls, Boyd & Herod, March 16, 1964.

Despite the fact that Richmond's Legal Aid Bureau is the oldest in the State it has been limping along since its founding with grossly inadequate support. Its volume of cases is barely one per thousand persons in the area served. The National Legal Aid and Defender Association has deemed the minimum number of cases from 1000 people to be seven.[43] Whereas Richmond would be expected to have a total of approximately 2600 cases a year,[44] in 1966 the number receiving service from the Legal Aid Bureau was only 104. In fact, since its creation, the most cases the bureau has ever handled were 249 in 1945. Another disturbing contrast to the national average is the fact that the number of cases handled by the bureau has decreased since 1962 rather than increased.[45] This fact becomes more understandable when one considers that though the Family and Children's Services total receipts for 1966 were $222,917.25 the amount spent on Legal Aid only amounted to $4,261.55.[46]

In Richmond the great bulk of Legal Aid work falls into two classes: first, domestic relations matters in which advice is needed as to the rights and duties of husband and wife and parent and child;

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43. Shriver, op. cit., p. 248.

44. Study of Legal Aid Services, Family and Child Welfare Division, Richmond Area Community Council, 1954.

45. See Table I.

46. Family and Children's Service Financial and Statistical Report for 1966.

second, small money claims involving either wages or disputes between the client and a lender, installment seller or landlord. In 1966 domestic and debt cases amounted to almost 69 per cent of the cases handled. Of the 104 cases handled in 1966 it is interesting to note that almost 50 per cent of them required only consultation or partial service.[47] Though the average time spent per case was one hour and 26 minutes and the average contact was 54 minutes, which are both above the national average, the bureau only handled 104 cases out of 319 which possessed legal emphasis.[48]

From the above history and statistics it is apparent that Virginia and the State Bar have an enormous job confronting them if they intend to provide adequate Legal Aid. They must not only create new bureaus but make the existing ones effective.

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47. See Table II.

48. See Table III.

TABLE I

LEGAL AID CASES HANDLED IN RICHMOND SINCE 1935

Year	Number of Cases
1966	104
1965	111
1964	122
1963	189
1962	192
1961	172
1960	134
1959	173
1958	200
1957	174
1956	243
1955	242
1954	219
1953	141
1952	129
1951	142
1950	158
1949	206
1948	162
1947	175
1946	139
1945	249
1944	243
1943	131
1942	109
1941	76
1940	159
1939	47
1938	48
1937	53
1936	80
1935	107

Data Source: Files, Family and Children's Service Society, Richmond, Virginia.

TABLE II

NATURE AND DISPOSITION OF RICHMOND LEGAL AID CASES IN 1965 & 1966

	1965	1966
Total Cases	111	104
Carried over from Previous Year	2	12
Intake During Year	109	92
Personal Applications	59	33
Referrals	50	59
Nature of Cases		
Domestic Relations	31	35
Debt and Other Financial Problems	57	34
Property	4	8
Other	19	27
Disposition of Cases		
Consultation Only	42	37
Consultation and Referral	9	13
Closed after Court Action	10	10
Service Completed without Court Action	19	20
Terminated after Partial Service	18	11
Incomplete at End of Year	13	13

Data Source: Family and Children's Service of Richmond, Financial and Statistical Report 1966.

TABLE III

CASES WITH LEGAL EMPHASIS IN FOCUS OF PROBLEM OR SERVICE IN 1966

Focus of Problem or Service	All Cases	Cases with Legal Emphasis
Marital Relationship	678	84
Pre-marital Relationship	4	0
Parent-Child Relationship or Relationship of Child under 18	274	9
Other Family Relationship or Relationship of Individual Adults	112	7
Total Family Relationships	199	4
Financial Difficulty	704	106
Physical Illness or Handicap	29	1
Mental Illness	20	2
Intellectual Retardation	7	0
Arrangements for Physical Care	280	0
Other Environmental or Situational Condition	148	106
Out of Town Inquiries	7	0
Reports on Terminated Service	17	0
Total	2,479	319

Data Source: Family and Children's Service of Richmond, Financial and Statistical Report of 1966.

BIBLIOGRAPHY

BIBLIOGRAPHY

An Inquiry into the History and Practice in England and America. 28 Notre Dame Law. 354 (1953).

American Bar Association, Compilation of Statistics of Legal Aid and Defender Work in the United States and Canada.

Appointment of Counsel for Indigent Accused. 28 Texas Law Review. 249 (1949).

Beaney, The Right to Counsel in American Courts. 32 (1955).

Benefit of Counsel in Criminal Cases in the Time of Coke. 6 Miami Law Quarterly. 546 (1952).

Berry, Theodore M. National Conference on Law and Poverty: The Role of the Federal Government. American Bar Association Journal 51:746 (August, 1965).

Betts v. Brady. 316 U.S. 455, 62 S. Ct. 1252 (1942).

Bolkovac v. Indiana. 229 Ind. 294, 98 N.E. 2d 250 (1951).

Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar. 377 U.S. 1 (1964).

Brownell, Emery A. Legal Aid in the United States at 144 (1951).

_____, Outline For Self-Evaluation of Legal Aid Organizations, 1958, p. 2.

_____, Supplement to Legal Aid in the United States (1961), p. 10.

Celler, New Hopes for Federal Public Defender Legislation, 19 Legal Aid Brief Case. 28 (1961).

Court Appointed Counsel for Indigent Misdemeants. Arizona Law Review. 6:281, Spring 1965.

Dimmock, The Public Defender: A Step Towards a Police State? 42 American Bar Association Journal 219 (1956).

Douglas v. California. 372 U.S. 353. (1963).

Dunfee v. Hudspeth. 162 Kan. 524, 178 P. 2d 1009 (1947).

Escobedo v. Illinois. 378 U.S. 478 (1964).

Fair v. Balkcom. 378 U.S. 478 (1964).

Family and Children's Service, Financial and Statistical Report for 1966.

_____, Legal Aid Bureau Report. Richmond, Virginia.

_____, What Is Legal Aid?, Richmond, Virginia.

Farmer, Mrs. Francis, Legal Aid Bureau secretary. Personal Interview, June 21, 1967.

Firmstone v. Myers. 202 Pa. Super. 292, 196 A. 2d 209 (1963).

5 State Trials 923 (Howell ed. 1809-1926).

Frankfurter, Memorandum on Incorporation of the Bill of Rights into the Due Process Clause of the Fourteenth Amendment. 78 Harvard Law Review. 746 (1965).

Garofone. 80 N.M. Super, 259, 193 A. 2d 398 (1963).

Gideon v. Wainwright. 372 U.S. 335, 83 S. Ct. 792 (1963).

Johnson v. Zerbst. 304 U.S. 458 (1938).

Kruegar, Herbert A. The Legal Aid Bureau of the Family Service Society of Richmond, May 6, 1946.

Legal Aid Bureau of the Family and Children's Service Society, Files, Richmond, Virginia.

Legal Aid Association Budget Committee Report, 1959.

Legal Aid Association, Sharing Legal Aid Experience, 1966.

Letter of Board of Directors of Family and Children's Service Society from the Law Offices of Bouls, Boyd & Herod, March 16, 1964.

Marden, Orison. Equal Access to Justice. Washington and Lee Law Review 19:158, Fall 1962.

Miranda v. Arizona. 384 U.S. 436 (1966).

McDonald v. Moore. Fla. 353 F. 2d 108 (1965).

N.A.A.C.P. v. Button. 371 U.S. 415, 434 (1963).

Newbern, 3 California Reporter. 364, 350 P. 2d. 2d 116 (1960).

New York County Law 334 (10).

Paulsen, Expanding Horizons of Legal Services. West Virginia Law Review. 67:183. April-June 1965.

People v. Garrett. 43 Ill. App. 2d 183, 193 N.E. 2d 229 (1963).

People v. Lettereo. 16 N.Y. 2d 307, 213 N.E. 2d 670 (1965).

People v. Witenski. 15 N.Y. 2d 392, 207 N.E. 2d 358 (1965).

Pollock, Equal Justice in Practice. 45 Minnesota Law Review. 737, 738-39 (1961).

Potts, Right to Counsel in Criminal Cases: Legal Aid or Public Defender. 28 Texas Law Review. 504 (1950).

Powell v. Alabama. 287 U.S. 45, 53 S. Ct. 55 (1932).

Richmond Area Community Council, Study of Legal Aid Services, Family and Child Welfare Division, 1954.

Richmond News Leader. May 25 and June 8, 1967.

Richmond Times Dispatch. February 7, 1954 and March 29, 1931.

Robinson, The Administration of Criminal Justice from the Standpoint of the Public Defender. 25 Connecticut Bar Journal. 263 (1951).

Shriver, S. Symposium On Legal Aid. Washington and Lee Law Review. 23:236, 245, Fall 1966.

Silverstein, Defense of the Poor. Louisiana Bar Journal. 14:104, August 1966.

Special Committee of the Association of the Bar of the City of New York and the National Legal Aid and Defender Association, Equal Justice for the Accused 36 (1959).

The Legal Profession in Ancient Athens. 29 Notre Dame Law. 339 (1954).

The Right to Counsel for the Impoverished Defendant in Britain and Canada. 17 Law Guild Review. 145 (1957).

Trebach, A Modern Defender System for New Jersey. 12 Rutgers Law Review. 294 (1957).

Virginia Code. 1960, 1964, Supp. 1964

Winters, J. M. Council for the Indigent Accused in Wisconsin. Marquete Law Review. 49:1, Summer 1965.

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