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Lawyer Reference Plans - Legal Aid - Legal Facilities for the Moderate Income Group

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cuse performance. Since the flood is foreseeable, it could be implied that the parties contracted with that condition in mind.

SUMMARY

No cases in North Dakota have been found directly interpreting the statute.⁶⁶ Hence we must indulge in some intellectual impertinence to forecast what our high court's attitude will be. Since the statute evidently represents a statement of a common law exception to the rigid rule of contracts, it is anticipated that a narrow view will be maintained as to what constitutes an Act of God, so that our near-sacred concepts of property and contracts will not be greatly disturbed. The concurring opinion in a North Dakota case⁶⁷ mentions Act of God, but that doctrine does not seem to have been considered in the decision. The court in this case apparently takes the view that the causes excusing performance as set out in the statute⁶⁸ are not exclusive, for their reasons seem based on other and perhaps equitable grounds.

California with a statute similar to that in North Dakota has interpreted the Act of God doctrine well within the limitations discussed in this article. The California courts have also held that the doctrine is a matter of defense only; it cannot be used to excuse non-performance by the plaintiff.⁶⁹

The North Dakota statute lays down certain exceptions to the hard and fast rule of contract enforcement as illustrated in *Paradine v. Jane*. It is not thought that these are the only exceptions to strict enforcement of a contract. It is believed that inasmuch as they are exceptions to the strict rule of contracts, they should be narrowly construed in the interests of the promisee.

LAWYER REFERENCE PLANS—LEGAL AID—LEGAL FACILITIES FOR THE MODERATE INCOME GROUP. Frequent constitutional assurances may be found to the effect that every person should be able to find prompt and certain legal recourse when needed,¹ a time-honored guarantee that is expressly set out in the Magna Carta.² That these solemn provisions have not been effective is pointedly indicated in a recent sur-

⁶⁶ N. D. Rev. Code § 9-1104 (1943).

⁶⁷ *Sandry v. Brooklyn School Dist.*, 47 N. Dak. 444, 182 N. W. 689 (1921).

⁶⁸ N. D. Rev. Code § 9-1104 (1943).

⁶⁹ *Remy v. Olds*, 4 Cal. U. 240, 34 Pac. 216 (1893).

¹ See Pirsig, *Cases on Judicial Administration 1* (1946) for constitutions embodying such guarantees. One group of authorities have indicated that the Federal Constitution's guarantee of equal protection of the law requires legal counsel regardless of financial means of client. National Lawyers Guild Committee on Professional Problems, *The Availability of Legal Services and Judicial Processes to the Low and Moderate Income Groups and Proposals to Remedy Present Deficiencies*, 10 Law. Guild Rev. 8 (1950).

² Magna Charta § 40 (1215).

vey of the legal profession³ conducted by the American Bar Association which disclosed that less than half the persons in middle and lower income groups used lawyer's services when needed. President Gallagher of the American Bar Association also believed that millions of persons of moderate means were in need of legal assistance and advice,⁴ and that was in addition to the admittedly large number of persons who have less than moderate incomes.

Several ameliorative plans have been in operation for varying periods. The best known of these is legal aid provided by Legal Aid Societies for those persons with no funds available to meet the cost of legal advice or assistance. Other less extensive plans employed to afford legal assistance where required are the Neighborhood Law Office,⁵ the Legal Service Office,⁶ and the several organizations which are properly only departments of legal aid but are often described as independent units, *viz.*, Law School Clinics, Public and Voluntary Defender Organizations, and Public Bureaus.⁷ However, none of these projects, sponsored generally by private philanthropies or bar associations, have approached fulfillment of the great need for legal services of lower income persons; for today "there is growing evidence that people in low income groups frequently go without legal assistance because they cannot afford to pay for it, or because they think they cannot afford to pay for it, or because they distrust law-

³ Smith, *Legal Service Offices For Persons of Moderate Means* 12 et seq. (1950) See Rosen, *Book Review*, 4 *The Lawyer and Law Notes* 32 (1950), to the effect that millions of persons need, and fail to get legal services. The Survey of the Legal Profession under the direction of Reginald Heber Smith and sponsored by the American Bar Association is divided into six major divisions of which "Lawyer Reference Plans" is a topic in the first division, "Professional Services by Lawyers and Their Availability."

⁴ Gallagher, *The Lawyer Reference Plan: Legal Service for Persons of Moderate Means*, 36 *A. B. A. J.* 24 (1950).

⁵ This system was found to be very successful in Philadelphia where one or two practitioners set up an office in an outlying suburban area and serve the needs of neighborhood clients with stress on preventive law. The offices exist at present only in Philadelphia, handle civil cases only, and are self-supporting. For full information on this system see the Report to the Survey of the Legal Profession, Abrahams, *The Neighborhood Law Office Plan*, (1949) *Wis. L. Rev.* 634.

⁶ The plan for a Legal Service Office contemplates a bar association sponsored office with two or three full-time attorneys serving a moderate income clientele right in the service office. It is thought that such an office plan ought to be organized in the more heavily populated areas when the burden on a Lawyer Reference Plan becomes too great. Full details of the proposed system are found in Smith, *supra* note ³ at 6.

⁷ Legal Aid clinics (or law school clinics) are law offices where law school students assist in the handling of cases for indigent persons on an apprenticeship basis. There is an increasing interest in such clinics as valuable adjuncts to a law school curriculum. Miller, *Legal Clinics and the Bar*, 20 *Tenn. L. Rev.* 1 (1947). The value of such legal apprenticeship is persuasively argued in Bradway, *Education for Law Practice: Law Students can be given Clinical Experience*, 34 *A. B. A. J.* 103 (1948). A full description of the various kinds of legal aid organizations and their measure of success can be found in Brownell, *Legal Aid in the United States* (1950).

yers or do not know any lawyers, or do not know they need advice. . ."⁸

An effective plan of relatively simple operation and structure has recently been endorsed by the American Bar Association. The plan is properly termed the Lawyer Reference Plan and is the main subject of this Note. Successful operation of the plan has already been achieved in twenty-nine cities, and there is much reason to believe that this inexpensive plan will serve to advance the status of the Bar more than any step taken in recent years with resultant direct improvement in public relations, and the further result that a vast untapped clientele will be provided with adequate legal counsel. A certain consequence is that the Law will be protected from undue political pressures, something which England did not entirely avoid. Since the plan is an outgrowth of legal aid some consideration should be given, though briefly, to the history of legal aid in order to fully understand the urgency of the need for legal advice and assistance and the steps taken to meet that need.

THE HISTORY OF LEGAL AID

Nearly all countries today have some form of legal aid for the poor, no distinction being made generally as to courts or the type of case. The growth of legal aid has been slow and hard to define with England furnishing the most complete history of the aged custom of furnishing indigents with free legal assistance. Before 1650 there is an incomplete record of legal aid, though many references may be found to earlier processes. During the reign of Henry III (1260-1272) the courts had the authority to issue writs providing for free counsel, but not until the Statute 11 Henry VIII, c. 12, of 1494, did a comprehensive statute for legal aid exist. "One might wonder what more than this is needed even at the present day. The statute provided that:

'Every poor person. . . shall have. . . writ or writs. . . according to the nature of their causes, therefore paying nothing to your Highness for the seals of the same, nor to any person for the writing of the same writ or writs; . . . and that the Lord Chancellor shall assign . . . learned counsel and attorneys for the same without any reward taking thereof; and . . . the Justices shall assign to the same poor person or persons counsel learned by their discretion, which shall give their counsel nothing taking for the same; and likewise the Justices shall appoint attorney and attorneys for the same poor person or persons and all other officers requisite. . . which shall do their duties

⁸ Porter, *Lawyer Reference Plans—A Manual for Local Bar Associations*, frontispiece, (1949) quoting a 1948 Report by the American Bar Association's Committee on the Economic Condition of the Bar.

without any reward for their counsel, help and business in the same.'"⁹

No substantial change was forthcoming until just prior to the First World War when the armed forces (a non-pauper group) were provided with legal assistance¹⁰ especially in regard to domestic relations cases. The next forward step was taken when in 1925 the eminent Law Society¹¹ took over the responsibility of providing legal aid, and only slight changes were noted until World War II when again a great demand from the armed forces necessitated broader provisions for low-cost legal services, again notably in regard to domestic relations cases. Under pressure, not only from the military but from civilians also, the British Government appointed the famous Rushcliffe committee to investigate the aggravated need for low-cost legal advice and assistance. The committee, after exhaustive research, made its report to Parliament in May, 1945,¹² and concluded that rigid financial limits should be abolished for the reason that persons of moderate means who were unable to pay the standard fees of counsel as well as poverty-stricken persons ought to have legal services made available to them. The report was primarily concerned with civil cases. The committee found also that the government should bear the cost of such a nationwide system, a point which the American plans completely reject, though the English view that only lawyers should direct the plan does coincide with that of the United States Bar.¹³ It is unfortunate that though Parliament, with the approval of Conservative, Liberal, and Labor parties

⁹ Egerton, *Historical Aspects of Legal Aid*, 61 *Law Rev.* 87 (1945). Unscrupulous suits against the poor were a strong reason for the birth of legal aid. English jurist, Lord Morton of Henryton stated: "There is nothing that would more quickly turn me into an anarchist than to feel that I could not get justice because the other man was richer or more influential than myself." Marden *The National Legal Aid Association: The Lawyer's Red Cross*, 36 *A. B. A. J.* 265, 266 (1950). To the same effect see, Pound, *Book Review*, 33 *Harv. L. Rev.* 621 (1920). A further problem was the abuse by persons receiving legal aid in bringing unfounded suits, Egerton, *Legal Aid in England*, 26 *Can. B. Rev.* 950, 951 (1948).

¹⁰ Lord Chorley, *Procedural Reform in England*, in David Dudley Field's *Centenary Essays* (1949). This assistance was mainly a training ground for young practitioners. Post world war I English legal aid progress was due mainly to action of the solicitors with slight activity in the more influential barrister group.

¹¹ "Law Society... is the governing body of the Solicitors Profession..." Lord Chorley, *supra* note 10, at 117.

¹² For discussion of the Rushcliffe Report, see Struthers, *Recent trends in Scottish Law. The Criminal Justice and Legal Aid Bills*, 35 *A. B. A. J.* 630 (1949); Smith, *The English Legal Assistance Plan: Its Significance for American Legal Institutions*, 35 *A. B. A. J.* 453 (1949).

¹³ The Committee further found that lawyers should be properly reimbursed and that the Law Society should be responsible for the functioning of the plan. Area committees were recommended to open branch offices for legal service, staffed by full-time solicitors with further provision for itinerant poor mens' lawyers for sparsely settled areas. One-fourth of all litigation is expected to fall under the scheme, Abrahams, *The English Legal Assistance Plan: A Description of its Machinery*, 36 *A. B. A. J.* 31 (1950), though Marden *supra* note 9, at 267, indicates it will cover one-third of the litigation handled by Britains 16,000 solicitors and 1200 barristers.

alike, passed the Legal Aid and Advice Bill on July 7, 1949, to take effect on July 1, 1950, pressing economic difficulties caused the indefinite postponement of putting the major portion of the scheme into operation in England, Wales, and Scotland.¹⁴

Actually legal aid in the United States is well ahead of that in Britain though it received a relatively late start in this country.¹⁵ The "Der Deutsche Reichsschutz Verein", an organization formed in 1876 for the protection of German immigrants, became the first clearly recognizable Legal Aid Society in America. Growth of the idea was slow until 1910 when there were fourteen societies in existence. By 1934 there were, through sporadic growth, legal aid organizations in nearly one hundred cities ranging in size from 25,000 to the largest city. And by 1948, the year in which the National Association of Legal Aid Organizations celebrated its 25th anniversary, there were approximately seventy-three cities with populations over 100,000 with legal aid facilities.¹⁶ Yet in seven states neither the state nor local bar associations have established committees to deal with legal aid.¹⁷

The administration of legal aid in North Dakota is dependent upon the charitable nature of each individual attorney. An indigent person in need of legal service must rely almost solely on the chance that some attorney will take his case either on a strictly charitable basis or, if the case warrants, on a contingent fee.

This haphazard manner of dispensing legal aid works manifest injustice upon public-spirited attorneys who feel constrained to shoulder the legal burden of those in distress, and often results in

¹⁴ Abrahams, *supra* note 13, at 33 (Editor's Note) correctde in some minor respects by an English authority in *Legal Aid in England and Wales*, 36 A. B. A. J. 853 (1950).

¹⁵ Little credit can be extended the American Bar organizations for the early development of legal aid, though they have for many years maintained an ambitious standing committee on legal aid. Not until 1909 did any organized bar recognize a legal aid organization. In 1910 there were 14 legal aid societies functioning. By 1916 there were legal aid organizations in 37 American cities, but the effect of World War I cancelled the gains. In 1917 the American Bar Association resolved that the Bar Associations should foster Legal Aid Societies. The American legal aid record is described as impressive in Hurst, *The Growth of American Law—The Law Makers* 153 (1950). The differences in English and American definitions of legal aid, advice, and assistance must be kept in mind and are discussed in Smith, *supra* note 12, at 456.

¹⁶ Brownell, *supra* note 7, at 33. In October, 1949 the National Legal Aid Association was created by the National Association of Legal Aid Organizations and The American Bar Association's standing committee on Legal Aid. For objectives and operation of the new Association, see Marden, *supra* note 9, who quotes Mr. Chief Justice Vinson's declaration that legal aid should be extended "to every part of this country to protect the rights of those who cannot protect themselves".

¹⁷ Alabama, Mississippi, Montana, New Mexico, South Dakota, West Virginia, and Wyoming are without committees. Brownell, *supra* note 7 at 30. The North Dakota State Bar Association at its 1950 Annual Meeting, August 24, 25, 26, appointed a committee on Legal Aid and Lawyer Reference Plans, with Robert H. Ford, Chairman. The present article was prepared at the suggestion of this Committee.

embarrassment to the attorney who is compelled to refuse private help.

While the value of Legal Aid Societies has been great, it is apparent that there remains a large group of persons who do not qualify for legal aid, but nevertheless are unable to pay what a lawyer must reasonably charge for his services. The problem has been tardily considered with the consequence that "today the very poor and the well-to-do are likely to get pretty good legal service. But there are millions of people who belong to neither the well-to-do nor the very poor. They neither need nor ask charity."¹⁸ Estimates of the number of persons not having access to legal services run from conservative figures to a seemingly exaggerated estimate of upwards of 100,000,000.¹⁹ Available estimates indicate an unwholesome situation and any solution must be based upon a realistic appraisal of the need. Evidence is in fact fast accumulating to show that both the low and middle income groups of citizens have a far greater need of lawyers, both as to matters requiring negotiation and litigation and as to matters requiring only constructive and preventive advice, than is realized even by the legal profession. One authority²⁰ wondered how "a problem that can be solved with so little cost and effort can be so acute."

The statistical analysis of the armed forces legal assistance offices furnishes striking evidence of the magnitude of the problem. As the great majority of these service people stemmed from the low and middle income groups, the problems which troubled them can give a picture typical of the legal difficulties encountered in these strata of American people.²¹ At least 90% of our military personnel may be considered persons of moderate means. The following figures graphically portray the size of the medium income group in the general population. In 1948 nearly 16,000,000 families had incomes between \$2,000 and \$4,000. This was 41.3% of all families in the United States.²² Under present inflationary conditions a city-dwelling family with an annual income of \$2,000 has virtually nothing left over, after providing the barest necessities, out of which to pay lawyers' fees. Either legal aid or help in some other form must be extended to such a family or they will necessarily be denied access to our judicial machinery.

¹⁸ Mr. Justice Jackson, July 9, 1939, in an address to the Junior Bar of the American Bar Association, quoted in Smith, *supra* note 3, at 18.

¹⁹ The estimate of 100,000,000 persons is found in a National Lawyers Guild Committee report citing other sources for such estimate. See the report by the National Lawyers Guild Committee on Professional Problems, *supra* note 1, at 9. But that only about eight in one thousand are unable to pay is indicated in Marden, *supra* note 9, at 265.

²⁰ Marden, *supra* note 9, at 266.

²¹ The Army and Navy Legal Assistance Offices handled between March, 1943, and December, 1946, more than nine million legal cases for Army personnel and well over one million legal problems involving Naval personnel. Detailed tables are found in Smith, *supra* note 3, at 9.

²² Smith, *supra* note 3, at 14.

The median income of American families has increased by \$720 from 1946 so that in 1948 the median or "middle size" income of American families was \$3,320. This strongly suggests that the typical American family is neither rich nor poor but is a family of "moderate means". The conclusion that must therefore be reached is that the classification, "persons of moderate means", includes at least one third of all of our citizens. The Lawyer Reference Plan "furnishes a permanent and most satisfactory answer to the legal referral problem for persons of moderate means, whether military or civilian, who require legal advice in an area in which the plan is in operation."²²

Another related need indicated by recent studies is that of a better relationship between lawyers and the public. The situation is graphically illustrated by the results of a recent Iowa survey.²³ The following question was asked of representative individuals from three income groups; high, middle, and low: "Do you happen to know of any place where free or low cost legal service may be obtained? If so, where?" The survey showed that 76% of all groups knew of no such place. A breakdown of this group shows that 75% of high income, 74% of middle income, and 81% of low income families fit a "don't know" category. No difference was indicated between farm, town, or city groups. The fact that 80% of the persons taking advantage of the Chicago Lawyer Reference Plan during the last six years have never had a lawyer is further evidence of the same need.²⁴

The suggested plans are consistent with, and tend to promote the individual freedom and initiative of what we like to call our way of life in America. An increasing of facilities and a focusing of public attention on remedial plans far more than has hitherto been possible are the most important steps to be taken. The legal profession now stands at the crossroads—if no solution of this problem is forthcoming some form of governmental intervention portends.

THE LAWYER REFERENCE PLAN EXAMINED

The best remedial device yet put forward is the Lawyer Reference Plan which has met with encouraging success in the last two decades. The plan has been described as a: "We'll-get-you-a-good-lawyer-who-won't-rob-you" service and can be defined as—"an agency through which a member of the general public can be referred to a competent and reliable lawyer who for a fixed, moderate fee will be willing to give a consultation on a legal problem and then render additional legal service for a moderate fee if further legal service seems desirable and necessary."²⁵ In the plan there are four pre-

²² Chief of the Legal Assistance Branch of the Army, Lt. Col. H. D. Beatty, quoted in Smith, *supra* note 3, at 24.

²³ Porter, *supra* note 8, at 3.

²⁴ Gallagher, *supra* note 4, at 25.

²⁵ Porter *supra* note 8, at 3.

requisite elements: a referrer, or referring agent, a place, a list of participating lawyers, and publicity for the plan. These will be considered in that order.

1. *The referrer*: The function of the referrer is to meet the prospective clients, give them a preliminary interview designed to discover the nature of their problem, or whether they have one, and either dispose of their difficulty on the spot or refer them to a lawyer whose name appears on an approved list. The most successful extant plans provide that the referring officer shall secure an appointment with the participating lawyer and fill out an appointment card for the client.

The client is at this time informed of the fee which will be charged for his initial conference (from \$3—\$5 for a half hour in existing plans). Any further fee arrangements will be worked out by the client and the attorney to whom he is referred. Thus the client gets original consultation for a precise low fee and the attorney gets a client who in many cases would but for the plan have remained lawyerless.²⁷ The Philadelphia Plan uses a referral request embodying these terms:

Case No.....

The undersigned,.....

- (a) Has applied to the above office to be referred to the next available lawyer on the reference panel;
- (b) Certifies that no lawyer has yet been consulted on this matter, and that he/she is not presently represented by an attorney;
- (c) Agrees to call at the office of the panel attorney named below at the time specified and to pay him \$5.00 in consideration for a consultation not exceeding one half hour;
- (d) Agrees to arrange with said attorney for any additional consultations or services or both as may be needed and for the fees to be paid for same;
- (e) Agrees, in the event of any dispute concerning fees, to accept as final the decision of the Committee on Public Relations and the Bar of the Philadelphia Bar Association; and
- (f) Agrees to make no claim against the Philadelphia Bar Association or any officer, agent or committee thereof, at any time by

²⁷ One reviewer of the plan suggested that there was weakness in the generality of the provision for fees, indicating that perhaps a schedule of fees for particular services which may follow the conference might well serve to encourage a prospective client to resort to the plan; whereas uncertainty in the matter might continue to discourage him from seeking the help of any lawyer. Rosen, Book Review, 4 *The Lawyer and Law Notes* 32 (1950). While this suggestion might work satisfactorily for certain types of services, it could not safely be applied to all of the various legal services because of the impossibility of pre-determining the amount of labor and expense involved in a great number of legal proceedings.

reason of any act or omission of any officer, agent, committee or attorney in connection with this matter, and understands that the Association makes no representation concerning any attorney to whom the applicant is referred except that such attorney is in good standing in the profession and is believed to be competent and reliable.

(date)

(applicant's name & address²³)

Many of the plans provide for a follow up report from the lawyer so that a complete file can be kept showing the dispositions and other data concerning the case.

There are four different types of plans now in operation, the type depending on the kind of referring agency used. Three cities, Philadelphia, Chicago, and New York, employ a full-time reference lawyer at a salary of about \$5,000 a year. This feature permits the settling of many problems on the spot and thus increases the possibility of public service. Many plans use the facilities of existing legal aid service. Arrangements are made for the referring of prospective clients from these agencies to listed lawyers. Experience shows that many persons seeking legal advice go to these agencies even though they don't seek free counsel but simply because they don't know where else to go.

Where there is a permanent Bar Association office with paid personnel it can be used for a referring agency. This might be a practical solution if the office is not too tied down with other duties. The fourth plan in use is for a Bar Association committee to handle the referring, shifting the duty among the various members according to a regular schedule.

2. *Place:* There must be a place where the referring is done. It should be an office which is easily accessible and its location should be well-publicized.

3. *The List of Lawyers:* There must be a list from which the referrer selects the lawyer to whom each client is to be referred. Participation of lawyers in good standing should be on a voluntary basis and many of the successful plans provide that the prospective lawyer participant should be interviewed by a member of a Bar supervisory committee to make certain that the attorney understands the operation of the plan. It is especially desirable that well-established legal firms take part in the plan in order to give it a recognized standing in the public eye. In some cities difficulty has arisen over the question of whether lawyers not members of the organized bar should be allowed to serve, with the better view being that they should. That question could not come up in North Dakota, however, because of our provisions for an integrated bar. The actual list may or may not provide for listed specialists. The application to be

²³ Porter, *supra* note 8, at 20.

filled out by a prospective participating lawyer should provide opportunity for him to disclose what kind of cases, if any, he doesn't care to handle, and whether he is qualified as a specialist in any field. The questionnaire used by New York City is considered to be very satisfactory.

The New York questionnaire is designed to give information concerning the lawyer's educational qualifications, practical experience, qualifications to practice in other jurisdictions, foreign language abilities, and further allows him to furnish as references three attorneys or judges who are familiar with the character of his professional work and ability. He is permitted to designate which particular field of legal work he is most interested in and whether he wishes to be registered as a trier of contested cases (in both State and Federal Courts) arising in the field or fields which he has named. Another paragraph of the questionnaire details the terms of the referral plan and asks the attorney to signify his willingness to abide by the terms imposed, as follows:

"Are you willing to serve persons referred to you by the Legal Referral Service upon the following fee basis:

- (a) A charge of \$5.00 payable in advance, to cover a first conference of not more than one-half hour;
- (b) With the understanding that the charge above specified is to cover conference and advice only, and does not include the preparation of letters or any legal papers;
- (c) With the further understanding that in all such matters wherein your compensation is contingent upon a recovery, your total fees will in no event exceed 40% of the total or gross recovery; and
- (d) With the further understanding that your compensation for any further services will be arranged with the client and if any dispute over fees should arise between you and the client, such dispute at his request will be submitted to the Joint Committee of the Service for final determination and that such determination shall be binding.
I agree to (this) and subdivisions."²²

Most of the plans now operating provide for the selection of the attorneys by the referrer on a rotation system. The lawyers should take turns to eliminate any possibility of ill-feeling or dissatisfaction which might arise out of the improper exercise of discretion in the referring agent. It is important, however, that some discretion be lodged with the referrer especially where there are specialists recognized on the list and the need for the services of these is clearly apparent to the referrer. Similarly an attorney may for some reason be

²² *Id.* at 6.

unable to accept a client when he is called, and his name may be passed over. Names skipped over in this manner should retain their place on the list and be taken on the next occasion.

4. *Publicity*: It is vitally important that the public be made aware of any lawyer reference plan set up. Success will depend upon public acceptance and public acceptance will depend to a great extent on public knowledge and understanding of the plan. Advertising the plan is not unethical since it does not take the form of extolling the good characteristics of any individual practitioner,²⁰ but rather makes public the availability of the whole profession and explains the services it is equipped to perform and also may explain how little at least the initial conference will cost and assure the reasonableness of future charges. It will tend to create public confidence in the program and in the profession, and help to eliminate some of the presently existing mistrust of lawyers²¹ and other defects in the legal system in regard to which a learned sociologist concluded: "Only as the legal profession comes out of its professional isolation and tells—through proper public relations—the American public what services it is prepared to render and within what range of costs the services may be had—then, and only then, will the doing without of legal services be eliminated from the American scene."²²

Because public confidence is needed it is important that the bar association sponsor the plans and it is recommended that a committee of the bar associations be responsible for each plan set up. This will provide a forum for airing any disagreements that grow out of the operation of the plan and still further increase public confidence. Persons dissatisfied with the plan's operation can go to the committee with their grievances and in all probability they can be ironed out amicably.

²⁰ The American Bar Association has implicitly approved publicity, which is inherent in the plan, by the adoption at its annual meeting in October, 1946, by its House of Delegates of the following resolution:

Whereas, The American Bar Association believes that it is a fundamental duty of the bar to see to it that all persons requiring legal advice be able to obtain it, irrespective of their economic status, and has recently approved and made an appropriation to increase the extent and efficiency of legal aid service in various parts of the country;

Resolved, That the Association approves and sponsors the setting up by state and local bar associations of lawyers' referral plans and low-cost legal service methods for the purpose of dealing with cases of persons who otherwise might not have the benefit of legal advice. . . (It was further resolved that a special committee for the legal problems of military personnel be appointed). Reports of the American Bar Association 240 (1946).

See Porter, *supra* note 8, at 14, 46.

²¹ One reason for the not infrequent disrespect displayed toward the legal profession is the mode of selecting legal counsel. Many persons seeking legal advice know of no good way to select a reliable attorney and are thus forced to rely on the often unreliable reference of friends or strangers. Hurst, *The Growth of American Law—The Law Makers* 317 (1950).

²² National Lawyer's Guild Committee on Professional Problems, *supra* note 1, at 8. See also Porter, *supra* note 8, at 13.

Financing the Lawyer Reference Plan has been undertaken chiefly in two ways in the cities now having such plans. In some, the Bar Association sponsors the plan and undertakes the entire task of financing it. In other plans a fee system has been formulated to aid in financing. A \$1.00 fee can be charged each prospective client seeking referral whether his problem is settled immediately or referred. It is felt by some that a charge is desirable, even though not needed for financing, simply on the theory that what is paid for is more likely to be appreciated. Some plans also collect a yearly fee of from \$5.00 to \$10.00 from each lawyer on the referral list on the theory that at least some benefit derives to him from the plan in that he gets some business which he would not otherwise have. A combination of the two ideas would probably be most effective.

THE LAWYER REFERENCE PLAN FOR NORTH DAKOTA

It is believed that many North Dakota cities could advantageously adopt some form of the Lawyer Reference Plan. Although it would likely be impossible to organize plans employing a full-time attorney as a referrer because of the limited size of our cities, it is submitted that many cities could use a plan with possibly a rotating committee of the local bar association serving as the referring agency. The greatest drawback of this form is that the office location, not being permanent, cannot be publicized as readily. If a purely referral system is desired (no on-the-spot legal counsel) it might be possible to have some non-lawyer public officer located at the county courthouse in county seat towns serve as the referral agent. He could be provided with a lawyer list and acquainted with the operation of the plan and act under the supervision of a bar association committee.

After careful consideration it is recommended that the Lawyer Reference Plan be set up in the immediate future at least in Fargo, Grand Forks, Minot, and Bismarck.

If the plan works successfully in these cities, then serious consideration should be given to the practicability of adopting it in other cities of North Dakota.

It is suggested that one of the benefits of the plan may be secured even in smaller communities and rural areas where a plan is impracticable, by the simple expedient of adopting and publicizing a standard office consultation fee for the initial conference usually involved in any legal problem. It should be apparent that the obtainability of qualified legal advice for a fee known to be reasonable will affect beneficially the public attitude toward the legal profession. The increased confidence thus engendered will serve well the public and the profession.

THE CONSEQUENCES OF ADOPTING THE PLAN

Reaction to this new plan may be in part described as fear that this is a step toward a nationalized Bar. Such fear is groundless, and

clearly so when it is remembered that the Bar controls in all aspects the operation of the plan. In fact, expert analysis has leveled that fear and asserted that adoption of the plan would be a forward step in nullifying any socialistic trends in the Bar, a view strongly asserted by Judge Augustus Hand.²² The American Bar Association Journal published an editorial entitled "Legal Service Policies" in its December 1946 issue which said in part:

"As to the organization of legal services for persons of moderate means...the profession is confronted with an early choice as to whether it will maintain its historic prerogatives and position by itself fulfilling the new needs, or will stand by while these essential forms of legal service are taken over by institutions, by labor organizations, or by bureaus of government."

"The alternatives have been clearly presented to the Bar. In its own field of service to the poor, legal aid has proved to be not the entering wedge for socialization but a great force adamantly holding back the pressure for socialization and abating the pressure by the extent to which Legal Aid Officers have been created, properly staffed, decently supported, and honestly maintained."²³ This latter statement should have equal application to results achieved and expected to be achieved by Lawyer Reference Plans.

There is every reason to believe that minimum benefits arising from adoption of the plan will include: more and better legal service for the public at large, better public relations for state and local bar associations, elimination of many widespread misconceptions regarding the legal profession and its members, and a retardation of any tendency toward governmental intervention in the lawyer's consecrated task of aiding in the administration of justice. As so forcefully expressed by Harold J. Gallagher, President of the American Bar Association, every lawyer should participate in "a great public crusade of the legal profession, which has for its goal the happiness and prosperity of all people."²⁴

REAL PROPERTY—EQUITABLE CHARGES—EFFECT OF DEED WHEREIN GRANTEE PROMISES TO PAY ANNUITY AND FURNISH MEAT TO GRANTOR
A North Dakota attorney was recently faced with a fact situation which presented a problem of increasing importance in view of the fact that grants of property of the type involved are becoming a relatively common occurrence. The deeds in question were in the regular warranty form, with no change in the granting clause or in the habendum clause as they ordinarily appear on the printed form, but contained the following wording:

²² Smith *supra* note 3, at 5, Fear that Britain will "socialize" its legal system has been declared groundless. Smith, *The English Legal Assistance Plan: Its Significance for American Legal Institutions*, 35 A. B. A. J. 453 (1949).

²³ Smith, *supra* note 3, at 51.

²⁴ Gallagher, *supra* note 4, at 26.