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Growth of Legal-Aid Work in the United States

A Study of Our Administration of Justice
Primarily as it Affects the Wage Earner
and of the Agencies Designed to Improve
His Position Before the Law

Revised edition

BY

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Bulletin No. 607

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1936

For sale by the Superintendent of Documents, Washington, D. C. - - - - Price 20 cents

PREFACE

The average American wage earner, in his personal affairs, is certainly not a litigant. As a rule, indeed, he is rather fearful of the law and its machinery. This is not because he distrusts the essential justice of the law or the fairness of the courts; it is due simply to the fact that the processes of law tend to be more costly than he can afford. As a result he often fails to secure the protection which, in theory, the law grants to all persons. At times this may be an actual calamity to the individual. Always, it is socially bad by fostering the idea that there is one law for the rich and another for the poor.

Take a concrete illustration from ordinary experience. A floating laborer is employed on a contracting job in a city or in a berry patch in the country. The job is completed in a week or two. The employer fails to meet his pay roll. What can the laborer do? He may have a perfectly good case, but he has no money to employ a lawyer. Also the procedure of suing and recovery takes time and he may be forced to leave the community immediately in the search for work.

In these and similar cases, more is needed than good statutes and a capable judiciary. There is also needed a system, whether under public or private auspices, whereby the worker can secure adequate legal assistance, which if not entirely free, will at least assure that legal fees and expenses will not amount to more than the recovered losses.

This report deals with the problem of legal assistance in its broad social aspects. It points out clearly just why our present machinery is often so ineffective in the securing of justice to those with small incomes. Still more important, it describes the various remedial measures which have been tried, and points out the most logical and practicable lines along which these measures may be made still more effective. The authors of the report are well equipped for their task, not only from the technical legal standpoint, but also because, over a period of years, they have given generously of their time and talents to the actual work of organizing a national legal-aid movement which is doing splendid work and has great possibilities for the future. The importance of this work and the part it plays in remedying some of the present deficiencies of the machinery of justice are set forth most forcibly in the introductory comments by Mr. Justice Roberts, of the United States Supreme Court.

June 1, 1936.

ISADOR LUBIN,
Commissioner of Labor Statistics.

INTRODUCTION

By OWEN J. ROBERTS, Justice of the United States Supreme Court

All thoughtful citizens will welcome this revision of the authors' original work, including more recent factual data and restating and enlarging the authors' conclusions therefrom. In his preface to the first edition, published in 1926 by the United States Bureau of Labor Statistics, Chief Justice Taft wrote:

The real practical blessing of our Bill of Rights is in its provisions for fixed procedure securing a fair hearing by independent courts to each individual. But if the individual in seeking to protect himself is without money to avail himself of such procedure, the Constitution and the procedure made inviolable by it do not practically work for the equal benefit of all. Something must be devised by which everyone, however lowly and however poor, however unable by his means to employ a lawyer and to pay court costs, shall be furnished the opportunity to set this fixed machinery of justice going.

Thus the Chief Justice stated a problem which no democracy may ignore. Our institutions and the spirit of our laws are inconsistent with the thought that poverty may bar the enforcement of any legal right or the redress of any legal wrong.

This comprehensive study tells an amazing story of progress toward the goal of equal justice for rich and poor. It sounds a call for sustained effort to spread the work of making justice available to the poor. This end naturally has attracted the interest of public-spirited citizens and governmental agencies, municipal, State, and Federal, and should have a special appeal to social workers, judges, and, above all, to lawyers. The latter, because of the dedication of their lives to the administration of justice, should, it seems, have a unique interest in legal-aid work and in the related problems of legislative and administrative reform. The legal profession, because of its place in the social order, owes an outstanding duty to the poor. The means of honoring the profession's obligation has not always been clear. This volume, however, shows the way. That way is the sponsorship, leadership, and support of legal-aid work, which is an essential auxiliary to the administration of justice. For the most part, the work has been carried forward by voluntary associations supported by private gifts and subscriptions rather than by public funds. An outstanding question with which this report deals is whether, in the future, the effort may be left to private initiative, subject, as it must be, to the limitations of personal philanthropy. It is pointed out that for many reasons the judiciary cannot adequately carry the burden of superintendence and administration.

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The growth of the organized bar throughout the country may provide an agency representative of the entire practicing body, to which larger powers may be granted and on which greater responsibilities may be laid in respect of the administration of justice. In addition to the problems of legal education, admission to the bar, discipline and disbarment, rules of practice and procedure, the duty of more perfectly adapting the administration of justice to the ideal of equality before the law may well be laid upon such a body. However speedily this corporate consciousness shall develop, the bar should now meet the obligation by financial and moral support, by active participation in the administrative problems of the work of legal aid and the public defender, and by the advocacy of the establishment of small-claims courts, the adoption of statutes adequately providing for actions in forma pauperis and the like.

Not the least interesting portion of the document is the summary of the cooperation of the law schools in legal-aid work. Outstanding examples are the legal-aid clinics established at the Law School of Southern California, Los Angeles, and at the Law School of Duke University, Durham, N. C. Of quite a different type, and much older, is the Harvard Legal Aid Bureau, which has been said to be one of the most valuable adjuncts of the law school.

The report makes it evident that legal-aid societies, publicly or privately sponsored, have justified their existence and are the best means of approach to the problem and the best hope for its solution. The mere statistics alone comprised in the report, covering, as they do, two decades which have embraced a great war and a great depression, bear testimony to the strength and stability of these organizations.

Although in 1883 there was but 1 such organization, and between 1883 and 1903 the number had grown only to 10, the record shows that in the 50 years, 1883 to 1933, inclusive, these instrumentalities handled approximately 3,900,000 cases and collected for clients in excess of \$13,500,000 and that, in 1933, 84 were functioning, serving a territory in which 39 million people live and dealing with over 300,000 clients per annum. It is no small thing to have obtained for these clients this vast sum in cases which involved an average of about \$15; but it is a much greater thing to have demonstrated to these nearly 4 million poor persons that there is an avenue through which they may obtain justice and to have removed from their minds the thought that the portals of the courts were closed to them by their poverty.

Whether he be a public-spirited citizen, a social worker, a student of the administration of justice, or a lawyer or judge, the reader cannot but be profoundly impressed by the splendid accomplishments of legal-aid organizations, their established place in the social order, and the prospect of further useful service attested by that which they have rendered in the past.

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Bulletin of the Bureau of Labor Statistics

Number 607

WASHINGTON

November 1935

Growth of Legal Aid Work In the United States

Chapter I.—The Wage Earner and the Law

To understand the obstacles which confront a wage earner when he seeks redress for a legal wrong or protection for a legal right through an appeal to the administration of justice, and to appreciate the difficulties which handicap our courts in their efforts to grant certain and speedy relief to the wage earner in common with all other citizens, it is first of all necessary to recall to mind the profound social and economic changes that have occurred in the conditions of American life. No other method of approach can define and explain our existing problems and set us on the road that may lead to their solution because no other method strikes deep enough to lay bare the fundamental causes.

The census figures indicate that whereas in 1800 there were 6.1 persons per square mile, by 1930 the density of population had increased to 41.3. In 1920 slightly over one-half—51.4 percent—of the population was urban; in 1930, 56.2 percent. The number of persons 10 years of age and over usually engaged in gainful occupations in 1920 was 41,600,000 and in 1930, 48,800,000.¹ At the same time the economic upheaval of 1929 had repercussions throughout the social order. The highly organized and industrialized society of 1929 struggled to provide employment for mounting millions of potential wage earners. The resources of industry and private philanthropy being insufficient for the purpose, the Government by a far-reaching legislative and administrative program endeavored to deal with the problem. The wage earner is the focus of much of this effort. This report gives the results of a study of how the

¹ United States Department of Commerce, Bureau of the Census, Fifteenth Census of the United States, 1930. Population, vol. 1: Number and distribution of the population. Washington, 1931, pp. 6, 8; and vol. 5: Occupations, general report. Washington, 1933, p. 10.

administration of justice may be brought into closer harmony with the peculiar needs of wage earners—the great constituent part of our citizenship.

In recent years much has been written concerning the law and its effect on the collective interests of wage earners. There is voluminous literature on the law of labor unions, collective bargaining, strikes, picketing, the closed shop, and injunctions, but little space and attention have been devoted to the law as it affects the individual claims and the individual rights of the wage earner and of his family in their everyday life. It is the purpose of the compilers of this report to exclude all consideration of the collective disputes of labor and to confine it to the legal problems of the individual laboring man or woman. However vital and important the larger topics may be, there have been moments in the lives of thousands of men when the collection of their overdue wages was the most important thing in the world, because it meant the difference between food and hunger. There have been similar moments in the lives of countless women when the collection of compensation for a husband's injury or death meant the difference between independence and destitution. At times our legal system has failed these plain, honest, humble folk in the hour of their need. This system will continue to function imperfectly until more people are awakened to an accurate understanding of the situation and are prepared to give their support to definite remedial measures that have been devised in the last 20 years, and that are already in successful operation in various parts of the country.

The outstanding characteristic of our American law is the spirit of fairness that pervades and permeates it. Our law is solicitous of the righteous claims of every man, be he rich or poor, and whether he be of high or low estate. Its ideal is to render exact justice to every person, whether citizen or alien, who lives within the jurisdiction of the United States. Insofar as the goal can be attained by stating clearly the ends to be sought through our legal system, that has already been done in our Federal and State constitutions in language that we cannot hope to improve upon. In its conception it is sublime: Justice is a matter of right, not of grace. No man shall be deprived of his life, liberty, or property without due process of law. Every man is entitled to the equal protection of the laws.

The history of these two great phrases has been summed up by Hannis Taylor in his book on "Due process of law and the equal protection of the laws", as follows:

Just as due process of law is a purely English creation, so the closely related principle now embodied in the formula, "the equal protection of the laws", is purely an American creation. It is the natural and inevitable ex-

pression of that sense of equality which is the undertone of our national life. In the words of Mr. Justice Brewer: "Equality in right, in protection, and in burden is the thought which has run through the life of this Nation and its constitutional enactments from the Declaration of Independence to the present hour." That equality never adequately secured before, either by constitutional guaranties or by the common law, was put for the first time upon a firm foundation by the addition at the end of section 1 of the fourteenth amendment of the clause declaring that no State shall "deny to any person within its jurisdiction the equal protection of the laws." Such is the final outcome of the struggle instituted in the reign of Henry II, who undertook not only to establish the reign of law but to reduce all orders of men to a state of legal equality before the same system of law. That kind of legal equality which neither the constitutional nor common law of the mother country was ever able to establish has appeared for the first time upon the soil of the New World.

When a Massachusetts statute attempted to grant relief in the court of equity to certain persons and to deny it to others, the supreme court of the Commonwealth declared that the act was unconstitutional, saying: "It is one thing to affect the scope of equity by extending or restricting it; it is a quite different matter to enact that some citizens may resort to it while others may not. Absolute equality before the law is a fundamental principle of our constitution."

The distinction between the legal rights of different classes had by the third century A. D. been deliberately set up by the Roman Government. William Stearns Davis tells us in his book, *The Influence of Wealth in Imperial Rome*:

When men stood before the judge, the first question would be: To what class do you belong? Are you one of the *honestiores*, a municipal official or ex-official, a great landowner—are you rich? Are you of the *humiliores*—a laborer, a small tradesman, an artisan, a petty farmer? In the latter case you can be beaten with rods, crucified, flung to the beasts, or suffer other cruel punishment; if you are rich, no matter how guilty you are, no such fate can befall you; the law will deal with you gently.

It is clear that the theory of American law is altogether sound and admirable and inquiry may now be made as to how far this theory has been translated into action. How far has actual equality before the law been secured? There is excellent reason to believe that in the earlier stages of our national development the administration of justice did secure actual equality to a very satisfactory extent. It is unnecessary to idealize the past, but it is true that the courts faced a far simpler task. The people of the United States were vigorous, self-reliant, and homogeneous; shrewd common sense had been inculcated into them by the very conditions of life, for they lived in small towns and in agricultural communities. Comparatively speaking, there was little litigation and little need of it. In the lower courts the litigant could, and often did, plead his own case. When a lawyer was needed one could be secured at

small expense or even for no fee, because nearly every man personally knew and was known by some lawyer in his community.

This much of past history is stressed only because it helps us to realize that whatever the shortcomings of our present administration of justice may be they are not inevitable nor are they inextricably interwoven into the texture of our legal institutions, but are rather the result of the tremendous forces that, beginning with the last quarter of the nineteenth century, have irrevocably altered the complexion and the conditions of American life. Those forces were immigration, the rapid rise of the wage-earning class, and the ever-increasing growth of urban population, all differing aspects of the central fact that our civilization was rapidly evolving from an agricultural to an industrial type.

"Our State systems of justice", writes Clarence N. Goodwin in the *Journal of the American Judicature Society* for 1932, "have been for more than half a century generally unsuited to modern conditions, and while we have in recent years made some progress toward improvement, justifying the hope that we shall ultimately succeed, we are yet far from completion of a rational program, and progress is unnecessarily and shamefully slow."

No one realized quickly enough that our rigid court organization with its too mechanical rules of procedure would be unable to cope with these new conditions and would, in fact, be swamped by the enormous mass of litigation inevitably engendered by those conditions. For the breakdown that followed, it is idle to blame any individual, group, or class. It has taken a large number of legal scholars many years of study and research to acquire a clear perception of the causes and the possible cures. In fact, it has been necessary to evolve a new conception of the duty of the administration of justice in a modern democratic urban community. The leader among these pioneering legal scholars has been Roscoe Pound, dean of the Harvard Law School, and his account of what has transpired may be accepted as an authoritative summary of the causes and events that produced the problem that today confronts us. In his book, *The Spirit of the Common Law*, he states:

To deal adequately with the civil litigation of a city, to enforce the mass of police regulations required by conditions of urban life, and to make the criminal law effective to secure social interests, we must obviate waste of judicial power, save time, and conserve effort. There was no need of this when our judicial system was framed. There is often little need of it in the country today. In the city the waste of time and money in doing things that are wholly unnecessary results in denial of justice.

A third problem of the administration of justice in the modern city is to make adequate provision for petty litigation, to provide for disposing quickly, inexpensively, and justly of the litigation of the poor, for the collection of debts

in a shifting population, and for the great volume of small controversies which a busy, crowded population, diversified in race and language necessarily engenders. It is here that the administration of justice touches immediately the greatest number of people. * * * The most real grievance of the mass of the people against American law has not been with respect to the rules of substantive law but rather with respect to the enforcing machinery which too often makes the best of rules nugatory in action. Municipal courts in some of our larger cities are beginning to relieve this situation. But taking the country as a whole, it is so obvious that we have almost ceased to remark it, that in petty causes—that is, with respect to the everyday rights and wrongs of the great majority of an urban community—the machinery whereby rights are secured practically defeats rights by making it impracticable to assert them when they are infringed.

Moreover, there is danger that in discouraging litigation we encourage wrongdoing, and it requires very little experience in the legal-aid societies in any of our cities to teach us that we have been doing that very thing. Of all peoples in the world we ought to have been the most solicitous for the rights of the poor, no matter how petty the causes in which they are to be vindicated. Unhappily, except as the organization of municipal courts in recent years has been bringing about a change, we have been callous to the just claims of this class of controversies.

To insure clarity and to provide an adequate background for what follows, it has been necessary in the foregoing pages to consider our basic legal ideas and something of our legal history; but the problem of making justice readily accessible to all, including the great army of our wage earners, is far more than an abstract legalistic controversy. It is a matter of life and death for a democracy because, in the words of Harlan F. Stone, formerly Attorney General of the United States and now a Justice of the Supreme Court, a democracy “cannot survive if it cannot find a way to make its administration of justice competent.” In similar vein Mr. Chief Justice Hughes says: “It is idle to speak of the blessings of liberty unless the poor enjoy the equal protection of the laws.” Lord Shaw, in his address to the American Bar Association in 1922, stated the point without quibble or evasion when he said: “That society is rotten where one citizen as against another can overpower him or undermine him by law wielded with an uneven hand. Only the blind, cruel, or the unjust in heart can wink the eye at this unnameable curse.”

In 1926 a committee consisting of the Lord Bishop of Manchester, the Bishop of Pella, the past president and honorary secretary of the National Council of Evangelical Free Churches, and a representative of the Society of Friends, writing in the foreword to F. C. G. Gurney-Champion's book, *Justice and the Poor in England* (1926), and speaking of the unequal position of the poor man in Great Britain before the law, say:

As Christians, we consider this position to be inexpressibly injurious, and inhuman; being, in fact, a festering sore in the body politic, having far-reaching

consequences; and being, moreover, contrary to the teaching of the Lord Jesus Christ.

A final quotation taken from an address by Judge Kimbrough Stone, of the United States Circuit Court of Appeals, will serve to indicate the logical starting point for a critical analysis of the exact nature of our present difficulty: "Civilization cannot exist without law. Law is useless unless actively effective." Granted that the fundamental principles of our law are sound, the question becomes, how far have we succeeded in making the provisions of law actively effective amid the stress and strain of modern life?

Chapter II.—Existing Difficulty

Our administration of justice often fails to secure actual justice in the case of the plain everyday citizen. This is not because we have too few courts or too few judges, or because the judges fail to work diligently and faithfully in the endeavor to decide fairly and honestly every case that comes before them. On the contrary, when a case actually gets before the judge we may be reasonably sure that justice will be done. The difficulty is that innumerable cases never come before the judge because the persons who need judicial aid find themselves unable to get their cases into court. This again is not due to the fact that we have too few laws. The consensus of opinion is that our fundamental trouble, the root difficulty of the situation, is that we have failed to make our laws actively effective.

The United States Bureau of Labor Statistics, in 1920, 1926, 1929, and 1933, made inquiry of the various State labor officials as to their experience and activities in the handling of wage claims of workers who considered themselves defrauded and appealed to these officials for help. Among the findings were the following:

There is in the United States very great loss to labor through the nonpayment of wages. Moreover, there are unquestionably many legitimate wage claims which are never pressed.¹

Although the amount of the average wage claims, about \$50, may seem small, the records of hardship and destitution following the workers' failure to collect their earnings include such tragedies as dispossession of lodgings, recourse to charity organizations, and even death.¹

There are comparatively few States having laws giving specific and adequate wage-collection power to some State agency. Some form of legislation regulating the payment of wages is fairly general throughout the United States, and some of these acts are so phrased as to allow the collection of wages by State officials. In several cases the officials report that they have assumed an authority not specifically covered by law or granted only by implication.

It is reasonable to infer that when an official bureau composed of skilled, intelligent men failed to collect a wage claim, the wage earner, if left to himself, would find the task impossible.

¹ United States Department of Labor. Bureau of Labor Statistics. Monthly Labor Review. Washington, June 1927, p. 19.

² United States Department of Labor. Bureau of Labor Statistics. Monthly Labor Review. Washington, October 1933, p. 776.

The American Bar Association's committee on legal-aid work reported in 1927 to the association:

Among the cases with which poor persons are concerned, wage claims are preeminent. The ordinary civil processes for collecting wages are often inadequate.

The Monthly Labor Review for June 1927, published by the Bureau of Labor Statistics, United States Department of Labor, states: "The defrauding of wage earners through the failure of employers to pay the promised wages continues to be a widespread and serious evil."

In the field of personal injuries—a matter of vital interest to wage earners—it must be admitted that the old master and servant law, even if it had been properly enforced, was utterly inadequate. In a decision written by Justice Winslow, of the Supreme Court of Wisconsin, the situation has been given its classic exposition:

In the days of manual labor, the small shop with few employees, and the stage coach, there was no such problem, or, if there was, it was almost negligible. There was no army of injured and dying, with constantly swelling ranks marching with halting step and dimming eyes to the great hereafter. This is what we have with us now, thanks to the wonderful material progress of our age, and this is what we shall have with us for many a day to come. Legislate as we may in the line of stringent requirements for safety devices or the abolition of employers' common-law defenses, the army of the injured will still increase, and the price of our manufacturing greatness will still have to be paid in human blood and tears. To speak of the common-law personal injury action as a remedy for this problem is to jest with serious subjects, to give a stone to one who asks for bread.

The Pittsburgh survey (1907–8) revealed that out of 355 cases of married men killed in accidents 89 dependent families received nothing, 113 received \$100 or less, and 61 received between \$100 and \$500. Since that time workmen's compensation legislation has been enacted in 46 States, and the antiquated theory of liability for fault gave way to the modern and more humane principle of insurance for all work accidents. The lasting success of the compensation acts, however, lies in the fact that they provided new methods of making the law actively effective by tearing down, as we shall see later in chapter IX, those procedural obstacles that prevent an efficient administration of justice.

Despite an era of prolific legislation, no such drastic overhauling has been found necessary in any other department of the substantive law, and, in the judgment of the authors of this report, the statement seems warranted that, certainly within the domain of the law regulating civil rights and obligations, no radical changes are needed. The huge majority of our citizens do not become involved with the criminal law. Throughout their lives it is the civil law on which they must rely for the protection of their rights and the enforcement of their claims. The title to a man's home, the rights

and obligations under a lease, the power to withdraw money deposited in a savings bank, the collection of wages, claims for industrial accidents, the enforcement of insurance contracts, divorce and judicial separation, the custody of children, the right to have property pass on a man's death to his heirs or according to his will—all these are matters governed by the civil as distinguished from the criminal law.

To make these laws actively effective, the State quite naturally and properly relies on the self-interest and initiative of the individual. The theory is that when he is wronged or aggrieved he will promptly bring the matter to the attention of the proper court; thus, the State has notice, and it will compel the defendant to appear before the same court and stand trial. This is sound theory, but it is precisely at this point that the whole plan may break down completely.

What if a citizen for any reason cannot bring his wrong to the attention of the courts? Then the State knows nothing about it, the law is utterly inactive, and the defendant is immune from a legal judgment against him. Unless the law can be enforced through the court it fails to work and is of no help whatsoever. That is why the machinery of justice is of such vital concern. The machinery of justice, designed to be only the servant of the law to insure swift compliance with its orders, is in a sense the master of the law because, whenever it fails to operate, it can and does prevent the law from ever reaching the suitor who needs its aid and protection.

The machinery of justice is necessarily extensive and it cannot be described in detail here. Its essentials, however, are these: It prescribes the form of action which can be brought in any given case, the court in which the case must be heard, and the time when cases may be entered. It regulates the court fees and costs for the entry of the case and for subsequent proceedings. It fixes the form and manner of service of legal process on the defendant, and specifies when and how he must answer. It controls every successive stage of the case until it comes before the court for trial. At the trial it regulates the order of procedure, it lays down rules of evidence, and regulates the way in which points may be reserved for an appeal. After judgment has been rendered it prescribes minutely how the sheriff may collect the judgment out of the defendant's property and it provides various kinds of supplementary proceedings designed to enforce the judgment or order of the court.

It is the machinery of justice that gives life to the law. It is the administration of justice that makes the laws actively effective. Consequently if the laws are to afford their equal protection to all persons in a modern community the machinery of justice must be

readily accessible to all, must be easily workable by all, and must be swift in its operation.

Our present difficulty arises because we have not yet refitted our whole system to meet the new demands of our urban populations. Entirely too many citizens find in actual experience that access to the courts is difficult, that the procedural machinery is complicated beyond any hope of their understanding and utilizing it, and that the legal system moves so slowly in their behalf that no prompt and summary relief can be obtained. Our immigrant population, burdened by the added handicap of unfamiliarity with our language, fares even worse. This particular aspect of our problem need not be elaborated here, because it has already been fully presented by Kate Holladay Claghorn in her book, *The Immigrant's Day in Court*.

Of the three factors which impede the even course of justice when its protection is sought by a wage earner or by any person of small means, the first is delay. In H. D. Mims' article, *Law Courts for the Forgotten Man*, which appeared in the June 1934 issue of *The Forum*, he makes the following statement:

To the man without means justice is a luxury, the entrance fees of the courts prohibitive. * * * The delay complicates his problem. With * * * small claims time is of the essence. * * * If the owner of such a claim must wait a year or even a month for the court to reach his case and then longer still to collect his judgment, the law is of little value to him.

Similarly, the late President Woodrow Wilson stated:

The speediness of justice, the inexpensiveness of justice, the ready access of justice is the greater part of justice itself.

The second factor is the expense involved in the payment of court costs and fees. The third factor is the necessity of employing lawyers in most cases if the suitor is to have any chance whatsoever to succeed. These are the three contributing causes of our present problem. The next step is to analyze them in detail so as to understand their exact nature and thus find out how far and in what ways their disturbing effect on the administration of justice may be eliminated or overcome.

Chapter III.—Delays in Legal Procedure

In all discussions of legal reform the evil of delay is emphasized. It has become an axiom that justice delayed is justice denied. President Franklin D. Roosevelt, speaking in 1932, has given it clear expression:

So long as years of delay are assured by the condition of the calendars of the courts, this delay itself will be used to threaten those who have rightful claims. Such delays constitute actual denials of justice. On the other hand, those defendants who have legitimate defenses are threatened with long and irritating legal processes.

Public attention has been focused on this factor in our problem, and excellent studies into its nature, extent, and results have been made. Robert H. Jackson, addressing the New York State Bar Association in 1933, said, among other things:

It is a general observation of press and laymen that our courts are from 1 to 4 years behind in their work and that justice is denied by unreasonable delays. The door of the court is always legally open, but the doorway is impassable because jammed with long-suffering suitors.

Mr. Jackson illustrated his remarks by referring to cases in New York State, in substance, as follows: Of the cases disposed of by trial in the New York Supreme Court in 1930-31, 1 percent were 5 to 6 years old; 4 percent, 4 to 5 years old; 13 percent, 3 to 4 years old; 17 percent, 2 to 3 years old. Eighty-four percent of the trials took place more than a year after the case was placed on the calendar.

An editorial in the Saturday Evening Post for February 1934 makes the following comment:

* * * the city court in Brooklyn has more than 22,000 cases awaiting trial * * * the city court of Manhattan is some 9,000 cases behind; and the supreme court, in New York County, has 14,000 cases on its docket. In the city of New York it takes anywhere from 3 to 5 years for a citizen to get his case before a jury.

The same condition exists in many other States.

Delay begets delay. Like compounding interest it is cumulative, and the evil, once in existence, tends to aggravate itself. That the effect of delay in the cases of wage earners is to rob them of any real relief is obvious. E. H. Downey, of the Pennsylvania Insurance Department, in his report on the Ohio State Workmen's Insurance Fund (printed in Monthly Labor Review, October 1919, pp. 248-

264), is dealing especially with compensation cases, but his words apply equally well to delays in all types of litigation:

Few workmen have such surplus of income that they can afford to wait weeks or months for the commencement of compensation. When the weekly pay check stops, destitution is never far away.

The tragic result is that persons of small means, knowing that they cannot afford the delay, simply do not bring their cases to the courts at all. They have to accept the injustice done them and suffer in silence. This is peculiarly true of the part of the wage-earning class recruited by immigration. The bulletin of the Foreign Language Information Service for August 1922 makes the matter clear:

Even the most casual observer of immigrant experiences must frequently have noted the victimizing of the newcomers by unscrupulous promoters, land agents, loan sharks, money changers, and notaries. It is difficult and often impossible to obtain legal redress in these cases: First, because of the immigrant's helplessness in knowing what to do or to whom to go; second, because the process of the law is so slow and involves so much time and effort that the victim usually drops the matter in despair.

Much can be done, much has already been done, to eliminate the factor of delay. Judge Morton, of the United States District Court for Massachusetts, has estimated "that 50 percent of the law's delay is caused by appellate proceedings." Certainly that is true in all States where every small case can be appealed, and thus be tried twice as a matter of right. The system of having a case tried before an inferior or justice's court and then permitting either side to appeal to a higher court, in which the case is tried all over again, has long been a curse in American court organization and is a prolific source of delay. Double trials on the facts were abolished throughout Massachusetts for the reason stated by the Massachusetts Judicature Commission in its 1921 report:

Trying small cases twice, maintaining courts for the conduct of ineffective trials, is merely consuming all time and money of parties and witnesses, many of whom can ill afford the loss and delay involved in two trials.

A special committee of the National Economic League on Efficiency in the Administration of Justice, writing in 1928, reports:

Our procedure at law involves too many trials and too much retrial. So far as possible, all questions of fact should be disposed of finally upon one trial.

If the decision of the lower court is to be final, then the character of that court must command public respect. The modern type of municipal court—for example, those now established in Boston, Chicago, Cleveland, Minneapolis, New York, and Philadelphia—marks a tremendous advance over anything that preceded it. It is the consensus of opinion that delays in the higher courts can best

be lessened by a centralized or unified form of court organization and by vesting in the courts the power to control their own machinery through their own rules. Later chapters will point out special methods that can be used to reduce to a minimum the delay in certain classes of cases of especial importance to wage earners. Here we are concerned chiefly with explaining delay as a factor in our problem and with pointing out its baneful effects.

Because the factor of delay is in the foreground of public discussion there is good reason to hope that reforms aimed to rid the machinery of justice of undue delay will make steady progress. This emphasis on delay has tended to distract general attention from any thorough consideration of court costs and of the necessity for employing counsel. Certainly these two factors cause as much trouble as delays, and from the point of view of the wage earner they constitute even greater obstacles in his search for legal justice. It is fitting, therefore, that this report should deal with them explicitly and at some length so that public opinion may be brought to a clearer realization of their serious importance.

Chapter IV.—Court Costs and Fees in Litigation

From the earliest times the payment of money in the form of court fees has been a condition precedent to the right to bring a case into court. And, throughout the history of English-American law, court costs and fees when applied to the cases of poor persons have constituted a formidable legalized obstacle in the path of justice. Too often they have proved insurmountable and the unfortunate suitor has found his access to the courts as completely and irrevocably barred as though the doors of the courthouse itself had been locked against him. Yet not until 1923 was any thorough and scholarly study of the subject made. In February of that year the Harvard Law Review published Prof. John M. Maguire's notable article entitled *Poverty and Civil Litigation*, which has since been reprinted in various American and English periodicals and is now accepted as the standard exposition of this second factor in our problem. The history of court costs and fees and of the many unsuccessful attempts to eliminate or circumscribe them insofar as they were directly causing denials of justice is there related, and the reader who desires the story in greater detail than the space of this report permits is referred to that treatise.

The term "fees" in a technical sense is used to describe the fixed charge which each litigant must pay upon beginning his suit. "Costs" on the other hand depend upon the duration and complexity of each individual suit. For purposes of this report it seems sufficient to use the words interchangeably in the sense of expenses which the litigant must bear and pay to the court or its officers.

In all cases, unless exempted by statute, the litigant must pay court fees. Ordinarily the losing party pays the court costs. In some States the statute by requiring that the plaintiff post a bond to cover the possible costs of the suit in advance of starting the proceeding, adds much to the obstacle where the litigant has only limited means.

There are two classic cases illustrating the fate of the man who cannot pay the imposts fixed by the State as the price of justice. Early in the nineteenth century England was shocked out of its indifference to the problem of costs by the case of a laboring man named Hall whose wife, Mary Ann, robbed him and then left him to live with another man. Hall could not pay the fees required to obtain a divorce. He lived with another woman as his wife and was thereupon convicted of bigamy. He came before Justice Maule for sentence and the following remarkable colloquy took place.

Hall remarked that he had been hardly used. "No doubt", replied the judge, "but such is the law. The law in fact is the same to you as it is to the rich man; it is the same to the low and poor as it is to the mighty and rich, and through it alone can you obtain effectual relief, and what the rich man would have done you should have done."

"But I had no money, my Lord", exclaimed Hall.

"Hold your tongue", rejoined the judge. "Yes, Hall; you should have brought an action and obtained damages, which the other side probably would not have been able to pay, in which case you would have had to pay your own costs, perhaps £150. But even then you must not have married again. You should have gone to the ecclesiastical court and then to the House of Lords. It is very true, Hall, you might say, 'Where is all the money to come from to pay for all this?' And certainly that was a serious question as the expenses might amount to five or six hundred pounds while you had not as many pence."

"As I hope to be saved, I have not a penny, I am only a poor man", said Hall, and then he received his sentence of 3 months.

On page 174 of the eleventh volume of the Encyclopedia of Law and Procedure it is stated that under the statutes of certain States if a plaintiff is apparently too poor to be able to pay any costs that may be assessed against him he may be required to furnish security for costs. If, being poor, he cannot furnish security, what then? Such was the position of one Campbell, and his case was accordingly dismissed. He appealed and learned from the decision, which is reported in volume 23 of the Wisconsin Reports at page 490, that—

We have no statute which permits a person to sue in forma pauperis. It seems almost like a hardship that a poor person should not be allowed to litigate. But this is a matter for the legislature to regulate, and not the justice.

Why American legislatures have paid so little attention to court costs it is difficult to understand unless the answer be that the matter has never been adequately presented to them. Certainly our record is as bad as that of any civilized nation in the world. The countries of Europe and Scotland have for many years had a definite procedure whereby poor persons could bring their claims into court. England, Japan, and now Poland, have made similar provision. Professor Maguire found in 1923 that over one-third of our States gave no relief at all of this kind to poor litigants and that in the remaining States the provisions were only partially adequate. He concludes:

It is hard to discern in any of our existing laws even the foundations of a comprehensive and effective plan for bringing justice within the reach of all. We should lose little and gain much if we stripped away most of our fragmentary in forma pauperis law.

Our failure to grasp and to deal adequately with this problem has undoubtedly caused innumerable cases of hardship and too many cases of downright injustice. Judge Clayton, of the United States District Court for Alabama, states in the Journal of the American Bar Association for January 1922:

One of the complaints against the administration of justice is the expense that the State levies in the form of court costs and fees, which often serve to prevent access to the court. Especially is this true in the justice court, courts of common pleas, and the like, in some of the States. In many of these courts, courts with which the poorer class of our citizens come in contact, the costs in some cases are so excessive as to practically amount to a denial of justice.

Since 1923 the legal aid organizations in the United States have kept a record of those cases in which the applicant was unable to proceed with his case because of lack of funds to defray the expenses of litigation. The following table represents a minimum statement for the years indicated.

Year:	<i>Number of Cases</i>	Year:	<i>Number of Cases</i>
1924 -----	54	1929 -----	56
1925 -----	53	1930 -----	72
1926 -----	72	1931 -----	166
1927 -----	37	1932 -----	247
1928 -----	43	1933 -----	715

So serious has this situation appeared that the National Association of Legal Aid Organizations, in setting up a series of standards by which to determine the effectiveness of a legal-aid organization, has adopted the following:

Every legal-aid organization should maintain a fund or provide a means whereby legal expenses may be available when necessary.

There is a further standard adopted which provides:

Every legal-aid organization should take appeals to right palpable miscarriages of justice or to establish useful principles when the costs can be obtained.

These standards adopted in 1933 indicate that the problem is far from a theoretical one.

Kenneth Dayton, writing in *The Annals of the American Academy of Political and Social Science* in May 1933, speaking of the New York situation, says:

The poor man, suing to recover \$50 in wages, pays three-quarters of the expense of the court maintained for his benefit; the wealthier litigant in the higher courts pays roughly a tenth. But of course the discrepancy is much greater than this, because the poor man pays precisely the same fees in the municipal court for a \$50 claim as a corporation for a \$1,000 claim, and with no distinction whether the claim is disposed of in 15 minutes or 2 days. Hence, proportionately, the poorest litigant probably pays substantially over 100 percent of the cost of handling his case, though he is least able to bear the expense.

It is impossible to present any statement of our present system of court costs, because there is no system. They vary from State to State; within a State they are utterly different in different courts, and in the same court the fees in an equity case are not the same as in a law case. No legal student, so far as we know, has ever attempted to explain the present American hodge-podge of costs and fees. Probably it would be a profitless task because such an exposition would only prove that utter chaos prevails and that we already know. Judge Andrew A. Bruce's book, entitled *The American Judge* contains an illuminating section on *The Cost of Litigation*. The views expressed in this chapter find support in his conclusion that—

These excessive costs and these unnecessary delays close our courts to the average citizen. The best antidote for anarchism is to implant in the minds of all the belief that at the great bar of the law all are equally favored and that poverty in America does not stand in the way of complete justice.

Poverty today does stand in the way of complete justice, and it will continue to do so until public opinion forces a radical overhauling of our archaic system of court costs and fees. However great the muddle we are in, the way out is reasonably clear.

First of all it would be well to abolish those costs which are purely fictitious, which are imposed by the State but bear no real relation to any service rendered by the State, and which when collected do not even go to the State but belong to the party that prevailed in the litigation.

Arthur L. Goodhart, in an article in the *Yale Law Journal* for May 1929, says:

Apart from purely historical reasons, the American rules as to costs may also be due in part to a vague feeling that they favor the poor man, and are therefore democratic, while the English system helps the wealthy litigant. The argument is that by imposing a liability for costs upon the losing party a poor man "might often become a prey of a dishonest adversary from sheer want of funds to protect his rights." This view is due to a confusion between costs and fees. It is obvious that if the court fees are large, then a plaintiff, who cannot afford to pay them, will necessarily be prevented from seeking the assistance of the law, for the fees must be paid before the action is commenced * * *. It is only where the law requires that a plaintiff, before commencing an action, shall give security for costs that the poor man is at a disadvantage. Strange to say, it is not in England but in some of the States, that this unfortunate provision exists.

Expenses can be substantially reduced. The modern municipal courts have succeeded in reducing fees very substantially. Instead of serving process by constables or by sheriffs at a cost of \$1 to \$5, the defendant can be summoned by United States mail, a method that

has been successfully employed by the Cleveland municipal court for nearly two decades.

The State is perfectly justified in asking litigants to contribute something toward the expense of the administration of justice. No one, however, has contended that the full burden of maintaining the courts should be thrust on the litigants. The State exists primarily to establish justice among its citizens. How low a tariff it should impose is essentially a matter of public policy and not a matter of revenue. Even if costs were substantially lowered, there would still be many cases of persons too poor to pay them, and there would be clear instances where no fees at all ought to be paid. A deserted wife turns to the State for legal relief against her husband generally with great reluctance and only when her funds are entirely exhausted, and it is morally wrong and socially unwise to present her, first of all, with a bill of costs. After the World War every effort was made to return the personal effects of soldiers who had been killed to relatives or to other persons in accordance with the soldier's expressed wish. In a report dealing with the carrying out of this humane plan this sentence occurs:

It frequently happens that it is advisable to recommend application for letters of administration; but this can be made only in jurisdictions free from vexatious delays, where the fees are little or nothing; in some States the laws are inflexible and the fees prohibitive.

As a last resort there is only one method that can guarantee to every man, irrespective of his poverty, his day in court, and that is by the enactment in every State of a comprehensive *in forma pauperis* procedure. By this is meant a law, applicable to every case in every court, under which the court may, in suitable instances and for cause shown, permit a man to file his case and have his trial without any requirement for the prepayment of any costs.

While the general scope and purpose of such a proceeding is perfectly clear, the experience in England ever since 1495 proves that any attempt to extend this relief will come to grief unless the statute is drawn with infinite pains. Recognizing that there was no model act in America, and being satisfied that a careful effort should be made to prepare one, the legal aid committee of the American Bar Association in 1924 prepared a draft of such an act. There was widespread discussion of the subject and in 1925 a second draft appeared. This is the most effective statement of the subject to date, and while we have no information leading us to believe that it has made headway with the State legislatures, except in Oregon, we believe that it is sufficiently important to be reprinted in full in this report. (See appendix A.) The explanatory notes following many of the sections make it unnecessary for us to comment further upon the subject.

The factor of court costs can undoubtedly be overcome through a proper *in forma pauperis* proceeding. The following statement is taken from the October 1931 issue of *The Consensus* entitled *A Program for Legal Reform in the United States*:

For years there has been no question that the delay and expense of litigation in New York was a serious burden on the litigant and on the public. Studies conducted by the Institute of Law of Johns Hopkins University show that in the Supreme Court it takes 2 years to reach a jury case for trial; in the city court 3 years for cases on the general calendar; and in the municipal court, which deals with claims for less than \$1,000, 13 months for cases in the central jury part. Many defendants file answers which have no merit at all simply to secure the benefit of this delay. The Institute reports that the average collection by plaintiffs in cases in the municipal court which go to trial is \$201, and the average out-of-pocket expense for the plaintiff is \$67 and that for the defendant \$73, or a total exceeding two-thirds of the amount recovered. This takes no account, of course, of the indirect expense due to the loss of time of parties and witnesses, disruption of business, and so on. Another study by the Institute of Law indicates that in the Supreme Court in New York County less than 7 percent of the amount of judgments entered are ever collected by the successful parties. No comment is needed on such figures.

To enable any *in forma pauperis* proceeding to accomplish fully its avowed purpose three difficulties must be overcome. In the first place, this special grant of assistance by the State is designed only for the benefit of honest persons with honest claims. It must not become the tool of unscrupulous persons with claims that are dubious or worse. Some preliminary sifting must be done, the fact of poverty must be proved, and the applicant must demonstrate that his suit is reasonable enough to take up the time of a court. To throw the burden of this preliminary investigation onto the already overburdened courts would be disastrous. Some auxiliary administrative method must be utilized, and for that the above-mentioned draft statute provides.

In the second place, there are certain expenses attendant on litigation which cannot be eliminated. So long as legal process is served by sheriffs who depend for their livelihood on their fees, those fees must be paid by the litigants or else the State must assume the burden, as has been done in some jurisdictions by placing the sheriff on a definite salary basis. The witness who is summoned to court to testify loses his day's work and it is only right that he should be recompensed. No progress is made by helping a poor litigant at the expense of a witness who may be equally poor or poorer. The stenographer who takes the record of his testimony (which is essential if an appeal is in contemplation) works hard, earns what he is paid, and cannot be expected to labor for nothing. In Louisiana the State may provide free stenography; elsewhere, we believe, the litigants must themselves pay the cost. The position of the printer who prints the record for the appeal is the same as that of the ste-

nographer. It is clear that the man of limited means must either try his case as best he can without incurring any of these expenses or else the State must, directly or indirectly, pay the bills for him. In the past this idea has met a cold reception because it seemed an open invitation to raid the public treasury. A proper *in forma pauperis* procedure would make that impossible, because State aid, as provided in section 14 of the draft statute, could be had only in approved cases and under suitable restrictions. In only a few cases, chiefly test cases, would stenographic and printing bills be incurred. Once it can be made clear that the actual expense to the State would be small, progress may become possible. The average annual cost of our State administration of justice is less than 18 cents for each inhabitant. State aid as above outlined would not increase this cost by the hundredth part of a cent.

When we remember that the fundamental purpose for which the administration of justice exists is to guarantee the equal protection of the laws to all persons, not merely those men who can pay the price, but all persons, it would seem worth while for the State to incur a moderate expense in order to achieve its own ideal.

Heretofore in this chapter we have been discussing in *in forma pauperis* procedure largely on the theory that justice will be done if the litigant can get his case into the trial court. We should not deceive ourselves on this subject. The principle of equal justice to all requires that the same opportunities for appeal be open to rich and poor alike. A law review comment appearing in the *Southern California Law Review* for April 1931, in addition to containing a very full statement of the authorities, has these comments to make:

However general the right may be to sue in the first instance in *in forma pauperis*, the right to appeal in such form is limited to those jurisdictions where it is authorized expressly by statutory provision, and statutes granting such right have been construed very strictly. The Federal statute of 1892 allowed proceedings in *in forma pauperis* in general terms, but the Supreme Court would not apply it to appeals. Doubtless as a result of this construction, the statute was amended in 1910 so that it now covers appeals. Several other jurisdictions have similar definite statutes, while some have indefinite statutory provisions, and many have none. In jurisdictions where there are no statutory provisions, the denial of the right to appeal in *in forma pauperis* is predicated upon the reasoning that all appeals are statutory and, since the right to appeal was not adopted with the common law, the right to appeal in *in forma pauperis* could not have been derived from that source.

The study made in 1927 by the League of Nations entitled *Legal Aid for the Poor*, demonstrates clearly that the United States is perhaps the only Nation which has not given adequate consideration to this important problem.

It is to be regretted that less progress has been made in developing an adequate remedy for the problem of court costs and fees than

in the case either of delay or expense of counsel. Outside of two or three articles, the legislative experiments of the American Bar Association through its legal aid committee and the steps taken by the National Association of Legal Aid Organizations, the years from 1926 to date show small evidence of interest by the public or legal profession. The problem of finding a remedy for the expense of court procedure is difficult because the problem is ordinarily not a dramatic one. There is a widespread apathy on the part of the public concerning the troubles ordinary men may have in asserting legal rights. The plight of the man who has a legal right but does not have the money to enforce it is frequently lost sight of. In consequence, the sense of frustration in the mind of the individual is deepened, the crafty person is free to continue unmolested his career of trickery, and the substantive law as developed by the courts tends to become limited to those cases where large amounts of property are involved.

The third and last requirement for the successful operation of any adequate *in forma pauperis* proceeding is that somehow provision must be made so that whenever necessary the impecunious litigant may secure the services of an attorney to advise him and to conduct his case. Indeed, without such provision, everything else is in vain. To enable a man to get into court and then to expect him to conduct his own case without help and without representation would be no more sensible than to put a boy in the cab of a locomotive and to expect him to drive the train safely to its destination. And the reason is the same. The law is necessarily a complex piece of mechanism and it can be operated only by those specially trained persons who devote their lives to an understanding of it. How to include the services of lawyers as a part of *in forma pauperis* procedure is only one aspect of the larger problem of how to secure the services of lawyers for poor persons generally. This is the subject of the next chapter and the attempt to answer our immediate question must be deferred until we have examined the problem as a whole and have obtained a clearer realization of the part that lawyers take in the actual administration of justice.

Chapter V.—Necessity for Employing Attorneys

The preceding chapters show that the wage earner has difficulty in obtaining the equal protection of the laws, not because of any partiality in the laws themselves or in the courts that enforce the laws, but because of serious flaws in the machinery of justice. As already pointed out, the failure to readapt our administration of justice rapidly enough to the changed and novel conditions of our modern urban industrial life has resulted in a break-down that is specifically attributable to three factors, of which the first two—delays and court costs and fees incidental to litigation—have been considered.

The third factor—the necessity for the employment of an attorney whenever a litigant wishes to understand what his rights are and how to enforce them through appropriate legal proceedings—is quite commonly overlooked altogether or when not overlooked it is generally misunderstood. No progress can be made until the strategic position of the lawyer in the administration of justice is clearly perceived, and no worthwhile reform can be planned that does not take this factor into full account. Indeed, those legal scholars who have devoted their attention to the general problem of improving the position of persons of limited means before the law are of the opinion that the necessity for securing to such persons the services of competent attorneys is the most important and the most difficult part of our task.

W. F. Willoughby, in his book, *Principles of Judicial Administration* (1929), in discussing the need for improvements in the administration of justice, says:

A third category of expense involved in the conduct of litigation is that of the payment for services of counsel. Four methods have been developed for meeting this expense: (1) Elimination, as far as possible, of the need for counsel; (2) assignment by a court of counsel to act without compensation or for such compensation as the litigant may voluntarily offer; (3) provision by the government of counsel to care for the interests of those unable to meet the expense of employing private counsel; and (4) provision of counsel by private organizations specially created to render this service.

So much attention would not be given to the subject were it not of paramount importance.

Procedural reform may speed up the judicial machinery and thus eliminate delays; court costs can easily be abolished in part, reduced in part, and prevented from working injustice by the provision of an adequate *in forma pauperis* procedure. Though all this is ac-

complished, the wage earner, in common with every other citizen, will need the assistance of an attorney in most of the legal matters that arise in the course of his life.

When it is said that the expense of engaging lawyers places a serious handicap on the less well-to-do members of the community the unthinking reply is apt to be, "then let's abolish the lawyers." This has been attempted at various times in the world's history and it has always failed. It was attempted in our own colonial era and the experiment was disastrous. After the revolution in Russia a determined effort was made to destroy the bar as a privileged class, but it instantly appeared that the legal business of the country could not be operated without attorneys. The abolition of lawyers would paralyze our administration of justice as completely as the abolition of all judges, for as Justice Miller, of the Supreme Court of the United States, wrote in the case of *Ex parte Garland*:

It is believed that no civilized nation of modern times has been without a class of men intimately connected with the court and with the administration of justice, called attorneys, counsellors, and other terms of similar import. They are as essential to the successful workings of the court as the clerks, sheriffs, and marshals, and perhaps as the judges themselves, since no instance is known of a court of law without a bar.

The reason for this is simple enough. It is like attempting to abolish doctors, engineers, and architects. The erection of a modern building is a complicated matter; its planning calls for a high degree of special skill and the few men who have mastered that skill we call architects. To construct railroads or to build subways presents complicated technical engineering problems that the average man would be utterly unable to solve, and civilization requires the services of mechanical and civil engineers. Human life daily becomes more intricate; day by day every man finds himself involved in closer relationships with, and more dependent upon, the fellow members of his community. The law which seeks to regulate this life and its manifold relationships steadily becomes greater in its scope and more complicated in its provisions.

No one knows how many laws and decisions of courts there are in the United States today. F. A. Eldean, in his book *How to Find the Law*, says:

Today the courts of last resort in the country are handing down about 25,000 decisions annually.

According to a study, *The Cost of Legislation*, by the Department of Legislative Research and Drafting of Duke University in 1934, the total number of bills passed by State legislatures during one regular session of each such legislative body between the years 1932-33 was 20,202.

The situation is summed up in the following statement by Edwin Bolte in his book *Ethics for Success at the Bar* :

The law is divided into seven divisions. These 7 divisions are divided into some 400 titles. These 400 titles are divided into some 470,000 propositions; these 470,000 propositions are supported by some 1,800,000 decisions of courts with an average of 30,000 decisions being added to this supply every year. To this confusing abundance of sources of the law, we add some 250,000 ever-changing statutes. God forbid that anyone should even undertake to read all the law, not to mention learning all of it.

The difficulty of understanding the law even for the legal profession became so great that some 13 years ago a group of eminent lawyers and judges formed the American Law Institute for the sole purpose of restating and simplifying the substantive rules. This organization meets annually in Washington to discuss the labors of a large staff of experts who are engaged in coping with the technical details. Even in the hands of experts the restatements of the law in any particular field must be gone over again and again before the wording of a single rule is agreed upon.

The intricacy of modern law and the necessity of having an attorney who is an expert in a particular field of law is made dramatic by the case of *Bountiful Brick Co. against Giles* which was finally decided by the Supreme Court of the United States in 48 Supreme Court Reporter 221 (1928).

On June 17, 1925, Nephi Giles, an employee of the brick company, while crossing the tracks of an electric railroad company on his way to work, was struck by a train and killed. The yard of the brick company is on the west side of the railway tracks immediately adjacent thereto. Giles resided on the easterly side of the tracks. In going to work it was impossible for him to avoid crossing the railroad tracks. There was a public crossing about 200 yards south of the brick yard. Some of the employees were in the habit of crossing the tracks directly opposite the brick yard. Giles, on his way to work, started to cross directly opposite the brick yard, and was run over.

After his death his widow presented the claim before the Utah Industrial Commission where the issue was joined on the point as to whether or not the deceased was "in the course of employment" at the time he was crossing the tracks. The point is a difficult one and the facts of this case made it a border-line problem and not a matter in which the law was obviously either one way or the other.

The Industrial Commission of Utah awarded her compensation. The defendant appealed. The widow being in destitute circumstances was unable to retain counsel to represent her before the Supreme Court of Utah. It happened that there is a Legal Aid Society in Salt Lake City and the aid of this organization was enlisted.

The result was that the Supreme Court of Utah in 1926 in 251 Pacific, page 555, affirmed the award in favor of the widow. The defendant again appealed, this time to the Supreme Court of the United States, 2,000 miles away in Washington. The constitutional question was whether the Utah Compensation Act contravened the due process of law clause of the fourteenth amendment to the Federal Constitution. The widow again was absolutely without funds to retain counsel at a distance, nor did she know any lawyer who might have been willing to help her without compensation. It happened, however, that one of the members of the Industrial Commission of Utah had attended, a year or so previously, a meeting of the International Association of Industrial Accident Boards and Commissions. At that meeting a member of the staff of the Boston Legal Aid Society who specialized in workmen's compensation cases had addressed the convention on the relationship between the work of the Legal Aid Society and the workmen's compensation boards of the country. The Utah commissioner believed that he could interest this representative of the Boston Legal Aid Society, and consequently a telegram was sent him. The Boston attorney responded by taking the first train to Washington. There the papers which were forwarded from Utah met him. He obtained special leave to file his brief although the regular time for filing it had expired. He labored for 3 days and nights unceasingly in the preparation of his argument and then presented the matter before the Supreme Court. On February 20, 1928, nearly 3 years after the accident the Supreme Court of the United States sustained the widow's claim.

It is obvious that for the widow's rights to be protected in this case a number of factors were necessary. There had to be a local lawyer to handle the case. There had to be an expert to present the matter to the Supreme Court of the United States. There had to be a correlation between the two based on a sympathetic understanding of the problem and a high degree of professional zeal. The mere statement of the difficulties in the way of accomplishing these results indicate by what a slender thread the plaintiff's rights hung. If the lawyer had not been present no one can tell whether the woman would have secured judgment in her favor.

Lawyers devote their lives to the study and practice of law. For their living they must depend on the fees paid by clients. No question of whether charges for legal services are high or low need detain us, because even when they are reduced to the lowest point which will enable the lawyer to support himself and his family there will remain a multitude of our fellow citizens who cannot pay those fees.

Nothing would be gained by any attempt to fix with mathematical certainty the number of persons who may be debarred from justice

because of their inability to retain counsel, but a rough approximation does help us to realize the magnitude of the problem with which we are now dealing. The population of the United States, exclusive of its outlying possessions, was nearly 123,000,000 according to the 1930 census.¹ This population consists of men, women, and children, many of whom obviously are not engaged in work and have no income whatsoever. According to the United States Bureau of the Census, in 1930 the number gainfully employed was above 48,000,000.² In 1935 the Committee on Economic Security in its report to the President fills out the picture for us by such statements (pp. 1 and 2) as:

The need of the people of this country for "some safeguard against misfortunes which cannot be wholly eliminated in this man-made world of ours" is tragically apparent at this time, when 18,000,000 people, including children and aged, are dependent upon emergency relief for their subsistence and approximately 10,000,000 workers have no employment other than relief work. Many millions more have lost their entire savings, and there has occurred a very great decrease in earnings. * * * In 1929, at the peak of the stock-market boom, the average per-capita income of all salaried employees at work was only \$1,475. Eighteen million gainfully employed persons, constituting 44 percent of all those gainfully occupied, exclusive of farmers, had annual earnings of less than \$1,000; 28,000,000, or nearly 70 percent, earning less than \$1,500. Many people lived in straitened circumstances at the height of prosperity; a considerable number live in chronic want. Throughout the twenties the number of people dependent upon private and public charity steadily increased.

With the depression, the scant margin of safety of many others has disappeared. The average earnings of all wage earners at work dropped from \$1,475 in 1929 to \$1,199 in 1932. * * *

The number of wage earners attached to all industries in 1927 was about 27,300,000, according to an estimate by the National Bureau of Economic Research. The average wage of this group, taking account of unemployment, was \$1,205 in 1927.³ A publication by the Brookings Institution, Washington, D. C., entitled *America's Capacity to Consume* (1934), states that even in 1929 there were 2,102,000 families with an annual income of less than \$500, and 3,797,000 families with an annual income of \$500 or over, but less than \$1,000 (p. 54).

Yet these millions of persons, and especially the larger proportion of them who live in cities, may at any moment and through no fault of their own find that they need legal advice or legal assistance in the enforcement or defense of their personal and property

¹ United States Department of Commerce. Bureau of the Census. Fifteenth census of the United States: 1930. Abstract. Washington, 1933, p. 9.

² United States Department of Commerce. Bureau of the Census. Fifteenth census of the United States: 1930. Vol. 5, Occupations, general report. Washington, 1933, p. 10.

³ National Bureau of Economic Research. The national income and its purchasing power, by Willford I. King, New York, 1930, pp. 56 and 146.

rights guaranteed them by the law of the land. This is the great dilemma; this is the core of our problem. The remainder of this report is devoted to the solution of the difficulty, showing that in certain kinds of cases it may be partially solved through new types of courts or administrative tribunals, but that in most instances a permanent solution can be had only by facing the issue squarely and by supporting those new agencies which have come into being for the avowed purpose of supplying the services of lawyers to all persons who need legal aid and are unable to pay for it. But before taking up a consideration of these new plans which seem so full of promise if they can be wisely developed, it would be well to review briefly what has been done or attempted in this direction by the administration of justice itself.

Poverty is perennial, and impecunious suitors have on occasion besought aid from the courts throughout our legal history. In one of the earliest English law books we find a petition filed before the justice in Eyre by William, son of Hugh of Smethumilne, which concludes:

And I pray you for your soul's sake that you will give me remedy of this, for I am so poor that I can pay for no lawyer.

On September 29, 1934, L. L. Dunn filed an affidavit in the office of the clerk of the Superior Court in Durham County, N. C., which read in part as follows:

I am unable to give sureties or make a deposit required by law, to enable me to prosecute the above action against the defendant, and therefore pray that I may be allowed to sue in this action as a pauper.

Courts have recognized the seriousness of the point involved. In an Iowa decision we find:

So limited and restricted is the sphere of action prescribed for the judge as to proceedings on trial touching matters of fact that without the aid of able and experienced counsel the poor and ignorant man would often find accusation and prosecution tantamount to conviction.

The Supreme Court of Wisconsin has summed up the very issue that confronts us in this chapter by asking:

Would it not be a little like mockery to secure to a pauper these solemn constitutional guaranties for a fair and full trial, and yet say to him when on trial that he must employ his own counsel, who could alone render these guaranties of any real permanent value to him?

and the court answers the question by stating:

It would be a reproach upon the administration of justice if a person thus upon trial could not have the assistance of legal counsel because he was too poor to secure it.

The most usual method evolved by our administration of justice for meeting this difficulty has been the system of assigning counsel.

The theory is that a lawyer is an officer of the court and is bound by his professional oath to render gratuitous service to poor persons. This same conception may be found in the legal systems of nearly all civilized countries. In practice it has never worked satisfactorily. W. F. Willoughby, in his book *Principles of Judicial Administration* (1929), further states:

It will be noted, furthermore, that the effort to provide counsel for those unable to employ counsel for themselves has been made only in the case of criminal cases. No attempt is made in this way to aid the poor litigant in civil cases.

The practice of assigning counsel differs sharply as between criminal and civil cases. Assignments in criminal cases relate so closely to the discussion of the public defender that in chapter XI, describing the defender in criminal cases, will be found further details; here only the general and broad outlines of the assignment system are discussed. Nineteen States either by definite prohibition or because they do not provide a fund for the purpose, prevent counsel from making a charge to the State for services rendered to a poor person where the assignment is made by the court. This is a return to the common-law rule that a lawyer as an officer of the court is required to assist the court in the performance of its duties as a part of the professional obligation which he assumes upon his admission to practice. In many States the compensation is generally so small as to be nominal. Some of these States allow a reasonable fee in murder or capital cases, but make no provision in cases where a lesser crime is charged.

In civil cases statutes authorizing the assignment of counsel exist in only 12 States. None of these statutes provides any compensation to the lawyer. Judge Levy, of the New York Municipal Court, in speaking of the statute authorizing the court to assign counsel without compensation, stated to the New York State Bar Association in 1920:

The power of the court has frequently been invoked in that direction.

How frequently, we do not know, but subject to this exception, the general rule throughout the United States is not to assign counsel in civil cases at all. As civil cases constitute the bulk of the cases in which wage earners, as well as other litigants, are interested, the statement is warranted that the assignment system has failed.

It has failed because it is based on an economic fallacy. We may be reasonably confident that this is the true reason because the same economic considerations in various countries have produced precisely the same breakdown in the assignment-of-counsel plan. As good a statement as can be found to illustrate this assertion is contained in a paper presented at the International Conference on Legal Aid

Work, held at Geneva in 1924, by Silvio Longhi, first president of the Court of Appeal, who in commenting on the assignment system in Italy, where it has existed since before America was discovered, said:

The duty of gratuitous assistance is not accepted with enthusiasm by lawyers of the widest experience and reputation, who are for this reason engaged in other more remunerative tasks; and when the duty is accepted it is now and then neglected. Thus poor persons' suits are necessarily almost always put in the hands of attorneys with small practices and of those just beginning to practice, who in their turn are not in a position to devote themselves to cases without profit. Finally, there is no doubt that the system of free defense does not give all the results that a paid defense could give, and so a poor person is given tardy and second-rate help. This is due to the fact that the system is based on a false theory, on the economic mistake in supposing that free help can be given with as much efficiency as paid help. However high the bar's standard may be—and it is very high—it has not moral strength to struggle for any length of time against the law of recompense for human activity; and if, taken all together, the system of free help does not measure up to those social exigencies to which one would wish to apply it, this is not to be laid to the attorneys, but exclusively to the illusion of the legislator who believes he can solve a serious problem with fine words: As by announcing that this free help is an "honorable activity" of the legal profession.

The apathy in the United States on this subject is in sharp contrast to the procedure in England. In 1914 the High Court in that country adopted a series of poor-persons rules. These matters have annually gone under the scrutiny of the legal profession. F. C. G. Gurney-Champion in his book *Justice and the Poor in England* (1926), has two statements to make regarding the condition at that time. He says:

On the 5th August, 1925, the Attorney General, in reply to a question in the House of Commons, admitted that it was impossible to bring some poor persons' cases before the courts, because of the dearth of conducting solicitors. The conducting solicitor is the key to the solution of the particular problem covered by the poor-persons rules.

The summary of the workings of the poor-persons rules is contained in the following statement:

The poor-persons rules exclude from legal aid in the High Court two out of the three classes of poor persons that cannot get justice in such courts without legal aid. Legal aid under the poor-persons rules is only given to that class of poor person who is rich enough to pay his own out-of-pocket expenses, and who is poor enough to be able to prove that his capital does not exceed £100, or his income £4 a week. By this rigid poverty test limit, the poor-persons rules have created a specially privileged class of poor person. In no sense do these rules make the administration of justice equal, even amongst the poor. They only assist a privileged middle-class poor person.

In consequence of this, at the present time, with the assistance of the poor-persons department of the Law Society and through the aid of several organizations which do the work corresponding to

that done by legal-aid societies in this country, there has been a marked improvement in the condition of the poor client. Beginning with a series of cases almost exclusively in the field of divorce, the demands for aid have been enlarged to cover many other problems confronting the impecunious litigant.

The assignment plan in America has been an altogether inadequate solution, but it should not be abandoned. Potentially it has great usefulness, and if reasonable compensation were allowed to assigned attorneys the inherent weakness of the plan as it now exists would be removed. In Norway, Denmark, and Sweden assigned counsel are paid a reasonable fee fixed by the court. Twenty-six States have some provisions for the payment of assigned counsel, but usually this is so little that it does not cover the incidental out-of-pocket expenses connected with a lawsuit. In North Carolina, Oklahoma, and Virginia the maximum compensation allowed by statute is \$25. On the other hand, the Illinois law now provides for the payment of assigned counsel in felony cases at the rate of \$15 a day during preparation of the case, but not to exceed 5 days; during the actual proceedings counsel is to receive \$25 a day. However, the maximum amount to be paid is \$250. New York allows incidental expenses plus \$1,000 in capital cases.

The most notable step has been taken by the legislature of New York State at its 1935 session, when at the instance of the New York Legal Aid Society it amended sections 196, 199, 558, 1493, and 1522 of the Civil Practice Act and section 174 of the Municipal Court Code. In effect the changes included the following: A poor person may "bring a special proceeding" as well as a suit. The court will assign him counsel, and counsel "so assigned must act without compensation except that if a recovery is had the court may allow such attorney a reasonable sum for his services and taxable disbursements." The definition of a "poor person" is rendered more flexible. Previously the possession of \$100 disqualified the applicant. The new law raises this to \$300 "in cash or available property." The right to appeal as a poor person is given in addition to the existing right of a day in the trial court, and in aid thereof the applicant "shall not be required to pay any fees or to print either the record or points on appeal but may submit the same in typewriting with such number of legible copies as shall furnish each appellate judge or justice with one copy thereof." The significance of exemption from the duty to pay fees is rendered clearer by the specific statement that fees need not be paid to any officer, "including clerks, stenographers, or sheriffs." Nonresident poor persons are freed from the obligation to file a bond to cover costs. Finally, in the municipal court, the filing fee of \$1.25 is not to be

“demanded or received on small claims of employees * * *.” The effect of these changes will be to accomplish more effectively than in the past the objective of giving the poor person, in fact, a chance equal to that of any other person.

Any thorough plan for adapting the machinery of justice to modern conditions should include some provision for assignment of counsel so that the courts would have power to act to prevent injustice as occasion might arise. The wise exercise of the power would probably serve as a complete solution of the difficulty in smaller communities and in the sparsely settled districts. For the great urban communities, where the need is far more extensive, it could serve as a last resource, but in actual practice it would need to be invoked only rarely, for our American experience indicates another more efficient, more economical, means whereby the desired result can be accomplished.

Chapter VI.—Development of Remedial Agencies

The social and economic forces that have so radically altered the conditions of life in America and that, as shown in the preceding chapters, have caused a breakdown of serious proportions in our administration of justice first made themselves felt in the last quarter of the nineteenth century. A generation passed before the American people were made aware of what had happened in their most vital domestic institution. During that time the wage earners and the humbler classes generally had to exist without ample protection from the law. If their wages were unpaid, their only redress lay in civil litigation, which was protracted and expensive beyond their means. If they were injured, their only recourse was a suit for personal injuries, their path was strewn with technical traps such as the fellow-servant rule and the doctrine of assumption of risk, a lawyer had to be secured on a contingent-fee basis, and the best that could be expected would be a verdict after the lapse of 2 or 3 years. Because of their legally defenseless position they were preyed on and defrauded by a host of petty swindlers. The exploitation that immigrants endured has been written into the records of Federal and State investigations. When pressed by the expense of illness, death, or other misfortune, money could be borrowed only from the loan shark at ruinous rates of interest. Workmen were induced, often by false representations, to assign their future wages—many employers made it a rule to discharge any one who made such an assignment—and thus the workman found himself at the mercy of an assignee who had power over both his livelihood and his job. The law in its actual application to his life was apt to impress the wage earner as an enemy and oppressor and not as a friend and protector.

The first definite pronouncement of the difficulties within the field of justice came in 1906 when Roscoe Pound addressed the American Bar Association on *The Causes of Popular Dissatisfaction With the Administration of Justice*. Slowly, gradually, but in increasing measure, the American people were aroused. Legislative committees, constitutional conventions, and bar associations became active. During the past 25 years we have been busily devising ways and means for reforming the law and reorganizing the machinery of justice so that the needs of the community might be better served. We have by no means accomplished all that must sooner or later be accomplished—perhaps the greater part of the road yet remains to be traveled—but we have at last come to a realization of our problem and of the factors that have produced it. No quick final solution

was possible; the matter was too complicated to be settled by any easy formula or panacea; experiments had to be tried, but the record of events since 1910 proves that an earnest and a brave beginning has been made.

The first State workmen's compensation act was passed in 1911. The Massachusetts law requiring the weekly payment of wages was made the most effective statute of its kind when in 1912 its enforcement was entrusted to the State labor commissioner. The first experiments with small-claims courts and conciliation were inaugurated in Cleveland and in Kansas City, Kans., in 1913. In the same year the first public defender in the United States was established under the new charter of Los Angeles County, Calif. Prior to 1910 there were fewer than 10 legal-aid organizations in the whole country; in 1910 the first municipal legal-aid bureau was created in Kansas City, Mo., and since that time the growth of legal-aid offices, both public and private, has proceeded apace.

The remaining chapters in this article trace the rise and growth of these new agencies, state the results they have already obtained, and attempt to appraise them as far as our present-experience enables us to form conclusions. First will be considered the small-claims courts which have been signally successful in caring for cases involving \$50 or less without delay, without excessive court costs, and without the necessity for attorneys. Then comes the allied subject of conciliation, which is still in an experimental stage in America but which has a long and enviable record of achievement in Norway and Denmark. Next will be taken up certain aspects of the workmen's compensation acts as administered by industrial accident commissions, and following that the legal assistance afforded to poor persons, especially in the collection of wages, by the labor commissioners in the several States.

These agencies—small-claims courts, conciliation, industrial accident commissions, labor bureaus or departments—all represent efforts to deal with certain limited types or classes of cases by special means adapted to the particular cases within their jurisdiction. Beyond them lies the whole area of legal litigation as to which no short cuts of procedural or administrative reform have been devised, where the need for the attorney's service remains as great as it has ever been, and where the only solution seems to be afforded by the further development and expansion of our legal-aid organizations. Because such organizations must be relied on so heavily for the final solution of our existing difficulties, and because to date they have not secured the public attention and support to which their merits entitle them, the final chapters of this bulletin will be devoted to the story of how these organizations came into being, of the nature and manner of their work, and of the unique service that they now render to more than 300,000 persons every year.

Chapter VII.—Small-Claims Courts

The effort to make our courts more serviceable to the modern community has met with striking success in the direction of devising a simplified form of procedure for the smaller cases. The courts which utilize this quick and inexpensive procedure are commonly called small-claims courts; their jurisdiction differs in different States; the average jurisdiction is over matters involving \$50 or less and this includes most claims for wages, debts (such as grocery bills), disputes about rent, board and lodging, detention of property under claim of lien, damage to personal property—in short, a very large number of the cases in which wage earners are likely to become involved. The importance of these new courts, from the point of view of the authors of this report, can hardly be exaggerated. It is of prime importance that their true nature and function be understood, and to that end it is essential to distinguish them from another new agency which is known as conciliation.

Small-claims courts and conciliation are distinct things. There is much confusion on this point and much reason for the confusion, but no intelligent grasp of the developments in these two separate fields is possible unless at the outset it can be made clear that small claims courts on the one hand and conciliation on the other are fundamentally different. The difference is one of kind and not of degree.

From any analytical point of view small-claims courts and conciliation tribunals have little in common; in most essential features they are opposite. Yet the two terms are often used as if they were interchangeable. This is a case of mistaken identity due to the fact that the establishment of the first small-claims court and the modern revival of the idea of conciliation occurred at the same time. By a freak of coincidence the official history of both begins on precisely the same day in the same year. These twin ideas were brought into being by the same underlying cause—the absolute necessity of doing something to make justice more accessible to poor persons. Both aimed, therefore, at the same goal, but they contemplated attaining that goal in different ways and through different machinery.

The first small-claims court was established in Cleveland on March 15, 1913. By the irony of fate it was called the “conciliation” branch of the municipal court, which, as the chief justice of that court has pointed out, is simply a misnomer. On March 15, 1913, the Kansas Legislature, acting entirely independently of this Cleve-

land experiment, passed a law creating "small debtors' courts", which were, in all important respects save one, nothing more nor less than conciliation tribunals.

These twists of nomenclature were enough to account for the original confusion as to these new agencies, but the continuing confusion that pervades the discussion and the literature on these subjects arises from the ambiguous use of the word "conciliation."

Conciliation is a method of settling disputes, just as litigation is another method and arbitration still another. But the term is also used to denote conciliation tribunals; that is, to denote the institution which employs the method of conciliation. When we speak of conciliation in North Dakota we mean the conciliation tribunals of that State.

What, then, are these small-claims courts and conciliation tribunals in relation to the administration of justice as a whole and in relation to each other?

First, a small-claims court is a court, and a conciliation tribunal is not a court. In upholding the constitutionality of the North Dakota Conciliation Act the State supreme court says:

A conciliation board such as is provided for is not a court; it is a tribunal, a board, a table of peace where those who have certain kinds of controversies are invited to sit; this tribunal possesses none of the attributes of a court.

Second, a small-claims court, like any other court, has power to render a decision and to enter a judgment which is as binding and as enforceable as the judgment of any other court in the land. A conciliation tribunal has no power to make a binding decision; the only judgment it can enter is one to which both parties voluntarily consent.

Third, a small-claims court has compulsory jurisdiction over the defendant; its writ of summons is a legal process and the penalty for disobeying it is a default. A conciliation tribunal has no power to compel the attendance of the defendant; it invites him to come and tell his story, but he may defy the invitation with absolute impunity.

Finally, the small-claims court is a court of law. Cases in a small-claims court are heard by a judge and his decision is based on the rules of substantive law. Conciliation tribunals are commonly presided over by laymen and the judgment, if any, need bear no relation whatsoever to the rules of law. This must be made clear.

If A sues B for a grocery bill and the judge of the small-claims court after hearing the evidence decides that the amount due is \$25, the only proper judgment he can render is one for \$25. In the conciliation tribunal, if the conciliator believes the amount due is \$25 but A and B agree it is \$35 or \$15, the only judgment that can be entered will be for \$35 or \$15, as the parties have agreed.

These are the fundamental attributes of, and the fundamental differences between, small-claims courts and conciliation tribunals. There are other features, less important and less absolute, pertaining to these agencies that need to be mentioned. As a small-claims court is a court of law its hearings, in accordance with constitutional requirement, are open and public. A conciliation tribunal's hearing is commonly held in secret. Testimony offered before a small-claims court may be used, in accordance with the rules of evidence, at a retrial or subsequent hearing. A conciliation tribunal is like a confessional; what is there said goes no further. Lawyers are generally barred from conciliation hearings; the most recent and best small-claims courts do not prohibit attorneys, although in fact they seldom appear.

In both small-claims courts and conciliation tribunals the procedure is highly informal; rules of pleading, trial procedure, and evidence are largely dispensed with. The parties tell their stories in their own words and are questioned directly by the judge or the conciliator. The outward appearance of a small-claims-court hearing and of a conciliation-tribunal hearing is thus much the same. A small-claims court on occasion does approach so closely to the conciliation tribunal as to be identical with it not merely in procedure but in function. A conciliation tribunal can never become a small-claims court, but a small-claims court can and does metamorphose itself into a conciliation tribunal by the simple expedient of invoking the method of conciliation.

For example, A and B appear before the small-claims-court judge. B says, "A, you claim \$30. I owe you only \$27, which I will pay you now." A says, "I won't take it." The judge says to A, "Assuming for the moment that you are right, \$27 in the hand is sometimes worth more than a \$30 judgment", and he explains why. A says, "Judge, that sounds like common sense to me. I'll take the \$27." B then pays it. The judge enters "Judgment for A in the sum of \$27 and judgment satisfied." While the method of conciliation may be utilized more readily and more commonly in the small-claims court its use is not peculiar to that court. All courts have from time immemorial invoked conciliation when it seemed appropriate. What trial lawyer has not seen instances in which a judge (often just before the case goes to the jury) has called counsel into his chambers and said, "Before we go any further I want to suggest that you see if your clients might not come together along the following lines." He does this because it promotes justice and because it often succeeds.

When the small-claims-court judge attempts conciliation his court is, for the moment, functionally identical with a conciliation tri-

bunal, but underneath it all the fundamental difference remains unchanged. If conciliation fails the conciliation tribunal is done; its power is exhausted. The small-claims-court judge, however, is only beginning. The preliminary step of conciliation having failed, he proceeds to hear the evidence, to decide the issue, and to enter his judgment.

This is the background of the following and rather surprising narrative of what has actually taken place, what small-claims courts have already been established, what their experience thus far has been, and what their future is likely to be.

Small-claims courts are being established with great rapidity. Though the idea is only 20 years old it has taken root in various cities and throughout a number of States, from Massachusetts in the East to California in the West. This development is more a national than a local phenomenon and its momentum has by no means subsided.

The historical record may be condensed into three paragraphs. The Cleveland small-claims court was established in 1913 under rules of the municipal court. In 1915 the Oregon Legislature provided by statute for the small-claims department of the District Court for Multnomah County (Portland) and in 1917 extended the plan to all counties. The Chicago municipal court by rules created a special division for small causes in 1916. In 1920, the Philadelphia municipal court by rule organized a special department including small claims, and Spokane inaugurated its small-claims court.

A great forward step was taken when Massachusetts in 1921 established a State-wide system of small-claims courts by requiring the judge of every lower court throughout the State to establish a special procedure and special sessions for the hearing of all small claims, not merely contract actions, but tort actions (other than slander and libel) as well, where the amount claimed was \$35 or less. The text of the Massachusetts Small Claims Court Act appears in appendix B. In 1921 California and South Dakota by statute erected State-wide systems of small-claims courts, and Minnesota, having liked the Minneapolis experiment, extended the plan to St. Paul, Stillwater, and Duluth.

Iowa passed an act in 1923 providing for conciliation and also giving all the lower-court judges power to regulate the procedure in small claims. Also in 1923 Idaho and Nevada created their State-wide systems of small-claims courts.

Since 1923 the small-claims court movement has entered still another stage. In that year in nine States and in four great cities in other States this specialized tribunal was an established fact. Ten years later in 1934 there were 16 States in which the statutes

provided for the establishment of small-claims courts. The seven new States were: Vermont, 1925; New Jersey, 1926; Connecticut, 1929; Rhode Island, 1930; Colorado, 1931; Utah, 1933; New York, 1934. In general, the device has been found necessary in those States where the industrialization process has matured. It will perhaps be of interest to make a comparison of two of these courts. As the first example the one established in Massachusetts in 1921 may be taken, and as a second example the one set up in New York in the year 1934.

Since Massachusetts was the first State to pass a State-wide act of general application to all small legal actions, thereby making the small-claims courts an integral part of its administration of justice, and since the Massachusetts law and procedure are in many respects the best thus far devised, the situation in that State affords a practical illustration of what the idea is, how it works, and what it accomplishes.

Massachusetts has both an industrial and an agricultural population; it has great cities and small country towns; its citizenship consists of the descendants of the original Anglo-Saxon stock and a great number of immigrants of diverse races. In short, here are presented all those problems that make the administration of justice in our country peculiarly difficult. The courts of the State are above the average; in the lower courts the fees and costs being comparatively low, and a great deal having been done to eliminate delays. Yet the poor man with a small case in many instances found the courts practically closed to him, because the fees for entry and service of process were more than he could afford and because of the expense of employing counsel to pilot his little case through the intricacies of pleadings, evidence, and trial procedure. It is probable that the problem existed in less acute form in Massachusetts than in most other States, but a specially appointed judicature commission, after traveling throughout the State, conferring with judges, and conducting hearings, stated in its first report:

The substantial point which the commission believes to be established by all this evidence is that, as a practical matter in many cases involving small amounts, the delay incident to formal court procedure, the expense involved in the service of process and in the present entry fee, and the expense of an attorney result in a failure of justice simply because the parties have not the money to pay what is required in the litigation of these matters.

This is not a healthy state of affairs in any community. That the failure of justice in this way may be relatively less in Massachusetts than that in some other places is no reason why efforts should not be made to improve matters in Massachusetts. Is it fair that a man who has a small claim for \$5 or \$10 or thereabouts should be under the necessity of paying out as much or more than the amount of his claim in order to present the matter to the court?

Cannot Massachusetts devise some practical method of handling these small claims promptly, simply, informally, and without unnecessary existing expenses, in the interests of justice?

The commission recommended legislation, the essential features of which are:

The justices (of the lower courts) shall make uniform rules providing for a simple, informal, and inexpensive procedure for the determination, according to the rules of substantive law, of claims in the nature of contract or tort, other than slander and libel, in which the plaintiff does not claim as debt or damages more than \$35. Such procedure shall not be exclusive but shall be alternative to the formal procedure for causes begun by writ. Such procedure shall include the beginning of actions without entry fee or writ or requirement, except by special order of court, of other pleading than a statement to a clerk or an assistant clerk of the court, who shall reduce the same to concise written form in a docket kept for the purpose. Such procedure shall include notice by mail instead of the mode of legal service heretofore required, and shall further include provisions for early hearing of actions thus begun. Such procedure may include the modification of any or all existing rules of pleading and practice, and a stay of the entry of judgment or of the issue of execution. The rules for such procedure may provide for the elimination of any or all fees and costs now fixed by law, and that the imposition of costs in causes under such procedure shall be in the discretion of the court. In causes begun under such procedure the court may, on application for cause shown, issue writs of attachment of property or person as in causes begun by writ.

The legislature amended the bill so as to require a \$1 entry fee and then enacted it in 1920, postponing its effective date to 1921 so that the judges might have time to formulate their rules. A copy of the law and a copy of the rules will be found in appendix B to this bulletin.

A small-claims court is doomed to failure unless it can speedily bring its cases to a final determination. It was at first feared that the Minneapolis court would be wrecked by multitudinous appeals. The chief difficulty is the constitutional guaranty of right to trial by jury, which Massachusetts, in common with most States, extends to all suitors in actions at law. This right cannot be cut off, and, therefore, the Small Claims Act provides as follows: A plaintiff may sue in the regular way, but if he elects to use the small-claims procedure (and plaintiffs are substantially unanimous in their preference) he has then waived his jury claim. The defendant may at once (not after the decision) remove the case to the superior court for jury trial, but if he does not he, too, has then waived, and there can be no appeal. It was debated whether the law should make the removal by the defendant burdensome by requiring extra fees or a bond. The commission decided against any such attempt on the ground that if the small-claims court did not command the

respect of the litigants it could not in any event be successful. The practical answer is that during 1931, 1,421 cases were entered in the small-claims branch of the Boston municipal court, and only two defendants exercised their right of removal.

This problem of appeal—which means delay and expense—and the allied problem of the right to jury trial are critical and must be overcome at the outset. We commend the Massachusetts plan, which is sound law and workable in practice, as the precedent to be followed wherever it is applicable. In Cleveland the situation is analogous. The small-claims court's decision is final on the facts; an appeal on points of law goes directly to the court of appeals, the intermediate appeal to the court of common pleas having been abolished. In California the decision is conclusive as to the plaintiff, but the defendant may appeal by giving bond to pay the judgment (if affirmed) and also a special fee of \$15 for the plaintiff's attorney. The system in Idaho, Minnesota, and Oregon is like that of California.

The procedure in all small-claims courts is very much the same. Using Massachusetts again as our illustration, if Adams has a grocery bill against Babbitt in Boston he goes to the clerk of the small-claims branch. Many matters are there settled or dropped. Generally, only about 25 percent of the claims filed are contested. Of the remaining 75 percent some are dismissed, judgment goes by default in others, and some are stricken from the docket; however, a large portion of those cases not contested are settled before trial. For example: In Minneapolis in 1933, of over 10,000 claims filed, about 1,500 were settled without contest; in about 4,200 judgment went by default; over 700 were stricken from the docket; and slightly more than 900 were dismissed. If an immediate settlement is not effectuated, the clerk has Adams sign (no oath is required) a simple statement of claim which appears in the docket as follows:

Claim: Defendant owes plaintiff \$27.83 for groceries and household goods sold to him between October 16, 1930, and December 28, 1930.

If the statement does not make out a *prima facie* case it may go at once before a judge, who determines whether the claim shall be received. The general principle that the statement may be informal and need not be the equivalent of a common-law declaration is upheld in *Sher v. Robinson*, 298 Ill. 181 (1921). As some entry fee is desirable, a nominal one of \$1 is required. In San Francisco, where the proceedings are absolutely free, collection and installment houses dun their debtors, *ad libitum* without expense, by having their bills mailed out by the small-claims-court clerk with postage stamps paid for by the county treasurer. The case is set down for hearing within a week or 10 days, and the clerk gives the plaintiff a card stating the exact time and place. Notice then goes to the

defendant, not in the usual form of a writ couched in archaic technical language but in the following direct style:

To John T. Babbitt.

Amos X. Adams asks judgment of this court against you for \$27.83 for groceries and household goods sold to you between October 16, 1930, and December 28, 1930.

The court will give a hearing upon this claim at (here the courthouse and room is inserted) at 9 o'clock in the forenoon on Thursday, February 3, 1931.

If you deny the claim, in whole or part, you must, not later than Tuesday, February 1, 1931, state to the clerk, personally or by attorney, orally or in writing, your full and specific defense to such claim, and you must also appear at the hearing. Unless you do both, judgment may be entered against you by default. If your defense is supported by witnesses, account books, receipts or other documents, you should produce them at the hearing. Summonses for witnesses, if requested, will be issued by clerk, without fee.

If you admit the claim, but desire time to pay, you must, not later than Tuesday, February 1, 1931, personally or by attorney, state to the clerk, orally or in writing, that you desire time to pay, and you must also appear at the hearing and show your reasons for desiring time to pay.

This notice is sent by registered mail, return receipt requested. If the postman (who knows most of the persons in this district) cannot make delivery, then the court may order other process. In the Boston district in 1931 only 3 notices were refused and only 72 were returned because the defendant could not be located. In fact, service by mail works so well that the Cleveland court, which has used it longest, has discarded registered mail and uses the ordinary mail not merely in small cases but as the regular method of service in all municipal-court cases. A series of cases holding that it is perfectly legal to have service of process by mail are collected in a comment in the May 1934 issue of the Columbia Law Review, on page 935, where this statement is made:

While actions in personam are traditionally commenced by personal service, the due process guarantee of notice demands only that the means used be reasonably adapted to inform the defendant. Service by mail seems to satisfy this requirement * * *.

Attachments are rarely issued, but they may be used if the court so orders. This seems better than the California rule that "no attachment or garnishment shall issue from the small-claims court."

It will be noted that the Massachusetts procedure requires the defendant to file an answer (or tell his defense to the clerk, who will file it for him) or be defaulted. The arguments pro and con on this point are evenly balanced. By not requiring any answer, you save the defendant one trip to court and you eliminate one procedural step. On the other hand, unless an answer is required the plaintiff is obliged to attend the court often for the sole purpose of being entitled to a default judgment. Furthermore, the answer

gives the plaintiff opportunity to prepare for a defense he had not expected. For these reasons Massachusetts requires an answer; for the contrary reasons the other small-claims courts do not. The wiser course cannot be determined by theorizing; it will be decided by experience.

On the assigned date (unless there be a default) both parties appear in person, and the judge conducts the hearing by direct conversation with the parties and their witnesses when there are any. The judge keeps the evidence within the bounds of relevancy but he does not object if hearsay creeps into the testimony of a man trying to tell his story in his own words. Much litigation grows out of misunderstanding; when that appears the judge may be able to remove it, and then he is using the method of conciliation. More litigation grows out of the defendant's inability to pay, and when he finds that he can pay in installments his denial often becomes a candid admission. In any event, the court makes a decision which is entered as a judgment. If the defendant needs time, issuance of execution may be stayed.

The procedure is obviously informal and untechnical. As expressed in rule 7,

Witnesses shall be sworn; but the court shall conduct the hearing in such manner and form, and with such methods of proof, as it deems best suited to discover the facts and to determine the justice of the case.

The small-claims courts established in New York City in 1934 are quite similar to their Massachusetts prototype. The jurisdiction is limited to \$50. The court is given authority to make a simple, informal, and inexpensive procedure for the prompt determination of claims. This procedure is not exclusive, but is alternative to that now or hereafter established with respect to actions commenced in the court by the personal service of summons. The initial fee paid in New York State is \$1.25. One of the immediate problems raised by the act in its present form is its failure to provide for the issuance of summonses in wage cases without this cost. An amendment modifying this situation is now in process of preparation. The right to trial by jury is retained but is restricted by severe limitations including the posting of a bond and a fee. Anyone who starts an action in the small-claims court is deemed to have waived his right to a jury trial. The defendant, however, may secure it, provided he complies with the conditions before referred to. Appeals are discouraged; the sole ground for appeal being that substantial justice has not been done. Here is a brave effort to get away from appeals based on technicalities and to deal solely with the merits of the case.

At the present time the act excludes corporations, and assignees of claims from being plaintiffs. This division is obviously for the

purpose of keeping the court as a poor man's court and preventing it from becoming primarily an instrumentality where collection agencies may expedite their securing of judgments. Whether this restriction is wise is a question of policy still to be finally determined.

The court having made rules for developing the provisions of the act, including the provision for services by registered mail, is gradually gaining the public confidence—it is not used by poor persons exclusively. No doubt in time its influence will be as great as that of other courts with similar powers. It is significant that the provisions of the Boston court seem to have been followed quite closely.

The justice of the case is determined, it must again be emphasized, not as the arbitrary ruling of an untrammelled despot and not as the merciful dispensation of a Haroun-el-Raschid, but according to law. The small-claims courts administer justice according to the principles of substantive law.

We have now gone far enough to venture some appraisal of these courts. They are relatively new courts but still courts of law. And though new, they do not add to our problem of multiplicity of courts because they are organized as branches or sessions of existing courts. They represent not new institutions but new equipment for existing institutions.

The small-claims courts disregard the established rules of pleading, procedure, and evidence, but they are by law authorized to disregard them. A departure from a religious observance of these rules is no menace. As Hon. Charles E. Hughes, now Chief Justice of the United States Supreme Court, has expressed it in an address to the bar:

The judicial quality does not reside in form or ceremony, still less in circumlocution and an avoidance of the pith of the matter. The judicial quality of procedure is found in the impartial hearing and the reasoned determination upon ascertained facts, and it may be speedy, summary, and, as our clients would say, businesslike, without losing its character.

The Minneapolis court has been in operation since August 1917. A few figures relating to its work are of interest. During the year ending December 31, 1933, 12,291 cases were on the calendar. During the 9 preceding years the gradual growth of business is indicated by these figures:

	<i>Cases</i>		<i>Cases</i>
1924.....	9,606	1929.....	11,915
1925.....	9,942	1930.....	11,110
1926.....	10,293	1931.....	10,555
1927.....	11,277	1932.....	12,416
1928.....	11,933		

A comparison of this volume of cases with the annual amount paid by litigants as filing fees during the years 1929 to 1933, inclusive (since 1929, a provision has been in effect which requires any

person filing 15 suits in the court during a year to pay \$1 per suit thereafter), gives some idea of how inexpensive this court has been for them from the following:

Amount paid as filing fees during 1929.....	\$213
Amount paid as filing fees during 1930.....	237
Amount paid as filing fees during 1931.....	237
Amount paid as filing fees during 1932.....	376
Amount paid as filing fees during 1933.....	524

During the same 9 years the number of appeals taken from the court were:

	Cases		Cases
1924.....	347	1929.....	384
1925.....	397	1930.....	347
1926.....	441	1931.....	297
1927.....	370	1932.....	291
1928.....	374	1933.....	318

During the year 1933, in which the 12,291 cases were on the calendar, the following statement of disposition is of interest. In about one-quarter of the cases (actually 3,093) there was a contest. In about one-third of the cases (4,259) the defendant defaulted. We may imagine various reasons for this default.

It seems reasonable to suppose that in some cases at least the case was disposed of outside of court. The records indicate that 758 cases were stricken from the calendar and 913 dismissed. Again, in some of these cases, it is not unlikely that such action by the court was taken because of an adjustment between the parties themselves—1,415 cases being settled.

During 1933 the small-claims branch of the municipal court of Chicago had two judges sitting on contract cases and one judge on tort cases. There were 28,833 cases filed in court during 1933, and 16,837 additional matters were entered during the first 9 months of 1934.

The procedure appeals to the average man. In New York City, in the first 3 months after the establishment of the court, 4,325 cases were disposed of. During the first week in 1 office 9 cases were filed, but by the end of the first quarter of the year as many as 15 a day were being received.

As an example of the general approval of the decisions rendered by the court, the small-claims court in San Francisco reports appeals filed from: July 1930 to December 30, 1930, 34; January 1931 to December 31, 1931, 52; January 1932 to December 31, 1932, 62; January 1933 to August 9, 1933, 39.

Thereafter a filing fee of \$7 was imposed by law where an appeal was desired. Immediately the number of appeals diminished, as shown by the following record: September 1, 1933, to December 27,

1933, 12; January 1934 to December 1934, 37; a total after filing fees of 49.

The advantages of the small-claims courts are clear. First and foremost they do justice in a class of cases where justice could not be done by the machinery formerly in existence. Because they secure justice to the humble citizen with his small case they demonstrate the integrity of our institutions and they afford a practical object lesson in real Americanization. It is not infrequent for a small-claims-court judge to dispose of as many as a hundred cases a day, thereby relieving congested dockets.

As an example of the jurisdictional limits, the following figures are of interest. In the States of Oregon and Vermont claims are accepted up to \$20; in Rhode Island, Utah, New Jersey, and California the figure is \$50; in Connecticut and Colorado, \$100; and in Chicago it is still \$200.

These courts are a success and should continue to be a success, because for the pressing need which exists they provide a satisfactory answer. They are not a surface panacea; they go to the roots of the difficulty. They are swift in action (10 days is enough for a small-claims court to do its work), thereby eliminating delay; they have reduced costs to a minimum by abolishing fictitious costs and by utilizing mail service (the court costs vary from zero in Connecticut, Kansas, and Minnesota to \$1.20 in Boston; \$1.40 in Cleveland; \$1.70 in Milwaukee; and \$2 in Vermont). They are so simple that, aided by the clerk and the judge, the parties can conduct their own cases, thereby making the expense of counsel unnecessary. This system in toto represents a complete, thorough, and sound plan whereby our machinery of justice may be adapted to a special need of the community.

Chapter VIII.—Conciliation Tribunals

For a completely adequate plan to secure justice in the smaller cases we would not need to look beyond the small-claims courts if their extension throughout the United States were possible. Unfortunately that is not the case, because in many parts of the country our court organization is not suited to this purpose. The wide discretion and summary power implicit in the informal small-claims procedure require that the court to which it is intrusted be a well-organized, responsible municipal court as in Boston, Chicago, Cleveland, Minneapolis, St. Paul, and New York, and that for adoption on a State-wide basis all the lower courts be of high standard; in Massachusetts, for example, every lower court is a court of record, its decision is final in all civil matters within its jurisdiction, and the judges of the several lower courts have an association that enables them to adopt uniform rules of procedure.

For every city or judicial district in which the small-claims court plan could be immediately adopted there are, according to an estimate by the secretary of the American Judicature Society, perhaps 10 times as many places where it is inapplicable. As is stated in a report on this subject presented to the conference of bar-association delegates in 1924, "There are States in which there are no courts between the justice of the peace and the circuit courts, except probate courts and special courts in the larger towns and cities. In such States there are many counties in which the benefits of small-claims procedure cannot be conferred, but which must be reached through court reorganization or by some form of conciliation if any solution is to be found." Because conciliation may afford the most practicable immediate solution in a substantial part of the country it merits careful examination.

It must be borne in mind that conciliation and mediation are not dealt with here as a means of settling collective disputes between capital and labor; this article is concerned only with conciliation as a method for settling disputes between individuals, claims for wages, debts, rent, damage to property, breach of contract, and especially with conciliation in the smaller cases within the jurisdiction of the conciliation tribunals.

There are few conciliation tribunals in the United States, even if the term is used broadly. In 1913 the Kansas Legislature established "small-debtor's" courts in Topeka, Leavenworth, and Kansas

City. In 1917 the Minneapolis "conciliation" court was created; in the main, this is a small-claims court, but a part of its jurisdiction is purely that of a conciliation tribunal. The board of justices of the municipal court of New York City in 1917 adopted rules for the disposition of controversies through conciliation. North Dakota passed a statute in 1921 making definite provision for conciliation tribunals, and in 1923 Iowa followed suit.

In Minneapolis the court's power to sit as a conciliation tribunal (as distinguished from its small-claims procedure) has been seldom invoked. The New York municipal court's rules for conciliation lay in abeyance from 1917 to 1925, when Justices Lauer and Davies revived the idea. North Dakota, therefore, affords the only American experiment from which we can hope to gain any tangible idea of the nature of conciliation tribunals and their results.

Since 1895 North Dakota has had on its books a law providing for the election of four conciliators in every incorporated town and village. Resort to conciliation could be had only if a case was pending in court and if both parties consented to have it transferred to the conciliator. This plan was wholly ineffective, the law was a dead letter, and it is doubtful if the conciliators were even elected. However, to remedy these defects the 1921 statute provides for the appointment of conciliators by district court judges, and added a compulsory feature to the effect that in claims of \$200 or less no one can sue in a court until he has first (except in certain exempted classes of cases, as suits on promissory notes) attempted conciliation. The procedure is as follows: A plaintiff goes to the conciliator and states his claim. The conciliator notifies the adverse party of the time and place of hearing by mail, telephone, or word of mouth. If the defendant appears and the parties are enabled to reach an agreement, the terms of the agreement are written, signed by the parties, and may then be entered in the district court as a judgment. If the defendant refuses to appear or if the parties fail to agree, then the conciliator can do nothing; he issues a certificate of "nonconciliation", which leaves the plaintiff free to pursue his action in the regular way in the courts.

The attorney general of North Dakota has stated "the results of conciliation have not justified the hopes of the authors of the measure." Investigation reveals that the plan has encountered numerous obstacles, but whether this is because the law is defectively drawn or because of other factors it is too early to know.

The idea underlying conciliation makes a great and a universal appeal; it will not down, and like hope, it "springs eternal in the human breast." As Charles A. Boston has expressed it, "Conciliation is one of the oldest forms of judicial procedure, which

reappears sporadically from time to time." The conduct of cases in the first American courts during the colonial era is suggestive of conciliation procedure. In the period from 1846 to 1851 we find provisions for conciliation being inserted in the new constitutions of New York, Wisconsin, California, Michigan, Ohio, and Indiana. The high hopes of these framers were disappointed, but again the idea reappears, as has been noted, in 1913, 1917, 1921, and 1923. When the Conciliation Act of 1921 was passed in North Dakota, one branch of the legislature was conservative and the other in control of the Nonpartisan League, but both branches agreed on this measure. The great Lord Chancellor Brougham, who labored so valiantly to improve the position of the poor in England during the early nineteenth century, had great faith in conciliation. Mr. Justice Parry, of the English county courts, the author of *The Law and the Poor*, is today an earnest advocate of informal conciliation procedure as the best method for the settlement of small causes. Still more important is the indisputable fact that for more than a century conciliation tribunals have been markedly successful in both Norway and Denmark. Nickolay Grevstad in an article on the Norwegian system states: "It is regarded as one of the cornerstones of the national system of justice and it is not an exaggeration to say that any attempt to abolish it would provoke a revolution."

There are two definite explanations to account for the rather spasmodic development of the conciliation idea. The first is that much conciliation procedure is indulged in by legal tribunals of which no record is made. Certainly there are examples as in Philadelphia in 1925 when the Philadelphia Legal Aid Bureau cooperated with the judges of the municipal court in the establishment of a series of special sessions of the court at night. Cases were prepared by the legal-aid bureau and at the proper time the parties and their witnesses appeared before the judge sitting as a conciliator. This work was discussed at the 1924 meeting of the National Association of Legal Aid Organizations, but apparently there is no other printed reference to it. It is quite certain that unrecorded developments of the idea of conciliation are more extensive than one would suspect. In 1930 the *Denver Post* conceived the idea and established an arbitration bureau. Disputants could apply to the newspaper and get a list of reputable attorneys. From this list they could select an arbitrator who would hear the case, usually in his office, and write a fair and just conclusion. His judgment was made a judgment in a court of record and while there existed a right of appeal, practically none was taken. The idea has met with approval and the procedure which is tantamount to conciliation has been utilized with success. A report of the work may be found in the record of the proceedings of the National Association of Legal Aid Organizations for 1930.

The second reason why conciliation has not advanced is because of the more extended development of arbitration. There is a tendency to confuse conciliation and arbitration. The distinction is substantially this. In a conciliation procedure both parties are entirely free to place the controversy before the conciliator and are perfectly free to abide by or reject at any time the solution he proposes. In arbitration procedures the parties sign a contract agreeing that the matter in controversy shall be submitted to the arbitrator and binding themselves to accept his decision as final. Arbitration, then, is a more formal and technical device than conciliation. An arbitrator may often invoke the method of conciliation by encouraging the parties to agree among themselves.

The growth of arbitration is more clearly charted. For example, an early colonial statute in Pennsylvania provided that the inhabitants, many of whom were Quakers, might submit their differences to arbitrators instead of bringing them into court. In more recent years commercial arbitration as a device for avoiding the expense, delay, and uncertainty of litigation procedure has grown to remarkable proportions. It has been fostered by chambers of commerce, by many trade groups, and by the American Arbitration Association. There is now considerable literature upon the subject, and impressive as its growth has been, its effect upon the problem has been only incidental.

While the history of conciliation in America has thus far been disappointing it would be unsound to dismiss it altogether from our plans for improving the machinery of justice. The sensible course is to maintain an open mind, to study more closely the procedure that has been developed in Norway and Denmark, to determine the reasons for its great success there, and then in the light of more accurate knowledge to try to secure its benefits for ourselves by including some adequate provision for conciliation in our American laws. To the extent that conciliation procedure may be utilized in greater measure in our judicial system, to that extent will the poor man be helped, because of all procedures ever invented none is so quick and so cheap as conciliation when intelligently administered and when buttressed by a strong tradition that men ought, whenever possible, to compose their differences, not by litigation which is the way of war, but by conciliation which is the way of peace.

Chapter IX.—Industrial Accident Commissions

So much has been published on workmen's compensation legislation that this chapter will be limited to those aspects of the subject which throw new light upon, or otherwise are peculiarly pertinent to, the immediate problem of how the machinery of justice can be adapted or supplemented in order that it may be adjusted more closely to the needs of the present day.

The superiority of the law affording compensation for accidents over the prior law which required a suit for damages based on the employer's negligence is so great and is so universally admitted that extended comment on this point would be superfluous. But if the legislation which introduced the compensation principle had stopped there very little gain would have resulted. In fact the legislatures went much further. They attacked the defects in the machinery of justice which we have summarized under the three headings of delays, court costs, and fees, and the necessary expense involved in the employment of counsel. The legislatures practically abolished all costs and fees; they designed a procedure that would be summary in character; they wished to eliminate the necessity for counsel altogether, and accordingly the larger majority of them entrusted the administration of the workmen's compensation acts not to the courts but to a new type of quasi-judicial agency called industrial accident boards or commissions. Only in Alabama, Alaska, Louisiana, New Hampshire, New Mexico, Tennessee, and Wyoming are the compensation laws administered through the courts.

In chapter IV, dealing with court costs and fees, it is stated that expenses of this kind ought never to be permitted to constitute an obstacle to justice, because it is so easily within the power of the legislature to reduce them to a minimum or abolish them in toto. The compensation acts did so, and after a decade of experience it is clear that great good and no harm has resulted. The Connecticut Compensation Act carried the principle one step farther and provided that if a case was appealed from the commission no costs should be charged in the superior court. Likewise the problem of stenographic expense has been met; most of the commissions employ and pay their own reporter to take the record of the proceedings. Iowa, by statute in 1924, expressly authorized this, and as a result this expense of litigation is lifted from the shoulders of the injured workman.

The compensation acts commonly said "proceedings shall be summary", but the credit for the excellent record that has been made does not belong to this legislative fiat. In dealing with the factor of delay we have said that delays could be eliminated only if and when the courts were given power to regulate their own procedure, and to control the formal routine of their business through rules which are flexible and which can be altered to meet changing circumstances. Precisely this power was given the industrial accident commissions, and their intelligent use of that power is responsible for the elimination of delay in compensation cases.

According to information gathered by Walter F. Dodd, a study made of 580 uncontested claims in Ohio for the year 1930 revealed that in 72 percent of the cases payments began within 38 days after the injury, and in 92 percent of the cases the time elapsed between injury and first payment was 53 days. An examination of all cases arising in Wisconsin in 1929 revealed that injured employees received first payments in 60 percent of the cases within 3 weeks after the beginning of disability. Of 403 uncontested claims studied in New York in 1930, in 78 percent of the cases first payments occurred within 30 days after the beginning of disability.

Where the claim for compensation is contested, there must be some kind of hearing and adjudication. However, this does not necessarily mean that the commencement of payments is delayed until final settlement of the controversy. Some States have a provision in their compensation law similar to that of Illinois, where payment by the employer to the injured employee prior to the filing of application for adjustment of the claim is not to be deemed as admitting liability to pay compensation. Another provision of the Illinois law is that the arbitrators may find that the disabling condition is temporary, and thus award compensation up to the date of the hearing, and yet leave the question of either further temporary total compensation or of compensation for permanent disability for further determination. A study of 102 contested cases in the Chicago area during 1928 revealed that in 60 percent of the cases an average of 2½ months elapsed between the application for adjustment and the date of the award.

The speed attained in settling contested cases does not seem to have prejudiced the accuracy of the results. The 1930 report of the New York Industrial Commission shows that of over 53,000 contested cases before referees, less than 10,000 were appealed to the industrial board. In the same year there were only 266 appeals to the courts from either the rulings of the referee or of the industrial board. The rulings of the referee or board were reversed in only about 27 percent of the cases.

In 95 percent of the accident claims that are automatically adjusted by agreements supervised and approved by the commissions, the necessity for employing counsel has been completely obviated. In this vast number of cases the ideal of our law has been closely approximated. The injured wage earner received the equal protection of the laws without delay, without the payment of court costs and fees, and without the expense of employing lawyers.

In the contested cases, the commissions have done much to assist the injured man to prepare his case through their staffs of inspectors and through the provision of impartial medical experts. But that is not enough; in any real contest the injured employee needs to be represented by counsel as much as does a litigant in any other case if his rights are to be fully protected. This lesson has been learned by generations of experience with litigated matters, and it is hard to see why compensation cases should prove an exception to the rule.

For the commissions themselves to act as counsel for the injured man is highly dangerous. It is axiomatic that no man can be judge of his own cause. For the same reason it is difficult for a commissioner to judge a cause in which he is the advocate. Either he will be a partial judge or his advocacy will lack that zealous fidelity to his client's cause which is the very essence of the attorney's duty. The American Bar Association's Canon of Ethics, No. 15, states:

The lawyer owes entire devotion to the interests of his client, warm zeal in the maintenance and defense of his rights, and the exertion of his utmost learning and ability, to the end that nothing be taken or be withheld from him save by the rules of law legally applied.

At a meeting of the International Association of Industrial Accident Boards and Commissions the chairman of the Pennsylvania commission pointed this out forcibly:

If your boards take up the side of the workman and prepare the workman's cases, and let the workman present the case, through his own lips, that you prepared for him, and you decide your cases, you are soon going to cripple your own usefulness through lack of confidence by the community.

The real situation is obscured by describing these commissions as "quasi-judicial" bodies. Their task as to the cases which are settled by agreement is supervisory—it is administrative in its nature. As to disputed cases, however, their task is not quasi-judicial but is primarily and essentially a pure judicial function. Their decision on the facts is final, their decision on the law is generally final for all practical purposes because relatively few cases are appealed to the courts.

As precedents accumulate, as the pressure of work increases, the commissions in order to perform their judicial functions properly

will have less time and less opportunity to act, or attempt to act, as counsel for the injured workmen. In the judgment of the authors of this report, as time goes on the need for an attorney to represent the workmen in disputed cases will become more and more apparent. But the attorney should be independent of the commission. His loyalty should run exclusively to his client, the injured workman. A solution may be afforded by the legal-aid organizations which, if they are properly developed, can supply the services of attorneys to injured workmen without any expense or for such nominal charges as the commissions themselves may fix.

In the first place, the history of the development of legal institutions indicates that the attorney, in order to fulfill his obligation to his client, should be independent of and not a paid retainer of the tribunal in which he pleads his cases. An analogy makes this plainer. If a citizen, when haled into court, could be represented only by an attorney selected by the judge, paid by the judge, and subject to discharge by the judge, he would be resentful. The community at large would regard this arrangement as foreign to our conception of safeguarding the right of the individual so that he can neither be condemned for crime nor deprived of property until after a full and impartial trial in open court. Secondly, and more important, the problem of the expense of counsel is not limited to compensation cases but is a general problem for which we want a general rather than a piecemeal solution. Rather than to attach salaried attorneys to every court or tribunal in which indigent persons have cases, it would seem less expensive, more efficient, and more in harmony with the spirit of our institutions to have one central law office to which the less well-to-do persons could go and there obtain whatever assistance from lawyers they may need. Such central offices are what the legal-aid organizations ought to become in the natural course of their development and what some of them have already become with their staffs of well-trained attorneys, qualified to practice before all courts and commissions, and possessing expert knowledge as to those types of cases in which wage earners are commonly involved.

A number of experiments have been made to find a device which will supply an attorney to give legal advice and assistance to the injured employee in workmen's compensation cases. The Pennsylvania law has provided for lawyers on the staff of the State compensation board. Applicants for compensation go to these lawyers and without charge have their claims prepared. The effectiveness of the device will vary with the extent of public interest. While the Pennsylvania system may ultimately be followed, it seems necessary that there be a broader basis of experience before a conclusion

is reached. For the past 20 years in Boston and more recently in Chicago and New York this experience has been slowly accumulating. The legal-aid societies in these cities supply trained lawyers to workmen seeking compensation for industrial accidents. Of the Boston Legal Aid Society, where this plan has longest been in effect, it can truthfully be said that it has given impoverished workmen, or their widows, as efficient and splendid legal assistance as money could buy.

The Boston society, beginning about 1916, determined to create a department of its work to specialize in workmen's compensation cases. One of the attorneys was designated for this purpose and to him all workmen's compensation problems were referred. The department through intensive study and the handling of many cases gained an experience which enabled it to stand on an equality before the commission and the courts with the able attorneys representing the employers and the insurance companies. Compensation law has become a specialty; unless schooled by experience any lawyer would be at a disadvantage, but the Boston society trained and made available to its clients just such experienced counsellors.

This plan has worked effectively and, rightly, it has won the confidence of the members of the industrial accident board and of the clients. Over the years a considerable number of cases were taken to the Supreme Judicial Court of Massachusetts and still others to the Supreme Court of the United States. The case of Bountiful Brick Co. against Giles in Utah has already been referred to in chapter V.

In the development of this plan many practical problems were encountered and solved. One of the hardest was that of securing expert medical service without cost. An arrangement was gradually built up between the legal-aid society and a group of able young physicians in Boston for adequate medical investigation on behalf of the claimant with the understanding that the physician would be compensated only by whatever allowance the industrial accident board itself granted. In this way expert medical testimony was available substantially equal in quality to that secured by the insurance companies.

The Chicago Legal Aid Bureau found a similar need in the administration of its compensation law and in 1927 set up a somewhat similar plan. In effect it made possible specialization by a member of the staff in this field of law, and it added another feature, i. e., students from Northwestern University Law School, as a part of one of their courses, participated on a clinical basis in the preparation of the cases for trial. In this way the enterprise served not only the client but brought to the prospective member of the bar practical experience in the procedure before a commission in contrast

to the more orthodox routine in a court. It also tended to develop a class of lawyers better prepared than the average to render service to clients in this particular field.

In 1931 the New York Legal Aid Society also set aside one member of the staff to handle all its compensation cases. More recently the Philadelphia Legal Aid Society has accepted a large number of such matters and the records indicate that the legal aid societies in other cities are experimenting with this same process of specialization.

These offices have gained invaluable information, and in their records lies the story of how these compensation laws operate. From these the student of social conditions may secure an accurate factual record. As opportunities for improvement are found, legislative committees will have a solid basis on which to draft remedial legislation.

The development did not cease with these several experiments. The National Association of Legal Aid Organizations appointed a committee in 1924 to study the problem, and in 1924 and 1925 this committee, in cooperation with a similar committee of the International Association of Industrial Accident Boards and Commissions, presented joint reports. The recommendations adopted jointly deserve a place here.

The committee recommended that the respective associations approve the following resolutions:

(1) *Resolved*, That cooperation in handling workmen's compensation problems is hereby approved by the International Association of Industrial Accident Boards and Commissions and the National Association of Legal Aid Organizations.

(2) *Resolved*, That the member organizations of the International Association of Industrial Accident Boards and Commissions and the National Association of Legal Aid Organizations, be requested and encouraged to cooperate with each other in handling workmen's compensation cases.

(3) *Resolved*, That these committees be continued by their respective organizations to supply information as to methods of cooperation, to study the results and report from time to time on the progress of the mutual work.

It should be noted that speakers from the legal-aid group appeared on a number of programs of the International Association of Industrial Accident Boards and Commissions for the purpose of helping this development of intelligent cooperation.

For practical purposes the problem resolved itself into one of local cooperation between industrial accident commission and legal-aid office. This cooperation is largely dependent upon the ability of the legal-aid organization to secure sufficient funds to enable some counsel to specialize in this field. To attempt to handle this highly technical subject without specialization is to do injustice to the applicant and ultimately to forfeit the confidence of the Workmen's Compensation

Board. Because the task is worth doing, it is worth doing unusually well.

The work of the legal-aid societies in this field has brought about still another interesting development which deserves mention in passing. Relations between the legal profession and the medical profession have taken place largely in the realm of the expert medical witness testifying for those who could pay his fees. It is interesting that through the medium of the legal-aid society in compensation cases both lawyers and physicians are able to perform a maximum of service to poor people on a cooperative basis which permits of an interchange of ideas and viewpoint hardly possible in the case of the ordinary litigant. In the present period of professional development, when there is every reason for a closer interprofessional relationship, this step has a significance far beyond the limits of the individual proceeding in which the legal-aid society and the physician contribute from the resources of their respective fields toward a joint accomplishment.

Because the compensation acts have on the whole been so successful in securing justice to the wage-earning class, the question arises as to how far the same plan might be developed into a more general solution for our existing difficulty. To the authors of this study, it is clear that the employees on interstate railroads, seamen, and all others not protected either by State workmen's compensation laws or the Federal Employers' Liability Act should be brought within the protection of compensation acts. As to longshoremen there is a confusing overlapping between Federal and State jurisdictions which leaves room for improvement. This suggestion is merely bringing other classes of employees within the scope of the laws; it does not involve any extension of the compensation principle and of the administrative method into new areas of the law.

Mr. William K. Clute, attorney for the Grand Rapids Legal Aid Society, writing in the American Bar Association Journal for April 1929, points out that—

in the field of interstate commerce there exists between the National and State jurisdictions a definite zone which may be designed "No Man's Land", described like this: If an employee of an interstate railroad common carrier is engaged in interstate commerce business at the time an injury befalls him in the course of such employment, and if no negligence be proven against the carrier nor any positive violation of the Federal Safety Appliance Act shown as the proximate cause of the injury, neither the workman, nor his dependents, in case of his death resulting therefrom, may recover damages under the Federal Employer's Liability Act, nor any indemnity under the workmen's compensation laws of any State.

Mr. Clute concludes that in order to provide for this twilight-zone type of case it is necessary that Congress pass a statute expanding the present Federal law or else permitting the State compensation laws to apply to accidents growing out of interstate commerce.

The years that have passed during which the workmen's compensation principle has been a matter of experiment have revealed interesting possibilities as well as weaknesses. Mrs. B. N. Armstrong, in her book *Insuring the Essentials*, summarizes the defects in the following language (p. 276) :

The chief shortcomings of most of the American compensation laws are as follows: (1) They include restricting clauses in the defining of injuries covered by compensation which penalize certain conduct on the part of the employee by denying compensation where it contributes to the injury. These lead to litigation and to the exclusion every year from benefit of compensation of thousands of workers who suffer accidents at their work * * *. (2) They limit the total compensation for all types of accidents to an arbitrary sum * * *. (3) They scale their weekly benefits down to an amount inadequate to maintain the worker's family requirements even at the lowest standard of living extant. (4) Most of them omit protection for occupational disease. One third of the few that make provision do so only for listed diseases.

Suggestions have been made for the extension of the workmen's compensative acts to automobile accidents and injuries to passengers on streetcars and railroads. Immediately difficulties of the first magnitude appear. A compensation plan must first fix a schedule for specific indemnities; the loss of a finger to the tender of automatic looms is not comparable to the loss of a finger to a violinist, yet both may be injured in the same train wreck. For nonpermanent disabilities the compensation plan is to pay two-thirds or three-fourths of the average weekly earnings. As to employees, earnings can be determined without undue difficulty, generally from the pay rolls, but any determination of the average income of many members of the public who ride on common carriers would be as complex as the administration of the Federal income-tax law. There would necessarily be a vast amount of litigation, and in that litigation the claimants would unquestionably need the services of attorneys.

In short, there are special fields of the law and certain types of cases where special machinery may be utilized to eliminate or obviate those factors which cripple the effectiveness of the administration of justice from the point of view of the wage earner. The small claims court is one example, the industrial accident commission is another, and in the next chapter the assistance given by labor officials in the collection of wages will be found to be a third. But beyond the little cases—compensation claims and wage collections—there is an infinite variety of litigation involving rights, duties, and relationships in which wage earners are deeply concerned, and some other solution, something comparable to the work of the legal-aid organizations, will have to be devised and rapidly developed if the law is to be actively effective and if justice is to be done.

Chapter X.—Administrative Officials

Just as the law and the courts have found it difficult to adapt their machinery to modern conditions, so government in the modern State has found itself confronted with new problems, with complicated questions of social control, and it has accordingly been forced to extend its sphere of action in many directions and into new fields, which until recently have been considered of no direct concern to governmental officials. The so-called "blue sky" laws, regulating the sales of securities, which have been enacted in so many States afford as good an illustration as is needed to indicate this enlarging sphere of governmental control over private transactions. During the past 2 years the Federal Government has led the way in developing functions where administrative officials are called upon to act. The Federal Securities Act of 1933 and the Securities and Exchange Commission are clear illustrations. The immense number of codes called into existence an administrative force for their interpretation and administration. It is clear that for a long time to come we shall be accustoming ourselves to the spectacle of laws administered by agencies outside the formal judicial structure. The extent to which laws of this type and their administrators bring aid to the working-man in his immediate problems merits examination.

We have long had administrative officials such as county commissioners and licensing boards; the Pension Office and the Bureau of Immigration have for years been familiar departments of the Government, and even the public-utility commissions, though newer, have been in existence for nearly a generation. None of these bodies, however important their public work undoubtedly is, has had any substantial direct influence on the legal position of the individual wage earner or person of small means so far as his individual legal problems are concerned.

But the most recent developments of executive governmental action through administrative officials do come into contact with the legal problems of individual citizens, and for that reason they concern us here. The various types of administrative officials can hardly be embraced within any simple definition. For our purposes we may say that they fall into two groups.

The first group consists of officials and boards which, like the industrial accident commissions, have both administrative and judicial functions to perform. They are commonly organized under the

executive department of the Government, but as they have power to hear and determine cases within their jurisdictions, they do, in reality, stand midway between the executive department and the judicial department, partaking of the nature of both.

In the same group should be included those administrative officials in 26 States who are attached to the banking departments and have jurisdiction over the business of making loans of \$300 or less. There is no problem which has affected the wage earner through the course of history more seriously than that of the usurer. In his most vicious form the loan shark uses every device of enticement to entrap borrowers into making loans. Once a loan has been made the records indicate that the victim will continue, year in and year out, paying interest and still owing the principal. If the interest charged was merely the legal rate there would be no cause for complaint. The dramatic character of the problem arises, however, when it is revealed that the interest rate charged and collected by the loan shark is far above that allowed by law; that various devices are employed to deceive the borrower and to make him continue to pay tribute to the outlaw lender who conducts his business beyond the pale of the law and in defiance of law. The records of the legal-aid societies in States where there is no adequate protective legislation reveal multitudes of cases every year in which persons borrowing small sums and unable to pledge normal banking security are charged exorbitant rates of interest, reaching frequently as high as 400 percent and occasionally as high as 1,700 percent.

For most borrowers who are caught in this situation there is no adequate remedy despite the fact that the whole loan-shark business is illegal from beginning to end. They do not have the money to employ an attorney to advise them as to their legal rights, and beyond that, they are terrorized. The loan shark cunningly restrains them from taking legal action by threatening to tell their employers or members of their families, thus precipitating the loss of a position or a domestic disturbance. As a consequence many borrowers have been and still are in a condition approximating serfdom.

The remedy for this situation is an adequate law which licenses the business so that it shall be conducted openly, which insists upon adequate inspection of books and records to see that it is conducted fairly, and which sets a rate of interest that will allow reputable capital to come into the field and drive out the disreputable lender. The Russell Sage Foundation by a process of experimentation over a number of years has finally developed a statute known as the uniform small-loans law which contains these three factors.¹ Where

¹ Copies of the sixth draft of the uniform small loans law as of Jan. 1, 1935, may be obtained from the Russell Sage Foundation, 130 East 22d St., New York, N. Y.

this law has been put into effect the powerful machinery of the State banking department is set in operation. Under this law any borrower who feels that he is in any way being imposed upon or who simply wants advice may bring the matter to the attention of a public official who will hear his case and take appropriate action. By the year 1935 this law had been adopted substantially in its January 1, 1935, form by 26 States. In five other States and the District of Columbia small-loan laws are on the books, but were rendered nugatory because of insufficient rate permitted to be charged or because they did not follow the regulatory theory of the uniform law. The effectiveness of the statute lies not in the power of a court to enter a decree, but in the administrative authority of the proper official to revoke the lender's license. This summary proceeding does away with the problems of expense, delay, and need for a lawyer, and usually the mere threat of its exercise is sufficient to put a stop to violations of the law.

In States where the uniform small-loans law, or its equivalent, is in effect there is little need for legal-aid societies to supplement the work of the officials of the banking department. Elsewhere there is a great opportunity for service. In no field has the opportunity been taken advantage of more effectively than here. Legal-aid societies have fought the loan shark in the courts, and legal-aid records have been among the most reliable data presented to legislative committees. When the battle was on in Ohio in 1930 the Cleveland Legal Aid Society not only did admirable work in support of the uniform law but its attorneys were active as counsel in a case (*Dunn v. Ohio*, 172 N. E. 148, 282 U. S. 801) which went to the Supreme Court of the United States and in which the constitutionality of the act was upheld.

In nearly every State where legal-aid organizations are well established the story is substantially the same. The legal-aid society is the champion of the borrower because it has the facts. Where the uniform law exists, legal aid champions it against sinister attacks by those with ulterior purposes. Where it does not exist, legal aid urges its enactment.

Nationally the record is impressive. In 1923 a committee of the National Association of Legal Aid Organizations was established to deal with small loans and investments. At first sight the name seems to indicate two very different kinds of problems. The word "investments" referred to cases of persons who had been induced to put their money into investments of doubtful value and had then lost everything. The increasing protection afforded by "blue sky" laws permitted legal aid to limit its interest to small loans. The committee continued its activities until 1934, and in the course of its work it submitted many noteworthy reports.

At the annual meeting of the National Association of Legal Aid Organizations in 1931 a resolution reading in part as follows was adopted:

Resolved, (1) That the consumer credit agencies be urged to give serious consideration to the social and economic condition of the individuals who attempt to borrow or to obtain credit, to the difficulties and hardships that are caused by an overindulgence in credit, and to the disastrous effects which will be caused the agencies themselves, the individuals, and their dependents, and community as a whole by a full enforcement of legal rights against those who have become overburdened as a result of the unusual credit extension during the present period, and, further, that it is the opinion of the affiliated members of the National Association of Legal Aid Societies that the over-extension of credit and the full enforcement of the legal rights by the consumer credit agencies against indigent persons who are overburdened as a result of credit extension will seriously affect the legitimate work and the beneficial influence of said agencies, that it will create a serious social and economic problem affecting not only the debtor and his dependents, but the community at large, and, finally, that it will tend to continue the present industrial situation and retard the industrial rehabilitation of this country, and that copies of this resolution be forwarded to such persons and organizations as is deemed expedient by the president and secretary of the National Association of Legal Aid Organizations.

Committees of the National Association of Legal Aid Organizations and the American Association of Personal Finance Companies held an all-day session in April 1932 and appointed a subcommittee "to carry on the detailed work of the larger joint committees, including such activities as correspondence, distribution of literature, arrangements for meetings, attendance at the conventions of the respective associations, and any other matters which may require their attention." Representatives of the legal-aid group addressed several of the national conventions of the American Association of Personal Finance Companies. At the 1933 convention of the National Association of Legal Aid Organizations representatives of the lenders group were present. The result of the series of contacts was a definite realization by each group of the extent of the work being done by the other. It was important for the lenders to learn how far legal-aid organizations are going in championing the position of the borrower. It was important for the legal-aid organizations to learn how much service of an altruistic nature was being rendered by members of the American Association of Personal Finance Companies, with what care loans were investigated, and the extent to which applicants for loans were given business advice instead of money. It was important to learn that there were lenders who looked upon their business as a public service and not purely a money-making device.

The National Association of Legal Aid Organizations by its attorneys appeared as *amicus curiae* in the case of *Beasley v. Cahoon*

(Mar. 16, 1933, 147 So. 288), which tested the constitutionality of the Florida uniform small-loans law, and as *amicus curiae* in the Supreme Court of the United States where its constitutionality was again upheld.

Finally, the National Association of Legal Aid Organizations had adopted as one of its standards the following:

Every legal-aid organization should cooperate, wherever possible, with the Russell Sage Foundation and other appropriate organizations with respect to the securing or maintaining of the uniform small-loans law, laws relating to wage assignments, and other laws and activities covering the entire field of consumer credit relations.

The early records of legal-aid societies indicated that they were closely in touch with the victim of the loan shark. It was not, however, until 1923, when the records of all offices were standardized, that it was possible to get a picture of the situation throughout the country. The following table showing the total number of cases reported to the national association by the various legal-aid organizations during the 10-year period is of interest:

TABLE 1.—*Number of cases reported during 10-year period, 1924-33*

Year	Number of cases	Percentage of total cases
1924.....	354	0.004
1925.....	365	.004
1926.....	808	.009
1927.....	3,369	.027
1928.....	1,151	.009
1929.....	2,177	.016
1930.....	2,217	.014
1931.....	2,747	.015
1932.....	4,428	.017
1933.....	5,465	.022
Total.....	23,081	.016

One is tempted to draw inferences from this table. Certainly it appears that the contact between legal-aid societies and small borrowers is increasing with the years. It is possible that this is the effect of the depression. After the small savings of many had been disposed of, more and more families procured small loans as a means of tiding over difficult periods. Then when they needed advice about their obligations they applied at legal-aid offices.

It would be interesting to make a comparison as to the legal-aid cases in those States where there is no uniform small-loans law as compared with those States where the uniform loans law exists. The records of legal-aid societies would yield much valuable information. As yet the study has not been made. Presumably it would show that with the adoption of this law implemented by active and alert administrative officials, the volume of cases would fall off considerably. Here once again the files of the legal-aid organizations would

be an invaluable barometer of legal conditions in this field of consumer credit.

Most important, however, is the fact that here is afforded one more illustration of how, within a special field, a good law vigorously enforced by an administrative official will overcome delay, costs, and the expense of counsel, and so make available free and equal justice.

The second group of administrative officials which is of interest to us is composed of officers whose function is exclusively, or almost exclusively, executive and not judicial in its nature, who have power to investigate, but who must institute court proceedings in order to secure obedience to their orders. Such officers, in the performance of their duties, render services to complainants which are, in effect, legal aid because they are the same services that a private attorney renders his client in a similar situation. Insurance commissioners, for example, give a substantial amount of free legal advice to persons who hold small weekly payment policies of life insurance, generally called industrial insurance. They are willing to take up with the companies questions of overcharge of premiums, failure to credit dividends, reinstatement of lapsed policies, and the rights of beneficiaries when the insured has died. If the insurance company refuses to comply with the insurance commissioner's request the insured or the beneficiary must go to court to vindicate his rights; practically, however, the commissioner's suggestion is apt to be acceded to and litigation is unnecessary. In such cases the State has, in effect, provided to the insured an official who has acted as his attorney, who has advised him as to his rights, and who has negotiated a fair settlement with the company, and the expense of such services is borne by the State.

While stock purchases, small loans, and insurance policies are all matters in which wage earners are interested, the administrative arm has been extended into a field of far more vital concern and that is the collection of wages. A large proportion of all the cases in which laborers need the help of an efficient administration of justice consists of claims for unpaid wages. There is no way to know for a certainty the extent to which wages are not paid promptly in this country; the fact that most established companies do meet their pay rolls with absolute regularity blinds public opinion to the fact that too many wage earners are able to secure their pay only after litigation or the threat of litigation. Persons who have examined the available data have expressed the belief that if all the claims for unpaid wages could be totaled the aggregate would run into astonishingly high figures.

Whether such claims are numbered by tens or hundreds of thousands, it should be borne in mind that each single claim is a matter of the utmost consequence to the individual concerned. The wage

earner lives from week to week; his dependency on his Saturday pay envelope is so absolute that the law has given him the status of a preferred creditor (as for instance in bankruptcy and under the mechanic's lien statutes). One may go further. The laborer's right to be rewarded for his toil is almost a sacred right; the employer's obligation to pay is enjoined not only by the law but by religion. No better statement exists than that in the twenty-fourth chapter of Deuteronomy:

Thou shalt not oppress an hired servant that is poor and needy, whether he be of thy brethern, or of thy strangers that are in thy land within thy gates.

At his day thou shalt give him his hire, neither shall the sun go down upon it; for he is poor, and setteth his heart upon it; lest he cry against thee unto the Lord, and it be sin unto thee.

In their efforts to secure their pay the wage earners have found our legal machinery entirely inadequate. Redress through civil litigation was too slow, too cumbersome, and expensive out of all proportion to the amounts involved. To bring civil proceedings they would be obliged to secure the services of attorneys, and we can gain some idea of the magnitude of the whole problem because we know that each year the legal-aid organizations of the United States collect for their clients over half a million dollars in amounts averaging about \$15 per case, and most of the cases are wage claims.

The inadequacy of ordinary litigation in the courts became so apparent that in State after State the legislatures took cognizance of the situation and endeavored to devise new remedies. If some plan can be found that will be as effective in securing justice to unpaid wage earners as the workmen's compensation plan is effective in securing justice to injured workmen, it will be possible to solve a large part of the whole problem with which this report deals. For that reason it is important to analyze the various experiments that are being tried in the various States to insure the prompt payment of wages.

The first legislative effort at a remedy was made in Massachusetts, when in 1879 the theory of "freedom of contract" was abandoned and the law required weekly payment of wages. In 1886 corporations engaged in certain industries were by statute made liable to criminal proceedings and to fines for nonpayment of wages. In 1895 the provisions were extended to individual employers. Since that time down to the present day the law has been extended in its operation until it embraces every employer in all important lines of business.

In other States other types of legislation have been tried, but in each case the effort has been to secure a remedy for the unpaid workman which would avoid the delay, the expense, and the problem of securing the services of an attorney.

The following group of States has endeavored to compel payment of wages by imposing a penalty, either in the form of allowing wages to run until paid (usually not to exceed a certain period, however), or allowing the successful claimant to recover a reasonable attorney's fee. However, the unpaid wage earner, under these statutes, is usually left to pursue his remedy in the ordinary courts.

Arkansas (Digest, 1921, sec. 7125).—Wages run until paid, but not exceeding 60 days.

Indiana (Baldwin's Ind. Stat., 1934, sec. 10004).—Penalty of 10 percent of wages due for each day of delay, but not to exceed double the amount of wages due. Also reasonable attorney's fee.

Illinois (Ill. Rev. Stats., 1933, ch. 13, sec. 13).—Attorney's fee.

Idaho (Code, 1932, 44-605, 44-606).—Reasonable attorney's fee; wages run for not exceeding 30 days.

Minnesota (Stats., 1927, sec. 4127).—Wages run not exceeding 15 days.

Michigan (Acts 1925, no. 62).—Reasonable attorney's fee.

Missouri (Rev. Stats., 1919, sec. 9804).—Wages run not exceeding 60 days.

Montana (Rev. Code, 1921, secs. 8352, 9800, 3085).—Penalty of 5 percent of wages due; reasonable attorney's fee (but this is reciprocal).

Nevada (Comp. Laws, 1929, secs. 2785, 2787).—Wages run not exceeding 30 days; reasonable attorney's fee.

Oregon (Code 1930, sec. 49-505).—Reasonable attorney's fee.

South Carolina (Code 1932, sec. 7033).—Wages run not exceeding 30 days.

Texas (Stats., 1928, art. 2226).—Reasonable attorney's fee, not exceeding \$20.

Utah (Rev. Stats., 1933, 49-8-1, 49-9-3).—Wages run not exceeding 10 days; reasonable attorney's fee.

Washington (Rem. Rev. St. 1932, sec. 7596).—Penalty of \$25 if no valid excuse; reasonable attorney's fee (between \$10 and \$25).

West Virginia (Code 1932, sec. 2356).—Wages run not exceeding 30 days.

Wisconsin (Stats., 1933, 103.39(4)).—Penalty of 10 percent wages due if delay not exceeding 3 days; 20 percent if delay is 3 to 10 days; 30 percent if delay is 10 to 20 days; 40 percent if delay is 20 to 30 days; 50 percent if more than 30 days; maximum limit of penalty, \$50.

These laws are not altogether sufficient. Wage earners as a class require a cheap, speedy procedure and someone to work the machinery for them. These laws all impose a preliminary expense on the wage earner. They do not expedite the trial of the case in the courts, although the penalty is supposed to urge the employer to settle. They do not provide a means whereby the case will be conducted through the intricacies of legal procedure; the worker must secure a lawyer. Where there is no provision for an attorney's fee the worker is in a weak position. Where the attorney's fee is allowed it savors somewhat of a contingent fee arrangement, because the lawyer must win the case to get a fee. To bring the suit may require court costs, and if the employee does not have the money for this, the law is of little value to him.

The most interesting and fruitful legislative effort has been to create an administrative official and place in his hands the duty of

enforcing wage-payment laws. Although many States have laws regarding the payment of wages, relatively few of them are made really effective by giving plenary authority to some State agency to enforce wage-claim collections. At the present time the procedures in the various States may be described under two heads. In a number of States the labor commissioner exercises a de facto authority and actually does collect unpaid wages. Among this group are the following States: Colorado, Kansas, Louisiana, Michigan, Nebraska, Oklahoma, Tennessee, Washington, and Wyoming.

In the second group of States, which include California, Massachusetts, New Mexico, New York, Oregon, Nevada, and Utah, the law specifically empowers the labor commissioner to handle wage collections.

The provisions of the California statute are so remarkable that they deserve consideration. The labor commissioner and his deputies may take assignments of wage claims and prosecute actions for the collection of wages of persons who are financially unable to employ counsel. During the fiscal year 1932 the bureau settled over 16,000 wage claims, collecting over \$775,000. Most of the cases are settled without resort to either criminal or civil actions. During the fiscal year 1927-28, 831 warrants for the arrest of employers refusing to pay wages were secured, and for the 2 fiscal years which ended June 1928, 331 civil actions had been brought on behalf of wage claimants.² In Oregon the situation is similar to that in California, except that the expenses of proceedings instituted by the commissioner of labor are paid by the costs and fines collected in criminal prosecutions and by levy of not more than 5 percent of the wage claims collected. Through this device the State is not compelled to bear the whole cost, and the wage claimant is not unduly burdened by being required to pay a nominal portion of the wage claim that is collected for him.

From the available experience, the best plan clearly seems to consist of these features: (1) A law requiring payment of wages weekly; (2) a law making the nonpayment of wages a criminal offense; (3) entrusting the enforcement of this law to an administrative official, generally called a labor commissioner. By making the proceeding criminal instead of civil not only is the law itself made more stringent, but also a more summary process is available and the problem of court costs is eliminated, because costs are not required as a condition precedent to the institution of a criminal complaint. To conduct criminal proceedings the laborer needs legal assistance, and this the labor commissioner or an attorney on his staff can furnish.

² American Labor Legislation Review, vol. 19, New York, 1929, p. 414.

The problem of the collection of wage claims has been of vital interest to legal-aid societies from the beginning. Prior to 1924 figures were not available showing the extent of this work. Since 1924 statistics have been kept in such shape that it is possible to give a fairly accurate statement of the situation. The following table shows what has been happening during the past 10 years :

TABLE 2.—*Number of cases involving wage claims during 10-year period 1924-33*

Date	Number of cases involving wage claims	Percentage of total cases
1924	23,084	26.6
1925	20,574	24.8
1926	29,432	30.2
1927	36,461	28.6
1928	34,758	27.4
1929	32,397	24.3
1930	34,411	22.3
1931	36,855	21.1
1932	35,103	13.9
1933	26,481	10.8
Total....	309,556	20.8

The foregoing table shows that over 20 percent of the cases coming to legal-aid organizations are in the field of wage claims. When one realizes that these applications are made in addition to the ones presented to the labor commissioners, small-claims courts, and other agencies, it is apparent that the problem of nonpayment of wages is a major one with which the administration of justice must concern itself.

The National Association of Legal Aid Organizations recognizing the seriousness of the matter in 1924 appointed a committee to cooperate with the Association of Governmental Labor Officials of the United States and Canada. This latter organization is now known as the Association of Governmental Officials in Industry of the United States and Canada. Representatives of the legal-aid group appeared at meetings of the Association of Governmental Labor Officials, and studies were made by both groups to determine the extent of the problem. In particular in the year 1927 at the Paterson, N. J., convention of the Association of Governmental Labor Officials an admirable report was presented containing valuable statistics on the nonpayment of wages, and a suggestion that the National Association of Legal Aid Organizations and the legal-aid committee of the American Bar Association cooperate in the drafting of a suitable law. This union of effort was effected. Professor John M. Maguire of the Harvard Law School acted as draftsman and the Legal Aid Committee of the American Bar Association in an appendix to its 1927 annual report presented the first draft of a model

statute for facilitating the enforcement of wage claims. A copy of the first draft of this act will be found in appendix C.

A portion of the preliminary statement to this draft is so significant that we quote it here :

While the statute books of all or nearly all our States contain provisions for enforcing prompt payment of wages, these laws are often imperfect. This statement is not intended as an adverse criticism of their draftsmen. The earlier laws were courageous experiments. They had to steer a tortuous course among outjutting constitutional difficulties. They suffered considerable judicial misunderstanding and disapprobation. From tentative small beginnings they have grown unevenly and frequently have not attained comprehensive symmetry. They have included many provisions proved futile when put to the acid practical test. States which resolutely forced their way through the stages of trial and error may wisely continue to build upon the workable residue of their old accustomed forms. But it is doubtful policy to shape fresh legislation in other jurisdictions by such irregular models, and obviously wasteful to repeat primitive mistakes. Hence this first draft of what is intended to become a scientific model statute is now published for the purpose of inviting criticism and suggestion. It is not proposed as a uniform law for general adoption in fixed phrasing. Local variations render utterly impracticable any idea of Nation-wide uniformity. Omissions and additions should be freely made to fit particular needs. But the draftsmen have striven to produce a statute which in general outline and method of approach reflects the best features of existing laws combined with certain helpful new features of substance and form.

Constitutional provisions raise serious difficulties. Wage-payment laws have had to run the gamut of attack on various grounds, some have been approved and others have been condemned. This is not the place for a dissertation on constitutional law, but it is worth while to indicate that the matter is complex, rather than simple, and that its solution calls for caution and forethought.

Statutes regulating the time of payment of wages are generally constitutional. Especially is this true when the statute applies to both individual and corporate employers and includes practically all kinds of employment. Exemptions from the operation of such statutes are valid, provided there is a reasonable basis for classification. Since the great majority of State laws on this subject are relatively comprehensive, and there is the added policy of recognizing that regulation of the time of wage payments is within the police power of the State, it is believed that such statutes are in the main constitutional. They have been upheld in Arizona, Arkansas, California, Indiana, Massachusetts, New York, and in a number of other States. However, in some of the above-mentioned States other similar laws have been held invalid, but the inconsistency is more apparent than real, as the decisions can be readily reconciled if the wording and the application of the statutes are considered.

Laws which make nonpayment of wages a crime are attacked as legalizing imprisonment for debt. Most State constitutions contain a prohibition against imprisonment for debt; but an exception is

made if the debt was contracted in a fraudulent manner. There is a conflict in the decisions on this point, but it is hoped that by careful wording a statute may avoid the imprisonment for debt difficulty by standing on the ground that any general or continuing refusal to pay wages earned is in itself prima facie evidence of fraud. A recent California decision (*Ex parte Sears*, 30 P. (2d) 571, 1934) held constitutional the California law making it a misdemeanor for an employer to fail to pay a discharged employee his wages. The court rejected the argument that this was violative of the imprisonment-for-debt provision in the California constitution, saying that debts contracted by fraud were excepted, and the statute involved in the present case made fraud a necessary part of the crime.

Some statutes have failed because of defects in title and other technical objections which are insignificant and so easily cured by proper drafting that they need not detain us, but two further serious objections remain. The first is the impairing of obligation of contracts. It is true that if the law requires wages to be paid weekly the master and servant may not agree that they shall be paid monthly, and this is an abridgment of the "freedom of contract." A Pennsylvania decision (*Commonwealth v. Isenberg* (1895), 4 P. D. R. 579) holds that such a statute substitutes a contract made by the legislature for a contract freely entered into by the parties and is therefore void. This objection can be overcome only by the theory that such a statute is within the police power; that the social interest in the prompt payment of wages is so great that the State may intervene through legislation.

We have earlier noticed that certain statutes providing civil penalties have been held unconstitutional, as in *Davidow v. Wadsworth Mfg. Co.* (211 Mich. 90, 1920), but it is not necessary to digress to consider this series of cases, because, in our opinion, the plan of civil penalties is not as effective as can be devised; it certainly is not so effective as the California plan, and the best hope for progress is to profit from the experience already available and to concentrate on the plan that offers the best solution.

There is excellent reason to believe that by the exercise of caution and foresight in draftsmanship the essentials of the so-called California plan can be embodied in a model statute that will pass any constitutional challenge. Statutes requiring the periodic payment of wages have come before the United States Supreme Court, and the decision as expressed in *St. Louis Ry. Co. v. Paul* (173 U. S. 404) is in substance "the right to contract is not absolute, but may be subjected to the restraints demanded by the safety and welfare of the State." Our economic concepts are constantly being broadened under the pressure of modern conditions. The trend of public opinion generally and of the courts as well is certain to be in the

direction of recognizing more clearly the direct interest of the State in promoting the general welfare by requiring the prompt payment of wages.

The authors of this report are certain that the administrative plan offers an excellent solution for this particular aspect of our problem. In their judgment, a proper wage-payment law, enforced by a labor commissioner, will afford a summary and an inexpensive method whereby wage earners may enforce their claims. In fact, the existence of such a law and of such an official is apt to make the law self-executing; in States where it exists wages will be paid, and it will not need to be invoked except in comparatively few instances. The solution is a sound one because it eliminates those factors that heretofore have prevented the law from being actively effective. Delay is avoided because the proceeding is summary in nature, no prepayment of court costs is required, and in most cases no employment of counsel is needed because the labor commissioner himself or his deputy can furnish to the complainant legal advice as to his rights and assist in drawing and presenting the complaint.

Only one final point needs consideration. Because this administrative plan is so excellent there is danger in expecting it to perform more than it ought to perform. It will unquestionably suffice for the great majority of matters within its jurisdiction, just as do the industrial-accident commissions, but there nevertheless will be contested cases where, if justice is to be done, the wage earner must be represented by counsel. There will be cases which, for one reason or another, do not fall within the scope of the statute and there will be cases within the statute where real issues of fact will arise, as that the wage earner was absent from his place of work or performed his duties in an improper manner so that nothing is owed him. The labor commissioner cannot be expected to run a general law office, but at this juncture it seems that the legal-aid organizations might well step in.

It is regrettable that further progress in this direction cannot be recorded. The problem has been thoroughly studied, and the first step in the solution has been taken. A model act exists which may be the subject of discussion and adaptation to the local conditions in the various States. Where the jurisdiction of the administrative officials set up by this law ceases, the legal-aid society is still available to take charge of other cases as in the workmen's compensation field. Again the problem has passed from theory to practice and from the national field to a local one in which legal-aid organizations and labor commissioners, by cooperation, may reduce to a minimum the instances where a wage claimant fails to secure what is his due promptly, inexpensively, and without resort to complicated court procedure.

Chapter XI.—Defender in Criminal Cases

The defender in criminal cases is a lawyer who represents indigent persons accused of crime. He is commonly called the "public defender", but as his compensation may come either from the State or from some private organization which employs him, we shall use the phrase "defender in criminal cases" to denote all public or private agencies engaged in this work. The defender's work is, in reality, legal-aid work in the criminal field. The dramatic features of the defender have given his efforts a greater amount of publicity than has fallen to the lot of the similar organizations in the civil field, because the fact that the life and liberty of the client are at stake makes the problem more engrossing.

While the defender in criminal cases has only recently become a part of the administration of justice in this country, the idea itself is an old one. The ecclesiastical courts in the Middle Ages were far-seeing in recognizing the needs of accused persons in the matter of legal representation. The office of advocate of the poor and that of the procurator of charity were regarded as highly honorable. Spain had an officer corresponding to the defender in the fifteenth century. Today, in the laws of Argentina, France, Belgium, Hungary, Mexico, Norway, England, Denmark, and Germany, provision is made for such an official, and in many of these countries the plan has existed for some time. The idea was discussed early in our own history, and in the constitutions of practically all the States we find established the first step toward the defender, namely, the plan for assigned counsel appointed by the court to defend the indigent accused, which we have already noted in chapter V.

Before discussing the arguments pro and con about the defender in criminal cases, it is helpful to get a concrete picture of the nature of the defender's work, such as is afforded by the case of *State v. Israel*, in which the public defender for Bridgeport played an invaluable part, and which came before the criminal superior court for Fairfield County, Conn., on May 27, 1924.

Israel was indicted for the murder of a priest. The murder was an atrocious one in which the assailant had shot his victim through the head with a revolver. The shooting occurred on the streets of Bridgeport about 7:45 p. m., and the murderer was seen by several people to flee rapidly and disappear from the scene of the crime. The police became very active, but for 2 weeks made no arrest.

Harold Israel, an ex-service man, about this time was out of work and set out to walk to Norwalk. He had in his pocket a loaded revolver which he had owned for a long time. He was picked up by a policeman as a suspicious person. The police spent hours questioning him as a suspect. At first he denied the crime, but finally he signed a confession and was thereupon indicted by the grand jury.

Mr. De Forest, the public defender in Bridgeport, immediately became interested in the case because of the youth of the prisoner, his lack of friends, and the seriousness of the charge against him. Mr. De Forest appeared at the coroner's hearing and was impressed with the mental condition and evident distress of the accused. The evidence adduced by the prosecution seemed without a flaw. Witnesses identified the accused as the person whom they had seen commit the crime. The deceased had been shot by a 32-caliber revolver. The accused had such a revolver with four chambers loaded and one chamber empty. Upon being questioned the accused indicated where the missing cartridge could be found. A cartridge was there found. An engineer, formerly in the ballistic department of the Remington Arms Co., after experiments, reached the conclusion that the fatal bullet had been fired through Israel's revolver.

Yet the public defender was struck with the strangeness of the case and, after study, became convinced that the man was innocent. This opinion he stated in the public press and to the State's attorney. His insistence induced the State's attorney to commence an independent investigation. The situation was remarkable because the net of evidence secured by the police and others appeared sufficient to convict the accused of first-degree murder.

The result of the investigation of the State's attorney was first to disprove the confession. It was clearly demonstrated that the mentality of the accused was defective and that he had completely succumbed to the stronger wills of the police. One by one the identification by various witnesses was proved to be mistaken. It was shown that Israel could not possibly have been the man whom they saw commit the murder. Finally, a group of ballistic engineers made an examination and came to the conclusion that the bullet causing the death had not been fired from Israel's revolver. This technical evidence was so conclusive that the State's attorney appeared in court and nol prossed the case against Israel.

When one considers the prominence of the deceased, the public clamor over his death, the demand for vengeance, and the apparently flawless case against the accused, there is reason to believe that an innocent man would have paid the extreme penalty for a crime he did not commit if he had been obliged to provide and pay for his own defense. He was saved by the legal aid of the de-

fender and also by the honorable and thorough cooperation of the prosecuting attorney.

In the last few years discussion as to the defender has advanced from a theoretical basis to a practical one. The operation of the plan is known, and with that knowledge it is possible to brush away many theoretical objections with which the proposal was originally met. It should be kept in mind that there is now little or no argument against the proposition that a person accused of crime is entitled to be represented by counsel in his behalf. The debate begins when it is urged that special effort be made to supply legal assistance to poor persons who cannot pay for the services of counsel.

A survey of the literature dealing with the defender reveals 23 different objections to such an official. Many of these are simply variations of the same theme, and by grouping all similar objections together we can shorten the consideration of them.

One group of objections is based on the belief that the defender is a person whose duty is to keep dishonest persons from going to jail. It is contended that such a person will frustrate the efforts of the district attorney; that the State should not champion criminals; that it is illogical to have one official to put men in jail and another to keep them out. In practice none of these fears has been realized. What has happened is a revision of the ideas of many persons regarding the real purpose of a criminal proceeding. It is now clearly seen that it is as much the function of the State to protect innocent persons from going to jail as it is to send guilty persons to punishment. It is known now that a criminal trial is not a contest in which the State's only interest is to secure a conviction, but a scientific search for the truth in which the State may well engage impartially, and to that end may support both sides to insure impartiality.

Another group of objections alleges that the defender is superfluous. It is argued that the laws throw safeguards around the person of the accused; that the judge and the district attorney are bound to protect him. Practice has here disclosed the fact that such safeguards in the law may be ineffective unless there is some counsel to assert them. It also demonstrates that while in a perfectly clear case the rights of the accused will be protected, yet if a careful investigation of the law or facts is necessary to disclose a proper defense and prepare it for trial, the defendant must have some one actively and affirmatively working in his behalf. If he can afford it, the defense is represented by able counsel. The equal protection of the laws is not attained unless legal assistance is provided for the man who cannot afford it. Such a consideration should in itself outweigh any objection based on the expense to the public of

such an official, and experience demonstrates that the cost is small—it being much less than that of the district attorney. The presence of the defender, furthermore, has the effect of winnowing out at an early stage all cases except those where a trial is absolutely necessary. This results in a substantial saving, because the cost of a criminal trial before a jury is about \$200 a day.

Some of the objections are founded on the fact that the objectors believe the “public defender” is merely a new elective official who will be subject to all the political difficulties, graft, and incompetence which they regard as attaching to too many public officials. Presumably such persons would not object to a defender’s office conducted and supported as a private philanthropy, as is the Voluntary Defenders Committee in New York.

Again, objection is raised on the score that we are too sentimental with criminals. This objection begs the question—because a man is accused of a crime is he necessarily a criminal? If he were, there would be no need of the trial. It is for the purpose of determining accurately this question of fact by means of an impartial trial that the need for a defender arises.

There are many pronouncements in our State constitutions to the effect that the accused in a criminal trial shall be entitled to counsel. To make this constitutional guaranty actively effective in all cases, some definite provision must be made to secure counsel to those persons who are too poor to employ counsel at their own expense. In final analysis, the argument about the defender must be resolved by ascertaining whether any other adequate and satisfactory plan is available for the protection of indigent defendants. In general, our laws provide three distinct remedies, viz: (a) Unpaid assigned counsel, (b) paid assigned counsel, (c) a regular defender’s office.

Table 3 shows the provisions of the statutes in various States regarding assignment of counsel for indigent defendants accused of crime.

TABLE 3.—Statutory provisions for assignment of counsel in criminal cases ¹

State	What crimes	Whose instance	When assigned	Compensation for attorney	Citation
Alabama	Capital	Mandatory	No provision	No provision	Ala. Code 1928, sec. 5567.
Arizona	All	Request	Arraignment	If in superior court and jury, \$10-\$100 in court's discretion.	Rev. Code 1928, sec. 5001.
Arkansas	Felony	do	Before arraignment	No payment. (See 31 Ark. 266)	Craw. & Moses Stat., 1921, sec. 3051.
California	All	do	Arraignment	No provision; public defender provided for.	Penal code 1931, sec. 987. Statutes, 1921, p. 354.
Colorado	do	Discretion	No provision	Capital, \$50 maximum; Felony, \$30 maximum; Misdemeanor, \$20 maximum.	Courtright's Mills Ann. Stat., 1930, sec. 2128-32.
Connecticut	do	Public defender	do	do	Gen. Stat., 1930, sec. 6476.
Delaware	Felony	No provision	No provision	No provision	Rev. Code 1915, secs. 3794 and 3798.
Florida	Capital	Mandatory	do	\$50 maximum	Comp. Gen. Laws, 1927, sec. 8375.
Georgia	All	Request	Before indictment	No payment	Ga. Penal Code, 1926, secs. 933 and 6361.
Idaho	do	do	Before arraignment	Capital, \$50; Felony, \$25; Misdemeanor, \$10.	Code 1932, 19-1412, 19-1413.
Illinois	do	Mandatory	Arraignment	Preparation, \$15 a day for 5 days; trial \$25 a day. Total maximum, \$250.	Smith-Hurd Rev. Stat. 1933, ch. 38, sec. 730.
Indiana	do	Discretion	No provision	Reasonable	Baldwin's Ind. Statutes, 1934, sec. 2235.
Iowa	do	Request	Arraignment	Life or over, \$20 per day; others, \$10 total maximum.	Code 1931, sec. 13773-5.
Kansas	Felony	Mandatory	do	No provision	Rev. Stat. 1923, sec. 62-1304.
Kentucky	Capital	Discretion	No provision	do	Carroll's Ky. Stat., 1930, const. sec. 11.
Louisiana	All	Request	Before arraignment	do	Code of Crim. Proc. 1932, art. 602.
Maine	Capital	Discretion	No provision	Reasonable	Rev. Stat. 1930, ch. 146, sec. 14.
Maryland	All	do	do	\$100 maximum	Bagby's Code, 1925, Art. 26, secs. 7, 8.
Massachusetts	Capital	do	do	Reasonable	Ann. Laws of Mass., 1932, ch. 276, 37A.
Michigan	All	do	do	Capital, \$250 maximum; others, \$100 maximum.	Comp. Laws, 1915, V. 111, ch. 264, secs. 15, 623, 15,911 to 15,914.
Minnesota	Felony and gross misdemeanor.	Request	Arraignment	\$10 a day for each attorney; public defender in counties over 300,000 population.	Gen. Stat. 1927, secs. 9957 to 9963.
Mississippi	Capital	Request	Arraignment	No provision	Code, 1930, sec. 1262.
Missouri	Felony	do	Before arraignment	No payment	Rev. Stats., 1919, sec. 3957.
Montana	All	do	do	Capital, \$100; Felony, \$50; Misdemeanor, \$25.	Rev. Code, 1921, secs. 11, 886-887.
Nebraska	Felony	do	Before indictment	\$100 maximum except in capital cases; public defender in counties over 100,000 population.	Comp. Stat. 1929, ch. 29, sec. 1803.
Nevada	All	do	Arraignment	Capital, \$100 in lump sum; In others, \$50 maximum.	Nev. Comp. Laws, 1929, secs. 10, 883, 11,357-358.

¹ There are several definitions of a felony. Originally the word meant an offense which by the statute or by the common law is punishable with death or a total forfeiture of lands or goods. In many statutes today a felony is defined as an offense which is punishable by death or by imprisonment in the State prison. In general, the word "felony" is used to distinguish the more serious offenses from misdemeanors, the less serious crimes.

TABLE 3.—Statutory provisions for assignment of counsel in criminal cases—Continued

State	What crimes	Whose instance	When assigned	Compensation for attorney	Citation
New Hampshire.....	Capital and 5 years imprisonment.	Request.....	Before arraignment.....	Reasonable; \$150 maximum.....	Pub. Laws, 1926, ch. 368.
New Jersey.....	All.....	Mandatory.....	No provision.....	Reasonable but only in homicide.....	Comp. Stat. V, 11, p. 1838, sec. 56.
New Mexico.....	Unspecified.....	No provision.....	do.....	No provision.....	N. M. Stat. 1929, 105-2411.
New York.....	All.....	Request.....	Arraignment.....	Incurred expenses plus \$1,000 in capital cases.	Code of Crim. Proc., 1933, sec. 308.
North Carolina.....	do.....	Discretion.....	No provision.....	\$25 in capital cases.....	N. C. Code, 1931, sec. 4516.
North Dakota.....	do.....	Request.....	Arraignment.....	No provision.....	Comp. Laws, 1913, sec. 10, 721.
Ohio.....	Felony.....	Mandatory.....	do.....	First and second degree murder, reasonable; Manslaughter, \$100 maximum; Others, \$50 maximum.	Page's Ohio Gen. Code, V. IV, sec. 13, 439-3.
Oklahoma.....	All.....	Request.....	Before arraignment.....	\$25 maximum.....	Comp. Stat. 1921, sec. 2590, and sec. 2929.
Oregon.....	do.....	do.....	do.....	No provision.....	Oreg. Code, 1930, sec. 13-803.
Pennsylvania.....	Capital.....	do.....	No provision.....	No payment. (See 16 Pa. Dist. Ct. Rep. 449.)	Pa. Stat. 1920, sec. 8165.
Rhode Island.....	All.....	do.....	do.....	Capital, \$15 a day; No pay for over 2 days except murder.	Gen. Laws, 1923, 6363-4, secs. 69-70.
Tennessee.....	do.....	do.....	do.....	No provision; Public defender in counties over 190,000 population.	Tenn. Code, 1932, secs. 9983, 11,734.
Texas.....	Capital.....	Mandatory.....	Arraignment.....	No provision.....	Code Crim. Proc., 1928, secs. 491, 494.
South Carolina.....	do.....	Request.....	No provision.....	do.....	S. C. Code, 1932, sec. 980.
South Dakota.....	All.....	do.....	Before arraignment.....	do.....	Comp. Laws, 1929, sec. 4755.
Utah.....	do.....	do.....	Arraignment.....	do.....	Rev. Stat., 1933, 105-22-12.
Vermont.....	do.....	do.....	Trial.....	Reasonable in capital and State prison offenses.	Gen. Laws, 1917, secs. 2496, 2539, 2555, 2568.
Virginia.....	do.....	do.....	No provision.....	\$25 in capital and State prison offenses; Public defender appointed by judge in cities over 100,000 population.	Va. Code, 1924, ch. 136, sec. 3518.
West Virginia.....	Felony.....	do.....	No provision.....	No payment. (See 47 W. Va., 376.)	Barnes' Code, 1923, ch. 159.
Washington.....	do.....	do.....	Arraignment.....	\$10 per day.....	Rem. Rev. Stat., 1934, sec. 2305.
Wisconsin.....	All.....	Discretion.....	No provision.....	Reasonable, not to exceed \$15 a day in preparation, \$25 a day during trial.	Wisc. Stat., 1933, sec. 357.26.
Wyoming.....	do.....	Request.....	Before arraignment.....	No provision.....	Rev. Stat. 1931, sec. 33-501.

Assignment of counsel for indigent defendants in capital cases is provided for in 48 States. In felony cases the law provides for the assignment of counsel in 37 States. In misdemeanor cases—that is, when the crime charged is a minor one—provision for assigned counsel is made in 29 States.

In general, it may be said that the plan of assigned counsel works satisfactorily in capital cases. The dramatic situation and the attendant publicity are sufficient to insure the lawyer's best efforts, and in capital cases the lawyer receives compensation for his work. As to felony cases, the efficacy of the plan is doubtful. In misdemeanor cases it appears that counsel are seldom assigned in actual practice.

In considering how these laws operate, we come next to the compulsory provisions. It is clear that if the law makes the assignment of counsel compulsory, it is more likely to be enforced than if the words used are permissive only.

The statute makes the assignment of counsel mandatory in seven States by using the word "must." But of these the reference is only to capital cases in three States and of the remainder the reference is only to felony cases in two States. The provision is enforceable at the request of the accused in 30 States and is enforceable in the discretion of the court in 9 States.

It appears only too often that the accused may waive his right to counsel; that if he does not demand his right at trial he will be presumed to have waived it. Obviously in the case of an uneducated person or a foreigner it frequently means that he will not know enough to assert his right.

We must next consider how far the laws compensate the assigned lawyers for their work. It is asking little to require a lawyer to care for one case a year without compensation, but it is an imposition to expect a man to give his professional services without compensation 20 or 30 times a year, and, as has been noted in chapter V, this is the point at which the assigned-counsel plan is apt to break down.

Payment is allowed in 26 States. In 13 of these compensation is provided for in cases both of felonies and misdemeanors. In five other States compensation is allowed only in felony cases, and in still eight other States compensation is payable only in capital cases.

A lump-sum payment is provided in 6 States, a per diem payment is provided in 5 States, and payment is in the discretion of the court in 15 States.

The amount of compensation throws a curious light on the relative value set by the States on such matters. In capital cases lump-sum compensation ranges between \$25 and \$1,000; in felony cases between \$25 and \$50; in capital cases per diem compensation averages about \$20 or \$25; and in felony cases per diem compensation averages about \$10.

The foregoing classification of States does not include the three States where the public-defender system is in effect. It does include, however, those States in which the public-defender and the assigned-counsel systems still exist side by side.

The problem of cash disbursements for necessary expenses is important. They include expert testimony, witness fees, and traveling expenses, as well as those items of one sort or another which are essential to the proper preparation of any case. The Hauptman murder case recently tried in New Jersey over a period of 42 days illustrates how great may be the expense for evidence given by witnesses, experts, detectives, and others. Such evidence was prepared and used both by the prosecution and the defense. Because of the national interest in the Hauptman case it was possible for the defendant to make an appeal through various publicity media for financial assistance. The question naturally arises as to how a poor man in a case that was not so dramatic would fare if it were necessary to provide an elaborate preparation for his defense. One may well speculate on what may have been the outcome of *State v. Israel* if no aid had been provided. Nearly every case, if it is to be properly prepared and tried, involves some cash outlay, but in the great majority of cases, even where counsel is assigned, no provision is made for such expenses.

This is a substantial defect in the assigned-counsel plan. It means that either the attorney must pay the incidental expenses out of his own pocket, which, of course, he cannot afford to do, and therefore does not do, or the defendant must go to trial and do the best he can in spite of an inadequate preparation of his case. In only eight States are the expenses defrayed by the State, and in two of these the expenses will be borne by the State only in capital cases. In seven States the law expressly prohibits any reimbursement to the lawyer for such incidental expenses. Not more than four or five States have adequate provisions on this point, and in three of these the adequate provision exists as part of the public-defender plan.

Even where assigned counsel are provided, the laws restrict their work to certain courts; it is rarely the case that a law provides the accused with an attorney to represent him from the very beginning to the very end of the proceedings. Thus provision is made for the appearance of counsel in the regular criminal trial courts in 34 States, but similar provisions for appearance in the magistrates or other lower courts are found in only 8 States, and for appearance in appellate courts we find definite provisions in only 2 States.

The statutes are not definite in many cases as to when counsel are assigned for the indigent accused person. In 2 States counsel are assigned before indictment, in 10 States before arraignment, in 14

States at the time of arraignment (when the person pleads guilty or not guilty to the indictment), in 1 State at the time of trial. In the remaining States the statutory provisions are not sufficiently clear to permit definite classification. However, it is believed that in the majority of these States the practice is to assign counsel at the time of trial.

The importance of the court in which the defender appears is reflected by the statutory services imposed on such an officer. He is supposed to expedite the trial of criminal cases by helping to eliminate all those where there is no need for a trial and by sorting out the cases where the person is clearly not guilty, thus saving the county the expense of complicated proceedings. It is obvious that the earlier in the case the defense may be thoroughly studied by an impartial expert the sooner will its validity be tested. If the case has no merit, a plea of guilty may be entered. If the defense is sound, prosecution may be dropped. This saves time and money. Another phase of the desirability of early assignment of counsel grows out of the celebrated "third degree." The police are often accused of resorting to "third degree" methods to obtain a confession. Whether or not such practices are often resorted to, it is certainly desirable that the accused should have the benefit of counsel's advice and protection at every stage in the proceedings.

Finally, consideration must be given to who selects the lawyer for the accused and who determines whether the accused is entitled to any aid of this kind.

The selection of the lawyer for the defense may or may not be a valuable asset in the hands of the defense. The law in three States allows the defendant to make a selection. In the other States the selection is in the hands of the court. The public-defender plan has been objected to on the ground that it gives no freedom of choice to the defendant as to who shall represent him, but this is an objection as well to the assigned-counsel plan as it exists in most States. It is urged that if a man of means is arrested and comes into court he may secure the ablest lawyers to represent him. Equal protection of the laws, it is claimed, requires that the indigent accused should have the same right and that he should not be forced to a trial involving his life or liberty with only the services of some assigned lawyer whom he does not want.

The practical operation of the assigned-counsel system in many States gives some ground for such an objection. The lawyers selected are apt to be of two kinds, either young and inexperienced men who wish to gain experience at the expense of the client, or older men who are present in the courtroom expressly for the purpose of receiving these appointments. Neither group represents the best

element at the bar and neither is able to afford the accused a first-class defense. The more able lawyers, whether in civil or criminal practice, are too busy to spare the time in such comparatively unremunerative work, and the courts rather hesitate to select the better lawyers because it seems like an imposition.

The objection, when directed against the defender plan, is not considered by the authors to be of great practical importance. The State cannot afford unlimited aid to every defendant; if it makes some efficient provision in his behalf, its duty is performed. It must be remembered that the complainant in a criminal case, for example, the man who has been robbed and who has sworn out the warrant against the defendant, has no choice of attorneys; at the trial he is represented by the district attorney whether he happens to like the district attorney or not. Furthermore, the public defender is not forced on the defendant, who is perfectly free to be represented by any other lawyer if he can get one. If he has a friend at the bar and the friend is willing to serve, then the public defender will not interfere or inject himself into the case in any way.

To determine whether a defendant is so poor as to be entitled to have counsel assigned to him is customarily within the discretion of the court. In California the test is whether the defendant is worth less than \$100, and in 41 States the decision is not fixed by any definite amount, but is left entirely to the court. There is little reason to believe that the courts are imposed on in this particular because, as the assignment plan works today, a defendant will procure his own attorney if he can possibly do so. There is more danger of imposition in connection with the defender plan, because as the defender is paid a salary he can afford to work hard on the cases committed to his care, and in the steady course of his work he is apt to become as highly proficient as any lawyer of the criminal bar. It is easy under such circumstances to conceive of persons who would sham poverty in order to secure his services without cost. The best check will undoubtedly be to permit the defender himself, after investigation, to determine whether the defendant is properly entitled to assistance and to report his finding to the court. The problem is only a minor one in any event. It is the same as that considered in chapter IV in connection with *in forma pauperis* procedure, and here, as there, the sound solution seems to be to place the burden of this preliminary inquiry into the applicant's economic status on an administrative official whose finding is subject to control by the court but who can in ninety-nine cases out of a hundred perform the task in a perfectly satisfactory manner, so that the burden is not thrust on the courts.

Viewing the country as a whole to determine how far the administration of justice is empowered and equipped to provide adequate

protection for poor persons accused of crime, it is found that the statutes do not afford any thorough and comprehensive plan. The situation is not unlike that disclosed in chapter IV when we examined the laws regulating the various procedures designed to enable poor persons to sue without prepayment of costs. The position of the man of no financial resources before the law has received insufficient attention, with the result that our statutes represent a hodge-podge of good intentions which fall short of the mark because they are built on false premises or because of inherent limitations that make them ineffective in actual practice. Summarizing the facts contained in the preceding pages of this chapter, we may say that the assignment plan exists in its best form and operates most successfully in capital cases. Also, in noncapital cases, when assigned counsel are paid, the plan does serve to provide adequate representation for the defense, although, as we shall try to indicate later, this is accomplished in an unnecessarily expensive and cumbersome manner. But in at least 19 States the indigent defendant must rely on unpaid counsel or go without any representation at all.

It is this situation that has brought about the various recent experiments which we have called "the defender in criminal cases." These experiments have been conducted along different lines and through different types of organizations. The least formal is that of the Chicago Bar Association Committee. Public defenders are definitely established in certain cities, as in Omaha, Minneapolis, and San Francisco. Variations of this municipal plan exist in connection with the inferior courts in Los Angeles and in New York. In Connecticut the public defenders are county officers appointed by the superior court judges. In 1925, there were the two great defender organizations, the public defender of Los Angeles County and the voluntary defenders committee in New York City.

In Chicago from 1926 until 1933 the Chicago Bar Association, the Northwestern University Law School, and the criminal courts branch of the Chicago Legal Aid Bureau cooperated in rendering voluntary defender service. Cases were referred from the jail or from some prison welfare association. The application for assistance came in the form of a request to the secretary or chairman of the committee. The chairman then assigned some member of the committee to handle the case, and if he wished it, arranged for the assignment of two law students of the Northwestern University Law School as assistants. These law students looked up the witnesses, interviewed the prisoner, did all sorts of investigating work, and under the direction of the older lawyers prepared the case for trial. The lawyer tried the case with the younger men sitting in as juniors.

Since the institution in Chicago of the public defender a portion of the work of this committee has been abandoned, but it is still functioning and secures attorneys to defend in certain types of cases. The committee now has an attorney on duty each day in the boys court and in the morals court. Occasionally the services of volunteer attorneys have been provided in other types of cases. The public defender's office in Chicago is carried on with much the same procedure and with the same satisfactory results which have been obvious in almost every place it has been tried. There are, however, a few characteristics of special interest which deserve mention.

Under the old system of appointing counsel for those accused of crime the dockets were crowded. Jury trials occupied too much time, continuances required witnesses to keep coming back again and again, the expense was enormous, and the result of it was that a system of bargaining with the defendant developed whereby a lesser penalty was offered in return for a plea of guilty. One of the greatest objections was that the assigned counsel would arrange with relatives of the accused for installment payments, and, consequently, would try to prolong the case as much as possible until he got his fee.

The public defender gets his clients by assignment from the court when arraignment takes place and the prisoner cannot afford private counsel. The public defender is appointed by the chief justice of the criminal court upon the recommendation of the judiciary advisory council.

Since the institution of the public-defender system in October 1930 the above evils have been practically eliminated. The saving effected is one of the most imposing results. The following are instances where savings have been effected:

(1) By holding down the number of jury trials (such now being possible where not formerly so).

(2) By always being prepared and ready to proceed with trials, thereby avoiding numerous continuances.

(3) By shortening trials: (a) By speedily selecting juries; and (b) by stipulating necessary facts to avoid continuances.

(4) By advising defendants when the case is hopelessly against them to plead guilty and thereby save the time of the court.

(5) By eliminating in capital cases fees of \$250 provided by law for the attorneys of every indigent defendant.

After making a conservative estimate and giving due allowance to other factors, it seems safe to say that the office has more than paid for itself.

As an illustration of the Connecticut plan we may take the public defender in Hartford. Each year the judges of the county appoint a defender from among the practicing attorneys. The work does not take all of the lawyer's time and he is entitled to continue his

private practice. There are four terms of court each year. The method of operation, for example, in the June term is as follows: About May 1 the defender obtains from the sheriff the names of all prisoners who require his services. He does not take bail cases except under unusual circumstances, because, in general, prisoners able to obtain bail are also able to employ counsel. As a result of the information received from the sheriff the defender is supplied with a number of cases. Others come in afterwards, for example, cases in which the prisoners expected private counsel to be paid by friends and were disappointed, or cases in which the arrests have been made after May 1 but before the term of court.

The first step is to interview each of these prisoners and endeavor to get the facts in his case. The public defender may then subpoena witnesses, secure the services of a detective, and employ all necessary devices to secure the correct information and proof. The bills for such incidental expenses are submitted at the end of the month, approved by the court, and paid by the county.

In this way the defender becomes conversant with the facts in each case. The next step is to confer with the defendant and decide what is to be done. There are three classes of cases—those where the accused is obviously innocent, those where he is obviously guilty, and those where there is doubt. In the first class the matter is taken up at once with the district attorney and the proof is submitted frankly to him. Upon agreement of counsel, the court will release the prisoner. In the second class of cases the prisoner is urged to plead guilty. If he refuses, he is at all events entitled to a fair trial, so that what he regards as the merits of his case may be fairly heard, and this the defender affords him. In the doubtful cases the defender frequently goes to the prosecutor, lays his cards on the table, and the district attorney does the same. If there is still doubt, the case must be tried. But as a practical matter the result of this procedure is that in most cases there is no need for trial. It is here that the economy of the defender's office makes itself manifest.

This preliminary work takes up the second and third weeks in May. On the 1st of June the trials begin and the cases thereupon take their regular course.

The Hartford defender is on a salary and handles no criminal cases at all in his private practice. While there is no statutory prohibition on his handling such cases, it is a matter of individual preference which very properly has developed into a tradition.

The defender in Omaha performs his work in a manner quite similar to that already described. It should be pointed out, however, that in Omaha the public defender is elected. In Minneapolis until the last year or two the public-defender system operated simi-

larly. Recently the judges of the local district court have reverted to the system of assigning counsel to individual defendants. The system grew up following the resignation of the last public defender, no further appointment being made. There seems to be no reason why the public-defender system should not be reestablished.

The public defender for Los Angeles County, Calif., established in January 1914, was the first office of its kind in this country and attracted a great deal of attention. Its office force consists of the defender and 12 deputies. Its existence is provided for by the county charter. It handles only criminal cases in the superior court. It has jurisdiction to handle civil cases in the municipal and justice courts. In those courts it does not handle criminal cases. Its main activity, however, is in the handling of criminal cases in the superior court. The office is subject to civil-service regulations and has been filled by men of the highest standing. Its work is not dissimilar to that described in Hartford, but it is on a much larger scale.

In conducting this work the public defender functions just as any ethical high-minded attorney would do his work. The rights of the defendant as guaranteed by law are protected but there is no incentive for doing anything beyond what is ethically proper. If the defendant is palpably guilty of the offense charged, the defender endeavors to show him that it would be wise to enter a plea of guilty. Of course, if the accused maintains that he is innocent the defender like any other reputable lawyer must submit his case to the determination of the court or jury. The valuable reports of this office served to make the public defender known throughout the country, and supply many of the figures which are set forth later in this chapter.

The New York Voluntary Defenders Committee is the best example of a private organization operating in the field. In 1914 the Association of the Bar of the City of New York and the New York County Lawyers' Association, each appointed a committee to report upon "the necessity and advisability of creating the office of public defender in New York City." The report was against a public but in favor of a private defender. The organization of the voluntary defenders committee followed. Court work was initiated in April 1917. The organization was merged with the New York Legal Aid Society in 1919.

The voluntary defender office staff consists of five lawyers, two investigators, and a social service worker. While the actual handling of the work follows the same general channels as those described above, there are certain distinctive features here.

Upon receipt of a case, either through assignment by the court or upon application of some social service agency or by direct application of the defendant, a copy of the indictment or charge is made

at the office of the clerk of the court. An attorney from the office then interviews the defendant, obtaining from him all the necessary data pertaining to his case and information concerning his past. It has been determined as a matter of propriety and expediency that the preliminary interview should be taken by the attorney rather than by an investigator. The attorney is in a better position to advise with the defendant and in most instances secures the pertinent information required. At the initial interview the defendant confers with his counsel and this enables counsel to gain a full measure of candor and confidence which is most essential in work of this nature. By this method the defendant frequently discloses information which might be withheld from an investigator.

When this interview is completed, the statement is then turned over to one of the investigators in the office for the necessary check-up. The social service division of the work is a highly important function. Through the activity of the social-service worker the defender is able to contact other agencies throughout the city, State, and country in an effort to assist in the solution of the social problems incident to the case. In turn this close cooperation with social agencies frequently leads to the reference of cases prior to arraignment. Thus the service is of distinct advantage both to the defendant and the community at large. At the proper time the investigator subpoenas the witnesses for trial. When this preparatory gathering of facts and information has been completed, the attorney proceeds to take the case into court and handle it just as any lawyer would handle a similar case.

The experiment has been so successful that in 1934 plans were made for an extension of the work into the magistrate courts of New York City. Defenders generally have confined their work to cases in the general trial court. Except for a brief effort in Cleveland in 1924 and the present effort in New York, there is only one other example. The two bar associations in New York contributed a fund in 1934 and appointed a joint committee to conduct a test as to the need for a defender service in the lower courts. An attorney and a social worker were retained to carry on the experiment as long as the appropriation should last. This small staff operated in the different magistrate courts in Manhattan beginning on July 2, 1934, and spending 4 weeks in each court. It is too soon to draw any conclusions from the experiment.

The other example of service in the lower courts is the city public defender in Los Angeles, which is of longer standing. This office was first created by a city ordinance in November 1915. The duties of the defender, as prescribed by the ordinance creating the office, are "to defend any person who is not financially able to employ counsel and who is charged in the municipal court, or before any judge thereof

sitting as a committing magistrate, with the commission of any misdemeanor, felony, or other public offense; he shall also, upon request, give counsel and advice to any such person respecting any such charge against him.”

It is to be noted that the ordinance as enacted does not extend the duties of the office of city public defender to include counsel and advice or representation in civil matters.¹ The necessities of those availing themselves of the benefits and privileges of the office, however, demand that service in purely civil matters be rendered; but this service, as yet, does not extend to a court appearance in civil cases, being limited purely to a consultation privilege. The fact that upward of 10,000 people yearly avail themselves of this extended privilege in strictly civil matters is in itself a justification of such service.

Actual work was begun in February 1916 with one lawyer and one stenographer. The personnel of the office now consists of the city public defender, four deputies, and a secretary. Of the four deputies, one is a woman, who has charge of all matters filed in the so-called woman's division of the municipal court. These matters deal principally with failure-to-provide cases and complaints largely involving morals charges. Another deputy is assigned to the night-court division of the municipal court, where arraignments on misdemeanor charges are heard and criminal trials are set. A third deputy is assigned to the day-court division, wherein prisoners are arraigned and trials set. The fourth deputy cares for both court and jury trials when disposition has not already been made in the other division of court.

The jurisdiction of the Los Angeles municipal court includes such matters as larceny, vagrancy, disturbing the peace, visiting lotteries, embezzlement, fictitious checks, indecent exposure, carrying concealed weapons, addiction to drugs, prostitution, violation of the State liquor-control law, criminal libel, and assault and battery.

The defendants in all cases of felonies (State prison offenses), which are not triable in the municipal court, but which have a preliminary hearing therein, are transferred to the superior court. When they appear in the superior court they may have the county public defender take up their cases.

This rather extended statement of the nature and scope of the Los Angeles Defender's work is necessary because it is the best illustration of such work in the lower courts, and there is a difference of opinion as to whether defenders are needed in these lower courts. The Los Angeles police court defender, writing on

¹ An amendment of Aug. 8, 1935, to this ordinance permits the city public defender of Los Angeles to handle civil cases.

this subject in March 1933, urges the need for his type of office on the ground that the courts are trial courts as well as courts of record, and the verdict of such a court is quite as effective against the prisoner as a verdict of a superior court. In California there is no criminal offense triable at all in the court in which the defendant is not entitled to a jury trial. In fact, he must specifically waive his right of trial by jury, and this waiver must be concurred in by the prosecutor. The seriousness of the punishments and the number of offenses triable both constitute a valid reason for the existence of some person to aid in weeding out cases which need not be tried, in saving the city the expense of unnecessary trials, and in seeing that the defendant has a fair presentation of his rights. The Los Angeles police court defender has made an excellent record, from which it appears that in cities where the police court has an important criminal jurisdiction the establishment of the defender office may well be worth while.

As no complete statement of the amount of work performed by the defenders has ever appeared in print, it is important to state here, as fully and as accurately as circumstances permit, the number of cases in which the defenders have acted as counsel for impoverished defendants. In 1926 there were 12 defender offices in the United States. As to three—Chicago, Memphis, and Norfolk—no records were available nor are they now. Three others—Bridgeport, New Haven, and Omaha—had a certain amount of material from which the volume of their business might be estimated. Prior to 1920 only five organizations existed and their records are as follows: The Los Angeles County public defender received 562 cases in 1915, 402 in 1916, 463 in 1917, 495 in 1918, and 535 in 1919. The New York Voluntary Defenders' Committee (working in Manhattan) received 484 cases in 1917, 533 in 1918, and 697 in 1919. The Hartford public defender received 90 cases in 1917, 122 in 1918, and 104 in 1919. The Minneapolis public defender received 118 cases in 1918 and 189 in 1919. From 1916 to 1919 the work of the Los Angeles police-court defender aggregated 9,010 cases. The records from 1920 through 1933 are more detailed and are shown in the following table. Adding these figures to those in the following table, it is found that the total work already performed by the defender offices in the United States is greater in extent than most persons realize. The totals for the respective organizations from their commencing work through the year 1933 are these: Los Angeles county public defender, 59,843; Los Angeles city public defender, 121,693; New York voluntary defender committee, 11,908; Hartford public defender, 1,996; Minneapolis public defender had handled 1,300 cases up to the time it was discontinued in 1924.

TABLE 4.—Number of cases handled by defender offices in specified cities, 1920 to 1933

City	1920	1921	1922	1923	1924	1925	1926
Bridgeport.....	200	200	200	200	100	200	200
Chicago.....							1 80
Hartford.....	97	126	101	70	86	97	129
Los Angeles C. P. D.....	558	675	956	992	1,360	2,450	5,078
Los Angeles P. C. D.....	3,608	1,989	2,504	1,495		1,602	3,050
Minneapolis.....	163	320	246	252	12		
New Haven.....	750	750	750	750	71	83	
New York.....	463	613	575	503	544	602	525
Omaha.....	100	100	350	350			
San Francisco.....		337	876	1,019			
Total.....	5,939	5,110	6,558	5,631	2,173	5,034	9,062

City	1927	1928	1929	1930	1931	1932	1933
Bridgeport.....	200	185	200	200	200	200	200
Chicago.....	504	407	432	477	446		
Cincinnati.....		71	519	1,734	2,693	2,023	1,664
Columbus.....	2,498	3,696	3,670	3,815	5,752	5,792	5,988
Hartford.....	150	164			187	217	256
Los Angeles C. P. D.....	1,800			10,008	14,805	16,096	2,608
Los Angeles P. C. D.....	3,473	4,432	7,373	18,793	20,128	19,529	24,707
New York.....	558		1,016	1,235	1,229	1,180	1,151
Oakland.....		285	341	411	559	690	603
Omaha.....				489			
Pittsburgh.....				283	790	790	769
Rochester.....			1,141	1,064	828	359	(¹)
San Diego.....						3,500	1,000
Total.....	9,183	9,240	14,692	38,509	47,617	50,376	38,946

¹ 1 month.² Discontinued.

Among the younger defender organizations, the Oakland public defender, beginning in 1927, has handled 2,889 cases, and the Columbus, Ohio, public defender, organized in 1927, has handled 31,211.

From these records, which understate rather than overstate the truth, we learn what has already been accomplished, and by estimating the 1933 volume of work at about 38,000 cases it is fair to state that the defender offices have already extended their assistance to approximately 300,000 persons in criminal cases.

Since 1923 there has been substantial activity in the creation of new organizations. The Legal Aid Society of Cincinnati in 1928 established a voluntary defender department. Columbus, Ohio, provided a public defender in 1927. In Dallas, Tex., a public defender functioned from 1929 to 1931, but the work has been discontinued. A public defender was provided in Oakland, Calif., in 1927. In Pittsburgh in 1930 and in Philadelphia in 1933 voluntary defenders were set up; in Pittsburgh in connection with the legal-aid society and in Philadelphia as an independent organization. Rochester experimented with this work through a branch of the legal-aid society from 1928 to 1933. Plans were on foot in St. Louis during the year 1927 but the work has not materialized. A public defender was established in San Diego in 1932 and in Youngstown, Ohio, in 1926.

In 1930, as already indicated, Chicago provided a public defender who conducts a substantial amount of the work. In 1931

the Duke Legal Aid Clinic, Durham, N. C., opened its doors to criminal as well as civil cases.

The National Association of Legal Aid Organizations has taken a step forward in furthering the development of the movement for the appointment of defenders by adopting the following ideal:

Every legal-aid organization should, as far as local conditions permit, endeavor to:

Provide for legal aid in criminal cases where there is no statute providing for the assignment of counsel or for a public defender, or where the circumstances are such that the defendant cannot obtain proper representation in any other way.

A sincere effort has been made to secure figures from these various organizations. In some instances information was available and has been recorded in table 4. It is obvious that in those cities where no figures are available a substantial amount of work is being done. It is hoped that through the medium of the National Association of Legal Aid Organizations these various defender offices may be persuaded in time to send in their annual reports so that interested persons may get some picture of the national progress in this work.

A comparison of the number of cases handled by each office, with the population of the city served by such office and the extent of the work, is indicated roughly by table 5.

TABLE 5.—Cases handled by defenders' offices per 100,000 population

City	Population, 1930	Cases handled, 1933	Cases handled per 100,000 population
Cincinnati.....	451,160	1,664	368.8
Hartford.....	164,072	200	121.9
Los Angeles.....	1,238,048	27,315	2,206.3
New York (Manhattan).....	1,867,312	1,151	61.6
Oakland.....	284,063	603	212.3
San Diego.....	147,955	1,000	675.9
Total.....	4,152,610	31,933	768.9

The best way to appraise the work of the various defenders is by comparing it with the work of assigned counsel so far as such records are available. Through such records we can weigh the merits of the defender plan as contrasted with the assigned-counsel plan and thus inductively arrive at an opinion concerning the defender that is far more interesting and far more likely to be right than any metaphysical balancing of the theoretical arguments pro and con.

We have earlier seen that we might divide the States into three groups according to the provision that they make for providing

counsel to indigent persons arraigned on a serious criminal charge. In the first group are States, such as Massachusetts, which, except in capital cases, make no provision whatsoever for assigning counsel. Between such a system and the public-defender plan no statistical comparison is possible and none is needed. Something is always better than nothing, and the defender plan is obviously a method of definite merit in affording counsel to indigent defendants whereas the Massachusetts situation reveals no plan or method whatsoever.

The second group of States consists of those which assign counsel in criminal cases, but which provide no compensation for such assigned lawyers, and which further make no provision for the expenses incidental to the preparation of the case. It so happens that California fell in this group prior to 1914, so that we can make a comparison between the work of unpaid assigned counsel in Los Angeles in 1913 and the work of the public defender in Los Angeles in 1914. A third column of figures showing the work of the paid private attorneys in 1914 is also submitted. Table 6 merits careful examination because it is based on official court records compiled by Walton J. Wood, the first public defender and now a judge of the superior court in Los Angeles, and because it makes possible a contrast between the two systems which is essentially fair because all the surrounding circumstances were the same.

TABLE 6.—*Comparison of work of public defender and other systems*

Item	Assigned counsel serving in 1913 without pay	Public defender	Attorneys in private practice retained by defendants in 1914
Total number of cases received.....	115	260	514
Pleas of guilty.....	71	183	250
Percentage of cases in which pleas of guilty were entered.....	61.7	70.4	48.6
Number of cases in which probation was granted.....	31	87	154
Percentage of cases in which probation was granted.....	27.0	33.5	30.0
Number of trials.....	30	58	147
Percentage of cases that went to trial.....	26.1	22.3	28.6
Verdicts of not guilty or disagreements.....	6	20	54
Percentage of trials in which verdict of not guilty was rendered or jury disagreed.....	20.0	34.5	36.7

The difference between the number of cases handled by the assigned attorneys in 1913 and the cases handled by the public defender in 1914 cannot be accounted for by the growth of population. It is due to the fact that the lawyers who commonly took the assignments were of such a low grade that the defendants avoided them whenever it was possible. These men hung about the jails and solicited business, but with the advent of the public defender they have almost entirely disappeared.

It will be noted that a higher percentage of the defendants represented by the public defender pleaded guilty than was the case with

the assigned attorneys. This has avoided unnecessary trials and has resulted in a saving of expense to the county. This was not obtained by sacrificing the defendant's rights, because it also appears that a larger percentage of the defendants represented by the public defender were acquitted or placed on probation than of the defendants represented by the assigned attorneys. The public defender accomplished nearly the same results on behalf of his clients as the paid attorneys in private practice, the former securing probation for a slightly higher percentage, and the paid attorneys in private practice securing a slightly higher percentage of acquittals.

The objection of expense is always raised when the public defender is advocated, and because of this the economy which attends the defender offices due to the saving of the wasteful expense of unnecessary trials is consistently pointed out. This saving goes even further and applies to the cases that are tried. The defender endeavors to conduct his cases according to the substantial merit of his defense and without constantly invoking the technicalities and subtleties with which, unfortunately, our criminal procedure abounds. To the foregoing table giving comparative results of work in Los Angeles may be added the following supplementary figures: The private attorneys in 1914 filed demurrers or motions to set aside the indictment in 61 instances, in only 4 of which were the motions sustained; the public defender filed only 2 such motions and was vindicated in both. The private attorneys filed 27 motions for new trials, and 1 such motion was granted; the public defender filed 6 motions for new trials, none of which was allowed. The private attorneys took 27 appeals, and the public defender 3.

Even in the trials themselves time was saved, because the public defender is interested only in matters of substance, and because it is feasible for the prosecutor and defender to agree on certain aspects of the case and to enter into stipulations which shorten the course of the trial. The following table was prepared by Mr. Wood, and its significance lies in the fact that if an office of a public defender can save approximately half a day on each trial that is a saving to the county of \$100, so that in the course of a year's time the office of the defender goes a long way toward paying for its own expenses.

TABLE 7.—*Comparison of time consumed in trials by attorneys in private practice and by public defenders, July 1, 1916, to July 1, 1917*

Item	Number of court days and trials		Average day for each trial	Average time saved on each trial (day)
	Days	Trials		
Cases defended by paid attorneys in private practice.....	167	120	1.391	-----
Cases defended by public defender.....	34	51	.666	0.725

In the presentation of figures there is always danger that important aspects of the work which cannot be stated statistically may be overlooked. It is well, therefore, to note at this point that in Los Angeles the public defender endeavors to help those persons who come into his charge by trying to convince them that honesty is the best policy and by cooperating with them in their effort to get a job and go straight. The most important consideration of all has already been pointed out, but it merits repetition. The man who has been represented by the public defender knows that he has received honest advice and that he has had a fair trial. The influence of this object lesson on him and his family and his circle of friends is to convince them that our legal institutions are fair and that under the law every man, even the poorest, not only is entitled to receive but actually does receive a square deal.

There remains for our consideration the small group of States that assign counsel and pay them, not only in capital offenses but in all cases involving serious crimes and which are triable in the court of general criminal jurisdiction. It is not possible to compare the work of paid assigned counsel with the work of the defender, because the two systems do not exist side by side in the same jurisdiction nor has one been supplanted by the other, as was the case in Los Angeles. We can, however, test the work of the paid assigned counsel by comparing it with the work of the privately retained and privately paid attorneys. The Cleveland survey of criminal justice, made in 1922¹ affords valuable statistics on this point.

The first task of the defendant's attorney is to get the case dismissed in some way, if he can, as by *nolle pros*, quashing the indictment, lack of prosecution, and so on. Failing in this disposition, counsel must then either have his client plead guilty or try the case. The remaining clients go to trial. After defendants have been sentenced there is still one more thing for counsel to do, and that is to try to secure a suspension of sentence. The figures for Cuyahoga County, Ohio, in which Cleveland is situated are as follows:

TABLE 8.—Results secured by paid assigned counsel and by privately retained counsel

Item	Not prossed and other dispo- sitions	Cli- ents plead- ed guilty	Result of trial		Sen- tence sus- pended	Sen- tence exe- cuted
			Guilty	Not guilty		
Represented by paid assigned counsel.....	Percent 23	Percent 41	Percent 70	Percent 30	Percent 17	Percent 83
Represented by counsel privately retained.....	25	45	56	44	21	79

¹ Cleveland Foundation. Criminal Justice in Cleveland. Cleveland, 1922, xxvii, 729 pp.

These figures indicate that the paid assigned counsel did their work reasonably well. The results obtained by them were a little less favorable to the defendants than those obtained by privately paid counsel, as one would naturally expect, but the discrepancy is too small to warrant any assumption that the assigned counsel were remiss or delinquent in their duties. The authors of this bulletin concur with the conclusion expressed in the report of the Cleveland survey that the system of paid assigned counsel is a reasonably satisfactory method of guaranteeing a fair trial to those poor persons who cannot afford to retain counsel in their own behalf.

The cardinal point which we have sought to stress in this chapter is that the administration of justice must make some provision for poor persons accused of serious crimes. If all the States provided paid assigned counsel, this chapter need never have been written. But most of the States either assign counsel without pay, which we consider an inadequate plan, or make no provision at all for the general run of cases. Most of the States should undertake reforms in this field, and the best solution seems to be the public defender.

It cannot be proved that the defender plan affords better protection to innocent defendants than the assigned-counsel plan. It is the belief of the writers of this report, however, that the defender plan serves the defendant just as well as the paid-assigned-counsel plan and that it is inherently a more efficient and more economical method of getting the necessary work done.

In these days of high costs, efficiency of organization which produces economy is worth while. It is logical to suppose that where all the cases of poor persons are centralized in one office, instead of being spread around in a large number of offices, there is a resulting efficiency which reduces cost. An estimate as to the amount of money saved by the operation of the public defender's office is given by the Los Angeles County public defender for the fiscal year ending July 1, 1934:

During the last fiscal year the public defender handled 2,669 criminal cases in the superior court. Of these, 1,200 were set for trial, but only 416 cases were actually tried. Seven hundred and eighty-four cases were disposed of without trial. Six hundred and forty-seven of said trials were disposed of by changing the pleas of defendants from not guilty to guilty. Dismissals were made in 110 cases, because it would not have been advantageous to try them, and 27 cases were stricken from the calendar. In each of said cases the rights of the defendants were, under the law, fully protected and accorded to them.

But for the work of the public defender we are of the opinion that at least 600 more of said cases would have gone to trial. If said 600 cases had gone to trial, it would have required five more superior courts, assigned to the trial of criminal cases, than are now handling such cases, functioning full time, to have tried said cases.

In round figures, it costs the county of Los Angeles \$50,000 a year to operate a superior court for the handling of criminal cases. With five more courts

operating it would have cost the county an additional \$250,000 to dispose of its criminal cases.

The efficiency of the defender plan also results from the concentration of responsibility in one office. A routine is developed, the staff becomes expert, and there is rapidly worked out a special technique for the prompt dispatch of business.

One further gain results from this concentration, and that is that a fund of information is made available from which the defender's office may study defects in the law and in the machinery of justice and thus be in a position to recommend remedial legislation. In the field of law there is entirely too little of this sort of constructive work, of applying the scientific method of study to the judicial machinery, and of using the available experience for the advancement of necessary reforms. It was this final reason which led the editors of the survey of the criminal courts in Cleveland to conclude that, while the system of paid-assigned counsel was a proper method, the defender plan carried with it many substantial collateral advantages and was entitled to be regarded as the best plan thus far devised in the United States for guaranteeing the equal protection of the laws to poor persons in criminal cases.

A final question for brief consideration is, whether the public defender or the private defender is the better type of organization in the more densely populated communities where some definite form of organization is required. It is doubtful if any clear answer can be given as different plans work well in different communities, e. g., in California, where the civil service is well established, the public defender may well be selected by that method and prove entirely satisfactory; in Connecticut, where the judiciary appoints the defender, excellent results are achieved; in New York City, where the bar-association committees expressed a fear of political interference, a privately-maintained organization is in successful operation.

Each of these systems works because of the personnel. There are two factors in the work, namely, office system and personnel. The office system may well become a matter of routine and may be transmitted by written forms and records. Personnel is a different problem. Success does not depend on routine. The individuals chosen to do the work, from the chief counsel to the most lowly member of the staff, must have something more than a perfunctory interest in the work. The office force must be imbued with an intense desire to accomplish substantial justice in every case and must be willing to devote its best individual endeavors to that end. It is here that the public-defender plan may have difficulty. The public tenure is more or less uncertain. The continuity of the work may be interrupted by elections. *Esprit de corps* is destroyed if positions are filled not by merit but by political considerations.

The public-defender plan, on the other hand, possesses the undoubted advantages that flow from the fact that the position is official and from its financial support which is definite and assured in contrast to the support of the private organization which is voluntary, more or less fluctuating, and therefore uncertain. The general tendency undoubtedly will be to establish defender's offices on a public basis.

The best available guaranty of proper appointments for such offices seems to be the alert watchfulness of local bar-association committees. Because the defender in criminal cases is a necessary part of the administration of justice under modern conditions, the task of maintaining a supervision over the work is properly one of the professional responsibilities of the organized bar. It is the same responsibility which the bar owes and is beginning to assume toward the legal-aid organizations.

In the future there is reason to hope that the defender plan may be extended into all our larger cities. We have had enough experience to dispel the bugaboos that were raised immediately after the establishment of the Los Angeles public defender in 1914. The notion that if we had a defender as well as a prosecutor the result would be a sort of stalemate, in which each could frustrate the other, has been exploded. In sharp contrast we find the district attorney and the defender working harmoniously together in sincere cooperation for the advancement of justice. It is no accident that most of the defender organizations have been established at the instances of judges and lawyers familiar with the criminal law, and the best proof of the essential merit of the defenders' work is that whenever it exists it is supported and commended by the district attorney's office and by the judges of the criminal courts.

For the smaller communities, where the volume of cases needing attention is too small to warrant the establishment of a definite office, the system of assigned counsel can be made entirely adequate. Such assigned counsel should be paid fair compensation and should be reimbursed for the necessary incidental expenses of the case. If the assignments were made to a committee of the local bar association (following in a general way the idea developed in Chicago), which would guarantee to make available for such assignments the services of properly qualified and well-trained lawyers of good professional repute, the evils which tend to creep into the assignment system could be avoided.

In the field of the criminal law there is enough available experience to demonstrate the ways and means to assure to the man of limited means that equal protection of the laws to which he is entitled as a matter of right and by constitutional guaranty. All that is needed is some agency, available to him without cost, that can make the

ample provisions of the law actively effective in his behalf. For this particular aspect of the problem the system of paid assigned counsel under bar-association control in the smaller communities, plus a public or private defender organization supervised by the bar association in the larger cities, would furnish a complete, thorough, and efficient solution.

Chapter XII.—Origin and Development of Legal-Aid Organizations

In the preceding chapters consideration has been given to the several different types of remedial agencies that could be utilized in adapting our administration of justice to the needs of the modern community. The survey shows that in various States experiments designed to improve the position of the poor before the law have been made, and that most of these experiments have met with substantial success. While each remedial agency was constructed to meet some particular aspect of the general problem with which this study deals, all these agencies, if combined and universally made a part of the administration of justice in this country, would provide definite and tried methods whereby the laws could be made actively effective in a large majority of the cases in which wage earners and all persons of limited means are interested. For the general run of claims under \$50, the small-claims courts afford a speedy and inexpensive procedure; the conciliation tribunals are still in the experimental stage, but they may become the ideal counterparts of the small-claims courts in the more sparsely populated districts. In the field of work accidents the industrial accident commissions, with their auxiliary medical and inspection staffs, unquestionably serve to bring justice to the injured workman and his dependents in at least 9 cases out of 10 through the method of administrative justice which is prompt and free from expense. Various administrative officials, operating as a part of the executive arm of the Government, give legal advice and assistance in matters of insurance, purchases of securities, small loans, and, most important, in the collection of wages. In criminal matters where the problem is to supply the services of attorneys to poor persons accused of crime, the public-defender plan, together with the paid-assigned-counsel plan, constitute a practical answer.

For the legal protection of the wage earner we have been trying to devise a series or chain of agencies and methods that would remove the handicaps of delay, court costs, and the expense of counsel, which have heretofore blocked his ready access to the courts of justice, and that chain is now complete except for one vital link. Even while stressing the efficacy of these remedial agencies it has been necessary on several occasions to sound a note of caution. There are disputed industrial accident cases where the employee needs representation by counsel, and there are wage claims which

a labor commissioner for one reason or another cannot collect, so that the wage earner must seek the assistance of a lawyer. As to the vast number of miscellaneous types of claims and cases within the field of the civil law—all cases of debts, contracts, many claims beyond the jurisdiction of the small-claims courts, all accidents not within the scope of the compensation acts, all domestic relations difficulties such as divorce, judicial separation, custody and guardianship of minors, partnership disputes, bankruptcy, claims growing out of insurance, real-estate titles and mortgages, the administration of the estates of deceased persons, disputes concerning the ownership, conversion, or loss of personal property—the only remedy that is available is through litigation in the courts and for that litigation the services of an attorney are indispensable. Add to this the need of the services of an attorney in drawing contracts and other documents and in advising clients as to their legal rights and what course of action they should pursue, and it is apparent that to complete our plan for equalizing the practical administration of the laws under modern conditions there must be provided some definite arrangement whereby the services of attorneys may be available to wage earners and others who, by reason of inadequate financial resources, are unable to secure the services of counsel at their own expense.

Our experience in America indicates quite conclusively that the final agency needed to round out and supplement the services of all the others is to be found in what is called the legal-aid organization. In the structure or program being pieced together by drawing on the sum total of the authors' experience in order to present a complete plan whereby the administration of justice may be brought abreast of present needs and demands, it is clear that the heaviest load, the most extended responsibility, and in a sense the final responsibility must be borne by these legal-aid organizations. The part assigned to them is so important that the remaining eight chapters will be devoted to a critical analysis of their work and possibilities for development and to a narration of their origin and growth up to the present time.

The conditions that operated to bring about the establishment of the first legal-aid society were precisely the same as those which caused the maladjustments in the administration of justice itself, and which were described in the opening pages of chapter I. In short, they were not legal causes per se but the rapid social and economic changes that transfigured the whole tenor and complexion of American life. Large numbers of immigrants, finding that the free lands suitable for agriculture were largely appropriated, remained in the cities and swelled the fast-growing ranks of the wage earners

so that the populations of our industrial and commercial centers grew by leaps and bounds. In 1875 New York became a city of a million inhabitants, and it is not a mere coincidence that the first legal-aid organization came into being in that city in 1876.

In that year a group of lawyers and laymen who were especially interested in German immigrants, realizing the frauds and impositions of which immigrants were the victims and which could be redressed only through legal action, appointed a special committee to study the situation, and from the committee arose the suggestion for the establishment of a regular association to handle the problems. Offices were secured and a salaried attorney installed, who devoted a portion of his time to the work. The initial year showed 212 cases handled, approximately \$1,000 collected for clients, and an expense of \$1,000. The organization was incorporated on March 8, 1876, a group of 12 directors chosen, and the first office was located at 39 Nassau Street. The first year closed with a deficit of \$250, which was made good by contribution from the German Society. This condition of a deficit continued from year to year for the first 10 years and was annually defrayed by the German Society. At the end of these first 10 years the organization had cared for 23,051 applications and had recovered \$105,729 for its clients. More than half of these collections were for unpaid wages.

This New York organization was efficient and businesslike, keeping accurate records of its work and its finances, which is especially fortunate because this office was destined to be the prototype of most of the legal-aid organizations subsequently established. But during these first 10 years it was not, and did not pretend to be, a legal-aid organization in the modern meaning of that phrase because it was not designed to offer legal assistance to all persons but only to German immigrants who needed help. It was supported not by the public generally but by the membership of the German Society. It was limited in its scope and vision; nevertheless it contained an idea in embryo that was shortly to bear fruit.

In 1886 in Chicago the Protective Agency for Women and Girls came into existence, functioning in the specific field indicated by the name. In 1888 the Bureau of Justice, fostered by the Ethical Culture Society in Chicago, also made its appearance. The first of these organizations was intended for the protection of young girls from the seductions and debaucheries under the guise of proffered employment, which had aroused the women of the city. The Bureau of Justice, however, had a much broader foundation. It undertook to supply legal services to all needy persons, regardless of race, nationality, or sex. In this respect it was the first true legal-aid society.

In legal-aid chronology, 1890 is a noteworthy year because it marked the election of Arthur V. Briesen to the presidency of the New York society. For 25 years Mr. Briesen played the leading role in shaping the development of legal-aid work not only in New York but throughout the country generally. As was said of him at the convention of legal-aid organizations held at Cleveland in 1923, "Every institution is but the lengthened shadow of some great man." The institution of legal aid in the United States is but the lengthened shadow of Arthur V. Briesen." With his advent the work in New York was broadened to care not merely for the immigrant but for any man, whoever he might be, who, because of his poverty, was in danger of a denial of justice. Despite a certain amount of criticism and a good deal of misunderstanding as to the true nature of its work the society forged steadily ahead, weathered a succession of financial crises, and every year increased its reputation among the poor of the city for its honesty and integrity in caring for the cases entrusted to it.

In 1894 Jersey City began the work in a modest way. There was no definite organization. It is interesting to note how slowly the idea spread at first. By the end of the nineteenth century there were only three cities in which legal-aid work was done. In 1899 only 10,424 cases were handled. But where it had taken root the work was not to be dislodged, and in 1899 it was found necessary for the New York society to open three branches—a seamen's branch; a branch in the university settlement, which later became the East Side branch; and a women's branch, which later became the uptown branch. The significant feature during this first period was the growth of the idea from a narrow proprietary type of work to a broad conception of rendering general legal assistance to all deserving persons.

The second period of growth runs from 1900 to 1909, inclusive. It was an era of steady expansion. More people came to realize the need for some such remedy; other cities took up the work—Boston in 1900, Newark in 1901, the New York Labor Secretariat in 1901, Philadelphia in 1902, New Rochelle in 1902, the Educational Alliance of New York in 1902, and in 1904 Atlanta, Cleveland, and Denver fell into line. In 1905 New York opened its Harlem branch, and in 1906 its Brooklyn branch. In 1907 came Cincinnati, in 1908 Pittsburgh, and in 1909 Detroit. It will be noted from this list of cities that during this second period the growth was almost entirely in the East. In Atlanta the work was discontinued and remained in abeyance for nearly 20 years.

Of these new organizations, Boston, Philadelphia, Cleveland, Cincinnati, and Pittsburgh were based on the New York type and were incorporated as private philanthropic societies. In Boston the bar

took a leading part in organizing the society. The Newark society was called the New Jersey Legal Aid Society, but its work was limited to Newark. The Denver organization, started by the local law school, was so successful and received so many cases that there were not sufficient funds to operate it, and it was forced to close its doors. The Educational Alliance is a specialized organization working in the vast Jewish population of New York, particularly among the immigrants.

In 1905 the two organizations in Chicago united to form the strong Chicago Legal Aid Society which later joined with the United Charities to become the Chicago Legal Aid Bureau. New York in 1906 tried to start a criminal branch, but the work was discontinued because of lack of funds. This gave legal-aid work a decided turn away from the criminal field, because other organizations in copying New York also limited their attention to civil work. The Detroit bureau is important because there for the first time the organized bar assumed responsibility for maintaining the work as a part of its professional responsibilities.

The third period was from 1910 to 1913. It was marked by growth in the Middle West and a strengthening of the group in the East. The outstanding development was the establishment of the first municipal bureau in Kansas City, Mo., in 1910. All the other societies had been established and supported either by bar associations, charities, or the general public in the form of philanthropic corporations. All were private organizations, but the legal-aid bureau of the department of public welfare in Kansas City was supported by the municipal treasury. In 1912, St. Louis, Akron, and St. Paul commenced organizations in their respective communities, and they were followed in 1913 by Duluth, Minneapolis, and Louisville. In the eastern field Baltimore and Rochester were added in 1911. In the same year the New York National Desertion Bureau was set up. In 1912 a society was started in Buffalo and another in Colorado Springs. In 1913 there were efforts to start legal-aid work in the South, resulting in progress in New Orleans and in Birmingham. Also in 1913 the Harvard Legal Aid Bureau (conducted by students at the Harvard Law School) was established, and in Minneapolis a cooperative arrangement was effected with the law school of the University of Minnesota, providing a sort of legal clinic for the instruction of law students. This period also saw the beginning of a national legal-aid body, when plans for the National Alliance of Legal Aid Societies were inaugurated at Pittsburgh in 1911. This central organization and its subsequent development are discussed in chapter XIII.

The National Desertion Bureau is an example of specialized legal-aid work in the one field of domestic relations. It deals primarily

with cases of desertion and abandonment. During this third period the prevailing type of organization changed. During the first two eras the privately incorporated society type predominated; but in this third stage 8 of the 14 new organizations were established as bureaus or departments of general charity organizations, such as the united, federated, and associated charities. Even more significant was the development of the municipal type of organization. Here, for the first time, one finds the government of a modern city establishing a law office to which needy citizens may apply for free legal advice and assistance. This municipal experiment in Kansas City was successful and it exerted a marked influence on the work in other cities.

During the fourth period, from 1913 to 1917, the work entered a stage of rapid development that was checked only by the outbreak of the World War. The territorial expansion continued until the Pacific coast was reached. The public defenders began to make their appearance. The number of organizations increased from 28 in 1913 to 41 in 1917. The municipal type of bureau was copied in a number of cities and the work as a whole advanced by leaps and bounds. Keeping pace with the enlarging work was a steady evolution of the fundamental concepts underlying and shaping the philosophy of the work. Whereas legal aid had started as a limited, proprietary sort of organization, it had been developed into a definite legal charity, at the service of all meritorious applicants, and the growth of municipal bureaus offered the first suggestion that legal-aid work might be something more than a charity, that under modern conditions it might indeed come to be regarded as an essential part in the public administration of justice.

In 1914, as is seen in the preceding chapter, the first public defender's office was established in Los Angeles. The mere fact that this was a public and not a private office tended to emphasize again the object lesson afforded by Kansas City, and in the following year the legal-aid society in St. Louis was taken over by the municipal government, Dayton established a municipal bureau, and the newly created bureau of public welfare in Dallas started a legal-aid bureau as one of its welfare activities. Likewise, in 1915, public defender offices were established in Omaha and Portland (Oreg.), and in Los Angeles the police court public defender. In 1916 the private legal-aid society in Hartford was taken over by the city, and a municipal bureau was created in Omaha. Thus in 2 years eight public legal-aid offices came into being, and in a real sense this phenomenon marks a turning point in legal-aid history. The full significance of this trend toward public control of legal-aid work cannot be discussed here, but in chapter XV, wherein the various types of legal-aid organizations are discussed and compared, it is recurred to.

Following the novel experiment at Harvard of a legal-aid bureau conducted by law students, the George Washington and the Yale law schools undertook a certain amount of legal-aid work in an informal way. Also in 1916 legal-aid offices were opened in San Francisco, San Diego, Milwaukee, Richmond, Nashville, and Columbus, and in Plainfield a legal-aid committee was organized. During that year plans for a defender in criminal cases were under way in New York, which were consummated by the establishment of the Voluntary Defenders Committee early in 1917. Then came the war and the development of legal-aid work was brought to an abrupt stop.

During 1917, 1918, and 1919 no new societies or bureaus were formed and some of the weaker and more recently organized offices had to be given up. Summarizing this interval, the attorney for the New York Legal Aid Society stated:

Legal-aid work has been a young man's work, and the war inevitably disrupted its personnel, and, by the same token, disrupted the organization of the National Alliance. Most of the men either went into military service or were commandeered for various forms of Government service, and those who remained technically in the legal-aid offices were so swamped with the additional war work which was assumed that they had no time or strength for anything else.

A renewed impetus was given to the work in the fall of 1919, when the Carnegie Foundation for the Advancement of Teaching published as its thirteenth bulletin a volume entitled "Justice and the Poor", which was primarily a treatise on legal aid. The main thesis of this publication was that legal-aid work must be considered an integral part of the administration of justice in the modern community because unless legal assistance were provided to poor persons unable to pay for such help the inevitable result would be substantial and widespread denial of justice.

In 1920 the onward march of legal-aid work was resumed. The Rhode Island Bar Association established a strong society in Providence. The society in Newark was reorganized under the auspices of the bar. In Philadelphia the work, which since 1902 had been conducted by a privately incorporated society, was taken over and greatly enlarged by the municipal government.

In 1921 the Grand Rapids Social Welfare Association opened its legal-aid bureau, patterned to a large extent after the organization in Chicago which, primarily for financial reasons, had become a part of the United Charities of Chicago. As a result of legislation fostered by the Connecticut Bar Association committee on legal-aid work, public-defender offices were provided for Bridgeport, Hartford, and New Haven. As a reflection of the fact that legal aid had now become a national as distinguished from a local or sec-

tional movement, it is found that while this legislation was taking effect in Connecticut, a similar act was passed in California establishing a public defender in San Francisco.

The most interesting event in this year of great activity was the creation of an entirely new plan for legal-aid work, especially adapted to work in the smaller cities, as the result of action by the Illinois Bar Association, which undertook to work out with local bar associations in the State an informal series of legal-aid committees to which the social-service agencies in their respective communities could refer persons needing legal advice and assistance. Up to this time the services of legal-aid organizations had been confined almost exclusively to the larger cities in the United States. The so-called Illinois plan indicated for the first time a simple and practicable machinery whereby the benefits of legal aid might also be extended to the smaller cities and towns where the volume of the work would be insufficient to warrant the establishment of a formally organized society or bureau.

In 1922 municipal legal-aid bureaus were created in Bridgeport and Camden, and the Louisville Legal Aid Society was reorganized at the instance of the local bar association. Likewise in 1922 the several legal-aid organizations of the country resumed their custom of meeting together. Their last joint convention was in 1916, the meeting scheduled for 1918 was necessarily canceled, but in 1922 they came together again at the invitation of the Philadelphia Municipal Legal Aid Bureau, and for the first time since the World War reviewed their situation and, in effect, took account of stock.

From the records made available by this Philadelphia legal-aid convention it appeared that 36 organizations had survived the war and that in 12 other cities new offices had been established or were in process of establishment. The scattered threads were gathered together at this meeting and definite plans for the future were resolved on.

The development of legal-aid work that was foreshadowed at the meeting in 1922 has been more than fulfilled. In the 12 intervening years numerous legal-aid societies, groups, and committees have come into being. Thus since 1923 organizations were created as follows:

1923

- Albany, N. Y.—Legal-aid society.
- Alton, Ill.—Bar association committee.
- Bloomington, Ill.—Bar association committee.
- Bridgeport, Conn.—Public defender.
- Champaign, Ill.—Bar association committee.
- Decatur, Ill.—Bar association committee.
- Elgin, Ill.—Bar association committee.
- Evanston, Ill.—Bar association committee.

Freeport, Ill.—Bar association committee.
 Jacksonville, Ill.—Bar association committee.
 Harvey, Ill.—Bar association committee.
 Indianapolis, Ind.—Legal-aid bureau.
 Lexington, Ky.—Lawyer retained by social agency.
 Memphis, Tenn.—Legal-aid society.
 Minneapolis, Minn.—Public defender.
 Moline, Ill.—Bar association committee.
 Montreal, Canada.—Bureau of social agency.
 New Bedford, Mass.—Legal-aid society.
 New Haven, Conn.—Public defender.
 Oak Park, Ill.—Bar association committee.
 Peoria, Ill.—Bar association committee and social agency.
 Rock Island, Ill.—Bar association committee.
 Salt Lake City, Utah.—Bar association committee.
 Seattle, Wash.—Social agency and volunteer lawyer.
 Springfield, Ill.—Bar association committee.
 Urbana, Ill.—Bar association committee.
 Washington, D. C.—Committee of lawyers.
 Winnipeg, Canada.—Through city solicitor.
 Worcester, Mass.—Bar association committee.

1924

Atlanta, Ga.—Legal-aid society.
 Dallas, Tex.—Bar association committee.
 Denver, Colo.—Legal-aid society.
 Harrisburg, Pa.—Bar association committee appointed.
 Indianapolis, Ind.—Lasted only a year.
 Reading, Pa.—Bar association committee.
 St. Paul, Minn.—Reestablished.
 Scranton, Pa.—Committee appointed.
 Wilkes-Barre, Pa.—Committee of lawyers.

1925

Cedar Rapids, Iowa.—Social agency and volunteer lawyer.
 Dallas, Tex.—Reestablished.
 Des Moines, Iowa.—Social agency and bar association.
 Erie, Pa.—Bar association committee.
 Jacksonville, Fla.—Bar association committee.
 Kalamazoo, Mich.—Social agency and volunteer lawyers.
 Long Beach, Calif.—Bar association committee.
 Portland, Maine.—Department of social agency.
 Schenectady, N. Y.—Committee of lawyers.
 Springfield, Mass.—Legal-aid society.

1926

Bronx, N. Y.—American Legion committee.
 Chicago, Ill.—Voluntary defender.
 Houston, Tex.—Social agency.
 Miami, Fla.—Legal-aid bureau of the county bar association.
 New Haven, Conn.—Legal-aid bureau.
 New York, N. Y.—Council of Jewish Women.

Salt Lake City, Utah—Legal-aid society.
 San Antonio, Tex.—Department of social agency.
 Tampa, Fla.—Social agency.

1927

Canton, Ohio—Committee of lawyers.
 Columbus, Ohio—Public defender and bar association committee—Reorganized.
 Dallas, Tex.—Reorganized.
 Erie, Pa.—Bar committee.
 Hartford, Conn.—Legal-aid bureau.
 San Diego, Calif.—Public attorney resumed operation.
 Portland, Oreg.—Volunteer attorney.
 St. Louis, Mo.—Voluntary defender association.
 Toledo, Ohio—Bar association committee.
 Union City, N. J.—Volunteer lawyer.
 Youngstown, Ohio—Bar association committee and social agency.

1928

Baltimore, Md.—Reorganized legal-aid society.
 Cincinnati, Ohio.—Volunteer defender.
 Covington, Ky.—Volunteer legal-aid assistance.
 Madison, Wis.—Bar association committee.
 Reading, Pa.—Unincorporated association of Berks County bar.
 Rochester, N. Y.—Public defender.
 St. Louis, Mo.—Committee of social agency.

1929

Berkeley, Calif.—University of California clinic.
 Dallas, Tex.—Public defender.
 Harrisburg, Pa.—Legal-aid society.
 Houston, Tex.—Department of social agency.
 Los Angeles, Calif.—Legal-aid clinic.
 Macon, Ga.—Mercer University clinic.
 New Orleans, La.—Bar association committee.
 Oakland, Calif.—Legal-aid bureau.
 San Antonio, Tex.—Social agency bureau.
 Santa Barbara, Calif.—Bar association committee.

1930

Houston, Tex.—Department of social agencies—Reorganized.
 Greenwich, Conn.—Local committee.
 Pittsburgh, Pa.—Voluntary defender.
 San Jose, Calif.—Committee of lawyers.
 Seattle, Wash.—Local committee.
 White Plains, N. Y.—Bar committee.

1931

Durham, N. C.—Legal-aid clinic.
 Easton, Pa.—Bar association committee.

1932

Dayton, Ohio—Bar association.
 Greensboro, N. C.—Legal-aid committee.
 Indianapolis, Ind.—Better business bureau.

Jacksonville, Fla.—Bar association and social agency.
 Muskegon, Mich.—Bar association committee.
 New Orleans, La.—Legal-aid bureau.
 Sacramento, Calif.—Bar association committee.
 Seattle, Wash.—Legal-aid bureau.
 Washington, D. C.—Social agency and volunteer lawyers.
 Wheeling, W. Va.—Bar association committee.

1933

Philadelphia, Pa.—Reorganized legal aid society.
 Seattle, Wash.—State-wide volunteer lawyer committee.
 Tulsa, Okla.—Bar association committee.

1934

Chester, Pa.—Bar association committee.
 Columbus, Ohio—Bar association committee.
 Philadelphia, Pa.—Voluntary defender committee.

NOTE.—In checking the records of the different organizations many inconsistencies as to the date of the inception of the work are encountered. This is probably accounted for by the fact that many of the societies disbanded for a time and resumed operation at a later date. Yet there seems to be a lack of absolutely accurate records in many cases. The foregoing list is the result of checking the various sources and harmonizing them with the records and statistics annually turned in to the secretary of the National Association of Legal Aid Organizations by the existing organizations.

This brings us to the most recent period in legal-aid development. Whereas in 1922 there were approximately 48 legal-aid organizations, by 1934 this number had increased to 84. Many of these added societies, bureaus, and committees are so recent that it is difficult to distinguish between organizations that are already entitled to be regarded as definitely established, informal groups that represent embryonic organizations, and committees that have the matter in hand and are undertaking to create legal-aid offices of one type or another. The full list of existing legal-aid offices, of whatever form or type, in each city, is given in appendix D. Some of these legal-aid entities naturally did not develop to the fullest extent and others after a promising start ceased to function. The following table, however, does give a very definite picture of a steady growth in interest and in actual accomplishment. Perhaps the most significant fact indicated by the table is that during the depression years there was a marked increase in legal-aid interest. This suggests that in a time of national emergency when there is a general testing of the importance of legal and social machinery, the legal-aid organization is coming more and more to be recognized as essential in the proper development of community resources to care for the legal needs of the wage earner and his family. The figures are taken from the report of the secretary of the National Association of Legal-Aid Organizations for 1934-35.

TABLE 9.—*Legal-aid organizations and public defender offices formed and discontinued, and information requested as to establishment of new societies*

Year	Legal-aid organizations and public defender's offices formed	Legal-aid organizations discontinued	Information requested as to establishment of new societies
1923.....	6	0	12
1924.....	2	2	9
1925.....	2	0	4
1926.....	6	1	5
1927.....	8	0	11
1928.....	5	3	5
1929.....	4	1	3
1930.....	0	1	7
1931.....	1	0	7
1932.....	4	3	15
1933.....	2	2	27
Total.....	40	13	108

The history of the development of legal-aid work represents an idea that originated in 1876 and germinated very slowly during the first 25 years. The community was not aware of the difficulties of the poor man who needed legal protection. The situation was most manifest in the largest cities and the legal-aid idea naturally first took root in our two largest cities—New York and Chicago. From 1900 to 1917 we find the idea extending at an accelerating pace, first into the next largest cities, such as Philadelphia, Boston, and Cleveland, and finally reaching across the continent to Los Angeles and San Francisco. During the war the movement was checked and suffered a momentary setback, but by 1920 it was well under way again. It has now regained its momentum and the current of events flows steadily ahead under the guidance and leadership of the National Association of Legal Aid Organizations.

Since each legal-aid society or bureau was formed by a local group to meet a local need, it was perhaps inevitable that they should have come very slowly to any realization of the fact that they were all engaged in a common enterprise. The first tentative step toward the formation of a national body was taken in 1911, but not until 1923 was there a strong enough conscious sense of solidarity to make possible the creation of a true national association. Legal-aid work has outgrown the period of its infancy and is entering the stage of its maturity. In any further extension of the work and in maintaining the efficiency of the existing organizations a leading responsibility devolves on this national association. To a large degree the future of legal-aid work in this country has been entrusted to its care. It seems worth while, therefore, to devote the next chapter to a reasonably thorough statement of its history, the scope of its functions, and the work in which it is engaged.

Chapter XIII.—National Association of Legal Aid Organizations

The origin of the present national association is to be found in the National Alliance of Legal Aid Societies. In 1911, Mark W. Acheson, Jr., president of the Pittsburgh Legal Aid Society, invited the societies then in existence to meet in Pittsburgh for an informal discussion. Delegates from 14 organizations attended and agreed upon the advisability of some kind of central body. A committee was appointed to draw up a form of constitution. At a second convention, held in New York in 1912 and attended by representatives from 12 societies and bureaus, the committee's report was accepted and there was formed the National Alliance of Legal Aid Societies. The purpose of this alliance, as stated in section 2 of its constitution, was:

To give publicity to the work of the legal-aid societies of the United States, to bring about cooperation and increase efficiency in their work, and encourage the formation of new societies.

Mr. Arthur V. Briesen, president of the New York Legal Aid Society, was unanimously elected president of the alliance, and its valuable, though limited, accomplishments were almost entirely due to his personal enthusiasm and zeal. The organization had no real power vested in it, and it was fatally handicapped by lack of funds. The constituent societies paid no dues; the central committee, which had power to fix dues not in excess of \$25 per annum, never authorized the collection of any dues; indeed, the constitution itself made no provision for the office of treasurer. The expenses which necessarily were incurred were paid by the president out of his own pocket.

The national alliance did little more than serve as the vehicle through which two subsequent conventions were called, the first at Chicago in 1914 and the second at Cincinnati in 1916. These gatherings of legal-aid workers served to build up an esprit de corps, they facilitated the exchange of cases between offices in different parts of the country, and through papers read and discussed they afforded a much-needed forum and clearing house for the presentation and exchange of ideas about the work, its technique, and its true function. The influence of a man like Mr. Briesen must have been very great in encouraging and inspiring the legal-aid attorneys, many of whom were poorly paid and inadequately supported in their own

communities. The whole weight of his forceful personality was thrown in the direction of making legal aid a more useful servant of the community, for his genius enabled him to see more clearly than anyone else the ultimate goal toward which all legal-aid work was developing. His vision is revealed by a paragraph in an informal letter that he sent to the Cincinnati convention to regret and explain his absence on account of his advancing years:

That legal-aid societies, since the national alliance was born at Pittsburgh, have increased in number and efficiency is apparent. That credit is due to those who brought about these gratifying results need not be stated. Hundreds of thousands of poor and helpless men and women, to say nothing of poor and helpless children, have reason to bless these institutions. I believe that very few, however, will now think of their work as a blessing, for they take it to be one of the institutions of the country, one of the things that makes this country great and glorious. By this time they accept this gift as a natural right, which indeed it is, marking an important step forward in civilization.

After 1916 the national alliance became quiescent. It had never been a controlling factor in guiding the development of the work; it had neither funds nor power, and, so far as providing the leadership which the legal-aid movement needed, this loose type of association was impotent. In 1919 the following statement was made in the bulletin entitled "Justice and the Poor", already referred to:

Legal-aid work has not yet passed out of the stage of localized organization. We have already seen that the societies were started in the various cities by local groups acting independently. If there was no such group, no society was started, and if the group failed or dispersed, the society went with it. There never has been, as there is not now, any strong central agency in a position of leadership. There is no centralized responsibility or authority. The legal-aid movement has not yet become a coordinated national undertaking.

At the Philadelphia convention of legal-aid organizations, held in 1922, the formation of a new national body was the main topic of discussion. In the course of the debates the following statements were made:

"The national alliance is like a federal government without power of taxation." "There is an imperative demand for such elementary things as standardized records of work, conventionalized classifications of the nature, source, and disposition of cases and for uniformity of financial accounting." "There is great need for a central clearing house to provide for the proper reference of cases." "There is no definite head, no leadership in the legal-aid movement." The upshot of this discussion was a unanimous resolution appointing a special committee to bring about a new national organization. The report of the Philadelphia convention summarized the feelings of the delegates of the local societies as follows:

They are determined to integrate themselves into a national federation. They are no longer contented with the loose and impotent association which

the national alliance, by reason of its ineffective structure, has necessarily been. They propose to recast the form of their national organization so that, as a representative legislative and executive body, it may provide a genuine leadership in extending and improving the work.

The special committee, after a series of meetings, decided that it was impracticable to make over the national alliance into a satisfactory central body, because what was needed was a real delegation of power by the individual local societies and bureaus to a central organization. This could be accomplished only with the consent of the local societies. After the draft plan for the new national association had been formulated, printed, and distributed, a constitutional convention was held at Cleveland on June 7 and 8, 1923. Duly accredited delegates were present representing 23 legal-aid societies and bureaus and including all the larger and stronger organizations in the United States. The special committee submitted its plan and stated:

We have considered that, in effect, we had been given a mandate by those competent to speak, to draft a form of framework for a national structure.

In this report, we do not debate or argue the need for a strong national organization. The lack of it in the past has retarded legal-aid development. That is a fact known to everyone. The need of it, if legal-aid work is to develop in the future, is also a fact known to everyone.

We have bent our energies to devising a plan of federation which, while still leaving the local societies and bureaus free and independent, would also vest in the central or national body enough power to be able to carry on its particular work.

After general debate and some perfecting amendments, the constitution was unanimously adopted and the constituent organizations became members by signing the constitution. The Hon. William Howard Taft, Chief Justice of the United States, was elected honorary president of the new organization, the other officers chosen being a president, vice-presidents, secretary, treasurer, and an executive committee of seven persons intentionally selected to represent different types of legal-aid offices operating in various sections of the country. The following letter, written by Hon. Elihu Root to the special committee, was read at the convention:

I have received your letter of May 1, telling me of the proposed June meeting of delegates from legal-aid organizations and the plan to form a national association.

Will you please count me as being heartily in favor of that plan? It becomes every year more evident that something is wanted to establish a contact between the system of administering justice, of which we are so proud, and the very people who need it most. The people who know how can easily get a very good brand of justice, but the people who don't know how have little reason to suppose that there is any justice here. I am afraid they are getting a very bad idea of our institutions. It is becoming evident also that this subject must be dealt with, in the first instance at least, by private enterprise. Methods may be evolved which can ultimately be applied by govern-

ment, but those methods cannot be evolved out of anybody's inner conscience, or out of any legislative committee. They must be worked out experimentally and that must be done by organized private enterprise. The present organization in the form of a national alliance of legal-aid societies is plainly inadequate. We need a national body which can act itself in accordance with the authority derived from the local societies. I think that is plainly the next step toward promoting genuine legal aid, and especially toward preventing the plunder of the poor under the false pretense of legal aid.

The purposes of the new national association are formally set forth in section 2 of article I of the constitution as follows:

The objects and purposes of this association shall be to promote and develop legal-aid work, to encourage the formation of new legal-aid organizations wherever they may be needed, to provide a central body with defined duties and powers for the guidance of legal-aid work, and to cooperate with the judiciary, the bar, and all organizations interested in the administration of justice.

The last clause of this section represents a thought that was entirely lacking in the purpose clause of the old national alliance, and which, as time goes on, is likely to be the most important function of the present national body. The legal-aid organizations have a direct contribution to make to the better administration of justice in the United States. They realized that if they were to be heard they must speak with a single voice and therefore they ceded to their national body "supervision over legal-aid work in its national aspects, over the relationship between legal-aid organizations and all other national organizations."

The national association carries on its activities through a salaried secretary who devotes a portion of his time to the work and through a series of committees to each of which is entrusted one major division of the legal-aid field. While the general outlines of the committee structure have necessarily changed during the 10 years of existence of the national body in order to meet the newer problems that arise, the democratic device of individual initiative in presenting the problems for consideration to the national association has been adhered to. These committees maintain continuing studies of the subjects committed to their charge, prepare annual reports which are printed and distributed to all member organizations and which form the basis for the discussions at the annual conventions. Following the Cleveland convention in 1923, annual meetings have been held each year in the following cities:

	<i>Year</i>		<i>Year</i>
Minneapolis.....	1924	Denver.....	1930
Memphis.....	1925	Buffalo.....	1931
New York.....	1926	Washington.....	1932
St. Louis.....	1927	Chicago.....	1933
Detroit.....	1928	New York.....	1934
Cincinnati.....	1929	Louisville.....	1935

The executive committee holds a midwinter meeting each year in the rooms of the Association of the Bar of the City of New York.

In 1923 and for the 10 years following there were certain specific problems confronting the legal-aid field. Paramount among these was the standardization of classifications of records. At the Cleveland convention one of the most significant steps of the new body was the adoption of a standard classification. This gave an administrative example of the efficiency, thoroughness, and zeal with which the new national association embarked upon its career. Further reference to it will be found in a later chapter. But this was not the only matter requiring consideration. Others will be interpreted by the names of the committees which were set up to deal with them.

The committee on records and the committee on financial accounting labored to bring the technique of all legal-aid organizations up to the approved standard. The committees on small loans, on domestic-relations courts, on the defender in criminal cases, and on small-claims courts, conciliation, and arbitration studied the remedial agencies, most of which have been discussed in earlier chapters, in order to make certain that the legal-aid attorneys are prepared to step in and assist needy persons at the point where these remedial agencies, by virtue of the limitations of their jurisdiction, are obliged to stop.

The separate legal-aid organizations having been integrated into a national body are now able to cooperate with other national bodies that are interested in the improvement of the administration of justice and especially as it relates to people of little or no means. In chapter IX we have already noted the object of the committee on relations with the International Association of Industrial Accident Boards and Commissions, and in chapter X that of the committee on relations with the Association of Governmental Labor Officials of the United States and Canada. In chapter XVII we shall have occasion to speak of the committee on relations with social agencies, in chapter XVIII of the Committee Relations With Law Schools, and in Chapter XIX of the Committee on Relations With the Bar.

Two of the further activities of the national association may be considered here. To gather and disseminate information concerning its own activities and concerning the progress of legal-aid work in general there was established a special committee on publicity. Beyond its routine work of publishing the reports of the standing committees and of the convention proceedings it secured articles of special interest to legal-aid workers and distributed them to its mailing list. The official organ of the committee was the *Legal Aid Review*, published by the New York Legal Aid Society. One undertaking was the preparation of a series of articles on legal subjects for release through the Foreign Language Information Service. These articles

have been widely used by the foreign-language press of the country and through them the meaning and availability of legal-aid offices has been brought directly home to our immigrant population.

Finally, the National Association of Legal Aid Organizations initiated a movement for international cooperation in legal-aid work which is so important that it may justly be regarded as the second significant achievement in the association's life. The first legal-aid society, as was pointed out in chapter XII, was formed for the exclusive purpose of aiding immigrants. While legal-aid work soon broadened its scope, nevertheless it has always been a bulwark for the protection of the legal rights of immigrants. In 1933, of the 34,906 persons assisted by the New York Legal Aid Society, 16,013 had been born in foreign countries and 4,983 were still aliens. In nationality these immigrants represented nearly every country in the world. The legal-aid organizations have naturally found themselves confronted with large numbers of cases in which justice could be secured only through some legal action in foreign countries. They had established contacts with a few legal-aid organizations in Europe and this suggested to the national association that if all the legal aid and similar organizations in the world could be ascertained some arrangements for international cooperation would become possible. Through one of its vice presidents, who enlisted the aid of the Norwegian delegate to the Assembly of the League of Nations, the association was able to file a memorandum pointing out this need, and in 1923 the assembly of the league by resolution decided:

(a) To place on the agenda of the fifth assembly the question referred to in the memorandum A. 119, 1923 V., regarding international arrangements for legal assistance to the poor.

(b) To invite the secretary general to prepare a report in the meantime and to make such inquiries, under the authority of the council, as may be found desirable, without expenditure of league funds.

The Carnegie Corporation of New York provided the moderate sum needed for the purpose and the Council of the League, on March 13, 1924, authorized the Secretary General to convene a small committee of experts from various countries who could advise the Secretary General and submit a plan for further action.

The committee was constituted as follows:

France: M. Lucien Baudelot, advocate at the court of appeal at Paris.

England: Sir T. Willes Chitty, senior master of the supreme court.

Norway: Prof. Mikael Lie, professor of international law at the University of Christiania.

Italy: Prof. Silvio Longhi, first president of court of appeal.

Poland: Prof. S. Nagorski, professor of civil law at the University of Warsaw, member of the Polish commission on codification.

Spain: Prof. Adolfo Posada, professor of public law at the University of Madrid, ex-director of the Institute of Social Reform.

United States: Mr. Reginald Heber Smith, chairman of the American Bar Association committee on legal-aid work, secretary of the United States national committee on legal-aid work.

Japan: Prof. Kenzo Takayanagi, professor of law at the University of Tokio.

International Labor Office: Dr. L. Varley, technical adviser on migration to the International Labor Office.

The committee met from July 30 to August 2, 1924, inclusive. Much valuable information was supplied by the members, both in the form of written memoranda and in oral statements at the meeting. Communications were also received from the Austrian Government and, through the German consulate at Geneva, from the committee of the German Bar Association.

After the committee had adjourned, the Secretary General filed an admirable report with the Assembly. This report has been reprinted in full and is available in the January 1925 issue of the *Legal Aid Review*. The recommendations offered by the committee were approved by the Secretary General and transmitted to the Assembly which, after making minor alterations, passed the following resolution on September 20, 1924:

LEGAL ASSISTANCE FOR THE POOR

Resolution adopted (on the report of the first committee) by the Assembly at its meeting held on Saturday, September 20, 1924 (morning)

The Assembly decides:

1. To invite the Secretariat to prepare a list of the agencies, both public and private, which have been established in each country for the purpose of giving to poor persons legal assistance in connection with litigation in the courts or free legal advice and consultation; and of international organizations that are interested in providing or securing legal assistance to poor persons.

This list shall be printed and distributed to the various governments and be available for the agencies named therein and for other interested institutions.

This list shall be revised by the Secretariat from time to time in order that it may mention agencies that may hereafter be established or abolished.

2. To invite the Secretariat to collect the various treaties, laws, and other provisions regulating legal assistance to poor persons in the various nations and between various nations.

Such treaties, laws, and other provisions or summaries hereof shall be published and distributed to the various governments and be made available to the agencies mentioned in the list of legal-aid organizations and to other interested institutions.

3. To invite each government to nominate an authority or other duly qualified person who will answer inquiries from authorities or other duly qualified persons in other countries, with regard to the facilities afforded in the country applied to for giving legal advice and assistance in litigation to poor persons in other countries.

The list of authorities or persons so designated by the various governments shall be published by the Secretariat from time to time.

4. To request the Secretary General of the League of Nations to ask the various States, including States not members of the League, whether they would

be disposed to become parties to a convention dealing with free legal aid for the poor on the basis of the principles formulated in articles 20 to 23 of the Hague convention of July 17, 1905, and whether possibly they would desire to propose any modification of such principles.

5. To request the Secretary General to transmit to the governments the report A. 34, 1924, V., concerning international arrangements for legal assistance for the poor.

The publication mentioned in the foregoing resolution appeared in 1927 but due to lack of funds and various other reasons less has been accomplished in this field than the proponents of the idea hoped. Today, when a case presenting an international aspect arises, little, if anything, can be done. However, the achievements of the Detroit Legal Aid Bureau in handling domestic cases where one party was in Detroit and the other in Europe constitute a noteworthy exception. The Detroit bureau, acting in cooperation with the International Migration Service, offers a practical example of the possibilities latent in this field.

As an example of the development of the legal-aid work in England, the report of the Law Society, Poor Persons Procedure, for the period January 1 to December 31, 1934, is cited. This document contains the following statement as to the expansion of this work in London:

The increase in the number of applications received continues.

The particulars are as follows:

TABLE 10.—*Development of legal-aid work in England, Jan. 1 to Dec. 1, 1924*

Year	Applications received	Applications granted
1927.....	1,540	769
1928.....	1,784	742
1929.....	1,921	864
1930.....	1,974	889
1931.....	2,275	1,037
1932.....	2,372	1,048
1933.....	2,531	1,117
1934.....	2,655	1,112

At the commencement of the year 1934 there were pending in London 264 applications, which added to the applications received during the year make a total of 2,919 applications as against 2,759 for 1933. Of these applications 1,112 were granted, 804 refused, and 635 were otherwise disposed of, leaving 368 remaining to be dealt with at the end of the year.

Approximately 65 percent of the London applications relate to matrimonial cases, as against 63 percent for the year 1933; 201, or 12 percent of the applicant petitioners in matrimonial cases admitted that they had committed adultery themselves; 76 of these were granted, 55 refused, 38 abandoned, and 32 remain to be dealt with.

The limitations of space prevent any adequate discussion of legal-aid work in other countries.

A third achievement of the national association deserves to be considered. As the annual meetings continued there grew up in them a

body of resolutions, understandings, and often unspoken thoughts regarding the standards by which to measure the efficiency of a legal-aid organization. At the instance of Miss Ruth M. Miner, of the Albany Legal Aid Society, a committee on standards was created in January 1930. This committee by the time of the 1933 convention had formulated a series of standards and ideals which deserve inclusion here because they mark another step toward legal-aid maturity.

STANDARDS

Every legal-aid organization should:

1. Have, except in the case of municipal bureaus and legal-aid clinics, a board of directors which shall fairly represent the legal- and social-welfare interests of the community and meet at least quarterly.
2. Have enough space in the legal-aid office to provide for private consultation between the attorney and client.
3. Have on the legal staff as a minimum the equivalent of at least one full-time attorney.
4. Maintain an active and friendly relationship with other social agencies.
5. Use the uniform classification of records adopted by the national association.
6. Keep accurate and detailed financial accounts and information.
7. Have a committee or some means whereby close and friendly relationship is maintained with the local organized bar.
8. Cooperate, wherever possible, with the Russell Sage Foundation and other appropriate organizations with respect to the securing or maintaining of the uniform small-loans law, laws relating to wage assignments, and other laws and activities covering the entire field of consumer credit relations.
9. Belong to the National Association of Legal Aid Organizations.
10. Pay all dues to the national association regularly and promptly.
11. Answer promptly all questionnaires and communications from the national association and chairmen of standing committees.
12. Have a social worker, or an investigator, on its staff; or have available, through other agencies, facilities for a proper social and economic investigation of those cases where the need arises.
13. Seek and maintain active membership in any local or State council, or other central planning group, of social agencies.
14. Make use of the social-service exchange when and where its work will benefit thereby, and register its own cases therein when it is of distinct community advantage so to do and where it will not violate the confidential relationship of attorney and client.
15. Make adequate provision for the reference of cases which are not handled by the legal-aid office.
16. Maintain a fund or provide a means whereby legal expenses may be available when necessary.
17. Take appeals to right palpable miscarriages of justice or to establish useful principles when the costs can be obtained.

IDEALS

Every legal-aid organization should, as far as local conditions permit, endeavor to:

1. Provide for legal aid in criminal cases where there is no statute providing for the assignment of counsel or for a public defender, or where the circum-

stances are such that the defendant cannot obtain proper representation in any other way.

2. Have some member or members of the office staff whose special business it is to investigate and handle workmen's compensation cases, where not acceptable to the bar, and representation is needful.

3. Establish contacts with the sources of legal-aid cases where essential to adequate service of special type of clients, such as workmen's compensation cases, seamen's cases, veterans' cases.

4. Have established a small-claims court in your community.

5. Have established a domestic-relations court in your community.

6. Provide some adequate machinery for handling complaints against lawyers where the legal-aid society cannot do so.

7. Act in an advisory capacity to social agencies relative to the legal problems which they face whenever requested to do so.

8. Secure desirable legislation in its own community or State legislature when in aid of its purposes.

9. Assume leadership in the securing of such new legal machinery for social betterment as the community requires.

10. Accept divorce cases on behalf of indigent persons, whether plaintiffs or defendants, in those instances in which there are social reasons which appear to make such an action both necessary and desirable from the standpoint of the client as well as of the family.

11. Accept bankruptcy cases on behalf of indigent persons in those instances in which the client has a reputation for honesty and has made every reasonable effort to pay his just debts, but in which creditors have refused to cooperate in any reasonable plan of payment and have persisted in harrassing the client by attachment of his wages and by other proceedings to such an extent that he is in danger of losing his employment; that bankruptcy proceedings be undertaken, however, only as a last resort, and after all other attempts in the way of conciliation or otherwise have failed to protect the client from the unreasonable collection practice of his creditors.

12. Except for good cause in individual instances, accept personal-injury cases in which the client is unable to pay any fee and in which the amount of recovery is not sufficient to induce a reputable attorney to accept the case on a contingent basis.

13. Defend indigent defendants in both felony and misdemeanor cases in the following instances:

Where there is no statute providing for the assignment of counsel or for a public defender, or where the circumstances are such that the defendant cannot obtain proper representation in any other way; provided the budget and facilities of the legal-aid organization permit of such representation as well as representation in other types of cases.

In 1934 at the New York convention there was a general feeling that the problems which had faced the national association in its beginning had been largely solved or replaced by a new set of difficulties. This idea had been present at a number of the earlier conventions, but until 1934 there had not been sufficient support for it to warrant making any substantial changes. In that year the association instructed the executive committee to abolish the existing committees and to set up a new group of committees to deal with the

new problems. The executive committee meeting in the midwinter of 1935 proceeded to establish the following four fundamental committees to guide the activities of the association during this second period of its existence: A committee on contacts with other agencies, which was expected to develop relationship with the bar, with social agencies, with law schools, with governmental officials, and other groups; a committee on internal administration; a committee on publicity and finance; a committee on specified types of cases.

After this brief glance at the developments in the national and international field, it is time to return to an examination and appraisal of what the legal-aid organizations have been able to accomplish in their own field of work.

Chapter XIV.—Work of Legal-Aid Organizations

The final test of the merit of any organization that exists to render a public or community service must depend on the amount of work it can perform and the degree of efficiency it is able to attain. It is possible to apply a quantitative test to the legal-aid organizations because most of them have kept satisfactory records as to the major features of their work, how many clients they served, how much they collected for clients, and the cost of their operation. In appendix E these figures are set out in detail. For our present purpose a condensed table will serve as an accurate reflection of the extraordinary growth of the work. When one notes that the total number of cases in 1900 was only 20,896 and that by 1933 it had increased to 331,970, one realizes that while legal-aid work has an unbroken history running back for over 50 years, yet the great bulk of its achievement lies within the last two decades, during which period the movement became truly national in scope. In other words, the legal-aid organizations taken as a whole have passed through their experimental stage, but they are still young; they have not assumed their final form because they are still in process of development. They are not yet at the zenith of their powers; they contain tremendous latent possibilities for effective service in connection with the administration of justice, but they are only at the threshold of the passageway which leads to a full realization of these opportunities.

TABLE 11.—*Growth of legal-aid work in the United States, by years*¹

Year	Number of organizations	Number of cases	Amounts collected for clients	Operating expense
1876.....	1	212	\$1,000	\$1,060
1877.....	1	750	5,019	1,519
1878.....	1	856	8,089	1,670
1879.....	1	1,903	7,514	1,816
1880.....	1	2,122	8,680	2,248
1881.....	1	2,832	9,149	2,622
1882.....	1	3,413	12,460	2,715
1883.....	1	3,400	17,040	2,838
1884.....	1	3,640	19,062	2,817
1885.....	1	3,802	17,711	2,870
1886.....	2	3,462	19,357	3,820
1887.....	2	3,870	17,755	5,005
1888.....	3	5,624	20,852	8,739
1889.....	3	7,611	32,768	10,425
1890.....	3	9,316	47,580	11,953
1891.....	3	10,282	65,818	12,781
1892.....	3	10,656	86,206	15,122
1893.....	3	11,166	37,603	11,365
1894.....	4	15,427	68,672	14,697

¹ Figures are for organizations reporting.

TABLE 11.—Growth of legal-aid work in the United States, by years—Continued

Year	Number of organizations	Number of cases	Amounts collected for clients	Operating expense
1895.....	4	16, 128	\$66, 341	\$14, 312
1896.....	4	15, 017	76, 695	13, 450
1897.....	4	12, 115	78, 420	14, 734
1898.....	4	12, 399	72, 860	13, 654
1899.....	4	16, 189	72, 575	16, 030
1900.....	5	20, 896	101, 970	21, 669
1901.....	6	23, 366	83, 739	28, 885
1902.....	10	23, 544	78, 507	29, 086
1903.....	10	28, 358	68, 731	33, 333
1904.....	13	34, 156	71, 005	38, 829
1905.....	12	33, 352	80, 020	42, 734
1906.....	12	37, 603	99, 049	53, 347
1907.....	13	42, 596	126, 515	62, 620
1908.....	13	50, 944	129, 562	66, 534
1909.....	14	48, 212	136, 105	72, 170
1910.....	15	52, 644	166, 851	76, 602
1911.....	16	60, 950	185, 567	97, 250
1912.....	21	77, 778	217, 532	119, 705
1913.....	28	87, 141	244, 162	133, 609
1914.....	32	109, 043	268, 849	160, 189
1915.....	38	111, 719	323, 092	166, 701
1916.....	41	117, 201	340, 199	181, 408
1917.....	41	108, 594	266, 373	153, 559
1918.....	41	99, 192	289, 859	167, 307
1919.....	41	102, 289	367, 813	195, 695
1920.....	41	96, 034	389, 835	226, 079
1921.....	41	111, 404	456, 160	282, 359
1922.....	47	130, 585	499, 684	328, 651
1923.....	61	150, 234	498, 846	331, 326
1924.....	72	121, 177	662, 675	348, 290
1925.....	72	143, 653	675, 994	408, 576
1926.....	73	152, 214	645, 991	369, 264
1927.....	78	142, 535	719, 643	387, 331
1928.....	85	165, 817	645, 435	461, 557
1929.....	84	171, 961	802, 328	404, 420
1930.....	86	217, 643	876, 477	546, 808
1931.....	85	227, 471	674, 122	538, 199
1932.....	85	307, 673	815, 440	596, 941
1933.....	84	331, 970	727, 499	481, 756
Total.....	3, 912, 146	13, 604, 855	7, 860, 746

The organizations have conducted their work so quietly that their aggregate accomplishment must be something of a surprise to anyone who reads of their work for the first time. Not including the figures for 1934, which are not available at this writing, the legal-aid organizations have received applications for assistance in 3,912,146 cases; through their efforts they have collected for their clients \$13,604,855; and in the prosecution of their work they have expended \$7,860,746. The existing organizations now serve a territory in which 39,000,000 persons live; each year they assist more than 300,000 clients for them; they collect nearly three-quarters of a million dollars annually in amounts that average little more than \$15 per case. The maintenance of legal-aid work now costs nearly a half million dollars a year, which means that they are able to interview, to extend legal advice to a client, and to render whatever legal assistance he requires at an average cost of about \$1.45 per case.

The foregoing may be regarded as minimum figures because records for some of the newer and less strongly established offices are not available. If we measure by number of clients, the legal-aid

organizations of the United States must conduct the largest law practice in the world.

In 1923 it would not have been possible to analyze this mass of legal matters to ascertain the source, nature, and disposition of various kinds of cases of which it is composed. During the past 10 years, however, legal-aid organizations have come to keep records on a standard basis of classification, and from these it is possible to gather the following types of information.

TABLE 12—Percentage distribution of total number of cases by nature, source, and disposition of case, 1924 to 1933, inclusive

Classification of cases	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933
<i>Nature of case</i>										
Cases growing out of contractual relations.....	52.1	55.3	56.2	56.8	54.7	53.1	43.2	47.1	37.4	32.5
Torts.....	7.8	7.7	8.1	7.8	8.1	8.6	8.5	7.7	5.6	5.9
Cases growing out of property.....	15.1	13.9	13.1	13.7	14.1	13.4	8.5	16.5	15.9	14.0
Estates.....	4.0	3.8	3.3	2.9	3.0	3.3	3.1	3.2	2.7	2.8
Domestic relations.....	17.7	16.4	16.6	16.2	15.7	16.3	14.1	14.0	10.4	12.6
Criminal matters.....	1.4	1.3	1.4	1.3	1.9	1.2	.9	2.0	1.2	2.1
Unclassified.....	1.9	1.6	1.3	1.3	2.5	4.1	21.7	9.5	26.8	30.1
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
<i>Source of case</i>										
Federal Government.....	.2	.1	.6	.7	.8	1.0	.9	1.4	.2	.6
State and county government.....	2.9	(¹)	5.7	4.2	4.5	4.8	6.8	4.1	2.9	2.9
Local government.....	10.9	9.8	10.1	8.9	9.2	9.0	10.1	9.6	7.4	5.3
Foreign consuls.....	.3	.5	.3	.1	.1	.1	(¹)	(¹)	(¹)	(¹)
Legal-aid organizations and lawyers.....	3.2	3.0	3.0	2.5	2.4	2.5	3.9	2.2	2.4	1.5
Medical agencies.....	.7	.5	.7	.7	.6	.7	.6	.6	.4	.5
Religious agencies.....	.3	.2	.4	1.1	.2	1.0	.1	.3	.2	.4
Social agencies.....	7.7	5.7	7.2	6.1	7.1	7.5	6.7	7.1	6.2	6.7
Business and industry.....	2.2	1.9	3.6	3.5	3.7	3.2	3.7	14.7	2.1	2.3
Publicity.....	3.5	4.6	3.7	3.9	3.0	2.9	3.0	2.9	2.6	2.3
Individuals.....	8.3	7.6	9.6	63.8	67.9	66.8	62.1	54.6	53.3	37.6
Previously served.....	7.1	8.2	9.2							
Referred by client.....	52.6	32.6	34.6							
Direct application.....	1	(¹)	.2							
Member of society.....	21.2	11.1								
Private individuals.....	4.1			4.5	.5	.5	2.1	2.5	22.1	39.9
Unclassified.....										
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
<i>Disposition and court work</i>										
Refused at first interview.....	8.7	4.8	3.5	5.4	6.2	4.5	3.5	3.2	2.1	3.2
Advice and referred.....	48.3	47.4	41.4	47.0	44.5	53.1	52.9	46.1	44.7	48.1
Client unable to advance costs.....	.1	.1	.1	(¹)	(¹)	(¹)	(¹)	.1	.1	.2
Case terminated by client.....	12.1	13.7	16.7	12.1	9.4	8.5	9.3	10.5	7.2	4.8
Investigated and advice given.....	5.5	8.4	9.2	11.0	19.1	10.2	8.6	13.5	8.4	8.0
Investigated and referred.....	3.5	1.8	1.7	1.4	1.0	1.5	2.2	1.7	1.7	1.0
Investigated and refused.....	1.8	1.9	3.1	2.1	1.6	1.3	1.8	1.4	.9	2.6
Information secured and documents drawn.....	1.0	1.6	1.0	3.3	.6	4.0	3.9	3.0	2.2	1.9
Adjusted.....	13.4	13.8	16.1	12.0	10.3	12.2	12.5	10.8	9.2	6.9
Disposed of after litigation.....	5.6	6.5	7.2	5.7	6.9	4.2	4.1	4.6	5.2	8.5
Unclassified.....					.4	.5	1.2	5.1	18.3	14.8
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

¹ Less than $\frac{1}{10}$ of 1 percent.

In the conduct of their work the legal-aid organizations have through experience, learned certain lessons which have become incorporated into well-established principles for their guidance; and, on the other hand, a number of questions remain unsettled because, although there has been an abundance of discussion, no clear agreement has been reached.

A legal-aid society or bureau is a law office—its attorneys are engaged in the practice of law. They are subject to the same rules of professional conduct and to the same canons of ethics as other attorneys. But, in addition to these traditional precepts, the legal-aid organizations have found it necessary to establish certain other rules.

The first of these rules is a definite principle, universally applied, that no person who is able to employ a private attorney is entitled to their assistance. The legal-aid organizations are not in competition with the bar, and they are scrupulously careful in this regard. Furthermore, their funds, whether received from the public treasury or from private subscriptions, are given to them in trust to carry out a specific purpose which, as it is commonly expressed in the constitutions of legal-aid societies, is "to render legal aid and assistance, gratuitously if necessary, to all persons who may appear worthy thereof, and who, from poverty, are unable to procure it."

While the principle is clear enough, its application to border-line cases is sometimes difficult. There are comparatively few doubtful cases, but the legal-aid attorneys have been at great pains to try to fix the exact dividing line. All persons, when they come to a legal-aid office, are first considered as "applicants." If they satisfy the attorney that they are without sufficient funds to retain their own attorneys, then they are accepted as "clients", and having been accepted the relationship of attorney and client continues to the end of the case.

Twenty organizations allow the attorney who receives the application to exercise his discretion as to whether or not the applicant is a legal-aid client. Such discretionary control has been found better than any rigid tests. The national association's committee on relations with the bar, in its report for 1924, says in this regard:

A further argument against all of these tests would be that while they may well be put in operation, there is always a way to beat them. If a man who does the work is the wrong kind of a man, no rules will keep him in place. If he is the right kind of man, you will have little need for rules.

A \$500 wage claim presented by a healthy unmarried man would, it may be assumed, be at once rejected by any legal-aid society. But how about an attempt to cheat a widowed charwoman who is the sole support of her nine young children out of a \$500 equity in her cottage? Is that a legal-aid case?

A close working understanding between the legal-aid committee of the local bar association and the board of directors of the legal-aid society, with the legal-aid attorney serving as the link between the two, will be essential if any elastic definition is to be applied satisfactorily. Would not such an understanding be speedily arrived at if—

1. The legal-aid attorney should submit to the bar association committee any border-line cases whose status he considers to be doubtful; and

2. The bar association committee should visit the bureau at intervals, examine the records, question the attorney, and satisfy itself as to the character of cases accepted, making such recommendation as it deems necessary.

The foregoing suggestion is undoubtedly as good a solution as can be had. The legal-aid attorney's discretion is not left free and untrammelled but is subject to enough control to prevent abuse. If the bar at large thinks the legal-aid office is accepting improper cases, the remedy lies in its own hands. Some organizations have already accepted the substance of this suggestion for their future guidance as the need may arise.

The earnest desire to avoid criticism from the bar has led a number of organizations to take a false step in the following situation. When an applicant is refused, either because he can pay a fee or because of the nature of his case, he invariably asks for the name of some reliable attorney to whom he may go. The organizations above referred to refused to answer this simple question, lest they be accused of playing favorites. The unfortunate result generally was that the ignorant applicant would fall into the hands of a "runner" and straightway be led to the office of some "shyster." The better practice today is to offer a list of names of reputable attorneys who have agreed in advance that they will accept such cases. Some organizations use lists compiled by themselves, and others use lists compiled by the local bar association. If any substantial number of cases are to be referred, the second plan is clearly the safer and should be used wherever the local bar association is willing to cooperate in this regard.

Whether or not legal-aid organizations should accept divorce cases has long been a mooted point. Divorce is a serious step; to make it easy by making it cheap may result in baneful social consequences. And to refuse divorces in certain instances has equally bad social results. It might seem simple to adopt a rule to defend divorce cases but to refuse to institute them. According to the attorney of the Buffalo Legal Aid Society:

It is a simple matter to bring to mind cases where a poor woman with several children has been deserted by a worthless husband who has given her all possible grounds for a divorce. When such a woman finds, as many of them do, some steady man who is willing, in return for the home life he wants, to give her his wages and help to bring up the children, we have an opportunity for a real, constructive piece of work. If a divorce is granted her, she can start life all over again and probably make her way. If the divorce is denied, she may very likely take the man in as a boarder and after a time bring into the world a group of illegitimate children.

There is in reality a dilemma which the committee on relations with the bar of the national association has summed up as follows:

It is argued that because of its public or quasi-public position a legal-aid society must take every case which comes to it, provided the client is one within the jurisdiction and the case is not prohibited by a general rule. It is further argued that a legal-aid organization, being merely an instrument of the law, should not assume to determine the merit of such cases provided the facts are such as to warrant a divorce. It is said that the moral side of such

questions is a matter for the individual client and not for the legal-aid society to pass upon.

On the other side, it is argued that divorce is in the nature of an equitable proceeding and that the moral standpoint of the applicant for a divorce must be taken into consideration. It is said that the break-up of a family is involved, a step is taken toward the break-up of society, and, therefore, society at large is involved in such a proceeding and is interested in whether, morally, the divorce should be granted or not.

It is a safe rule to lay down that while a legal-aid organization refuses a divorce case at its peril, it also accepts such cases at its peril, and must tread the narrow path between denying justice to the poor on the one hand and encouraging unwarranted destruction of families on the other.

In actual practice some organizations do not accept divorce cases and others do under special circumstances. The National Association of Legal Aid Organizations has finally stated its position on the problem by adopting the following recommendations, suggesting the activities of legal-aid societies regarding divorce cases:

Every legal-aid organization should, as far as local conditions permit, endeavor to:

Accept divorce cases on behalf of indigent persons, whether plaintiffs or defendants, in those instances in which there are social reasons which appear to make such an action both necessary and desirable from the standpoint of the client as well as of the family.

Public opinion may be changing, but it is still at odds on divorce, and it is too much to expect the legal-aid organizations to solve completely such a baffling social question.

Whether or not personal-injury cases should be accepted has been, and still is, a warmly contested point. The problem arises in a peculiar way. A man may be utterly penniless, but if he is knocked down by a streetcar he has a claim that may be worth a thousand dollars against a solvent defendant. For many years lawyers have been willing to accept these cases on a contingent-fee basis. Despite the fact that the contingent fee has given rise to a host of abuses, and that many excellent lawyers look at it askance, it seems to have become a recognized method of arranging the fee in negligence cases, and a contingent-fee contract, which was originally deemed void at the common law, is now accorded legal recognition in most States. On this question the committee on relations with the bar states:

As a general proposition, a legal-aid organization has no right to contend with other lawyers for business.

As long, then, as lawyers can be found to take contingent-fee cases, the legal-aid organization ought to keep its hands off. If such cases are of any value at law, members of the bar will take them. If they are of no value, a legal-aid organization cannot make much headway.

When, however, we come to consider a small case of this sort, where there is undoubtedly a legal right to recover and where the amount involved is so small as not to warrant any action by a private attorney, even on a contingent basis, then the legal aid may properly proceed; because if it did not interfere, injustice would be done.

Wherever the law has acknowledged the propriety of contingent-fee contracts, the committee's observations are applicable, and they constitute as good a practical solution as can be afforded, and the rules of the great majority of the legal-aid offices are in accord with this plan.

In 1930 the national association approached the solution of this problem when it adopted the following recommendation:

Every legal-aid organization should, as far as local conditions permit, endeavor to:

Except for good cause in individual instances, accept personal-injury cases in which the client is unable to pay any fee and in which the amount of recovery is not sufficient to induce a reputable attorney to accept the case on a contingent basis.

Other types of cases present difficulties, but the only group that is important enough to warrant attention here is that of complaints against attorneys, which the legal-aid organizations are apt to receive because it is the poor and ignorant on whom unscrupulous lawyers prey and such persons naturally turn to a legal-aid office for assistance. A rule to reject such cases has been adopted by a few societies but it is indefensible. These cases are of the utmost importance, not only to the wronged individual, but to the whole administration of justice. A legal-aid attorney, in our opinion, is remiss in his duty unless he investigates the matter and, if the complaint appears justified, sees that it is properly presented to the grievance committee of the bar association or whatever other body is vested with jurisdiction over matters of professional misconduct.

The national association has adopted the following recommendation:

Every legal-aid organization should, as far as local conditions permit, endeavor to:

Provide some adequate machinery for handling complaints against lawyers where the legal-aid society cannot do so.

The last important matter of policy concerning legal-aid work that needs some exposition is the theory and practice of charging fees. In the purpose clause, quoted earlier, which is to be found in the constitutions of a number of societies, the object of the work is stated to be "to render aid and assistance, gratuitously if necessary." This is a balanced phrase. When the client is unable to pay anything the service must be extended to him free of all charges; every legal-aid organization subscribes to this principle, and no applicant is ever rejected on the ground that he cannot pay a fee.

On the other hand, if the applicant can pay a nominal fee, some of the organizations do make a charge. One definite school of thought among legal-aid workers strongly objects to any system of fees whatsoever. Their argument is that justice should be free; that

legal-aid service should be extended without any pecuniary reward; that the nature of legal-aid work will be more clearly appreciated by the community and its dignity be enhanced if no charges for services rendered are imposed. This point of view represents an earnest conviction, it has the merit of simplicity, and it is based on an ideal that carries with it an undeniable appeal.

The countervailing argument is perhaps less idealistic but is supported by strong practical considerations. It is urged with vigor that the system of charging fees, however small, tends to eliminate fictitious and groundless complaints; that when a client has paid a fee he has a stake in the matter and is less likely to drop it; that by the payment the relationship is lifted from the plane of charity to one of self-respect; and that these fees, although trifling in themselves, in the aggregate constitute a source of income that enables the organizations to do more work than their limited finances would otherwise enable them to perform. That there is practical validity behind this last argument is apparent from the following table showing fees collected by certain organizations in recent years.

TABLE 13.—Amounts collected in fees and commissions by legal-aid organizations, by year

Year	Albany	Balti- more	Boston	Buffalo	Cam- bridge	Chicago L. A. B.	Cincin- nati	Cleve- land	Denver	Detroit
1917			\$1,600	\$214				\$558		
1918			3,549	217				1,320		
1919			5,478	348				2,018		
1920			6,295	432				2,804		
1921			5,972	663				1,886		
1922			6,997	1,012				1,591		
1923			9,398	844				2,661		
1924	\$51		10,066	864			\$121	2,963		\$1,764
1925	118			831			193	2,483	\$135	1,600
1926	240		13,376	986			81	1,786	355	
1927	347		16,026	1,408			230	1,949	413	
1928	283		15,323	1,692			727	1,284	450	2,292
1929	245	\$125	18,111	1,809	None	None	763	1,567	349	1,485
1930	210	250	22,311	1,694	\$20	None	646	1,627	405	1,355
1931	137	275	15,812	1,210	10	None	462	1,038	233	2,124
1932	178	250	18,378	1,137	39	None	833	738	203	4,110
1933	260	458	15,672	1,082	77	\$3,617	783	576	165	3,922
Total.....	2,072	1,358	184,364	16,443	146	3,617	4,839	28,849	2,708	18,652

Year	Grand Rapids	Louis- ville	Minne- apolis	New York L. A. S.	New York Ed. ALL.	Newark	Provi- dence	Roch- ester	Spring- field
1917			\$530	\$11,667					
1918			184	10,508					
1919			101	11,506				\$83	
1920			100	12,841				62	
1921			61	13,927			\$39	151	
1922	\$32	\$240	97	14,812	\$2,768		124	184	
1923	45	148	198	13,815	2,808		144	197	
1924	24	109	161	14,508	2,876		223	279	
1925		87	118	15,322			283	315	
1926	50	113	134	12,513	2,598		273	372	\$142
1927	43	107	225	12,714	2,308	None	342	287	458
1928	29	133	279	12,776	2,405		288	298	342
1929	352	137	331	13,548	1,950		257	294	358
1930	None	84	224	16,537	1,794	\$1,048	252	260	708
1931	44	95	155	25,221	1,708	1,462	194	351	580
1932	None	85	112	26,437	1,548	1,283	191	397	427
1933	160	267	103	21,269	1,236	1,050	219	199	
Total.....	779	1,605	3,113	259,921	23,999	4,843	2,829	3,729	3,015

The nature of the fees charged is shown by the following table. By "registration fee or retainer" is meant a payment by the applicant when he is accepted as a client and work in his behalf is undertaken. A "fee or commission on money collected" signifies that if the society through its work is able to collect for a client something more than a nominal sum, then it may make a charge based on a percentage of the sum recovered. The percentage figure is a maximum figure which may not be exceeded, but which may in any case be reduced. By "fees or commissions in special cases" is meant the imposition of a charge where the society's services have produced some valuable result other than a collection of money for the client.

TABLE 14.—*Fees and commissions charged by legal-aid organizations, by cities*

City	Registration fee or retainer	Fee or commission on money collected over a certain sum	Fees or commissions in special cases (workmen's compensation, etc.)
Albany.....	25 cents.....	5 percent.....	Fixed by workmen's compensation bureau.
Baltimore.....	50 cents.....	do.....	None.
Boston.....	do.....	20 percent (unless amount is large).	\$5 to \$15 in domestic relations cases.
Buffalo.....	25 cents.....	10 percent.....	None.
Cambridge.....	do.....	None.....	(1).
Chicago, Legal Aid Bureau.....	do.....	do.....	None.
Cincinnati.....	do.....	10 percent.....	Do.
Cleveland.....	None.....	10 percent if client is married; 15 percent if not.	10 percent.
Denver.....	do.....	10 percent.....	Fixed by workmen's compensation commission.
Detroit.....	do.....	do.....	Voluntary contributions by clients.
Grand Rapids.....	25 cents.....	do.....	10 percent.
Jersey City.....	do.....	do.....	Do.
Louisville.....	None.....	do.....	25 cents to \$5.
Minneapolis.....	25 cents.....	No set fee.....	(1).
New York, Legal Aid Society.....	50 cents.....	10 percent of amount over \$5.....	3 percent in estates.
New York, Educational Alliance.....	25 cents, except to female clients.	5 percent from \$5 to \$10; over \$10, 10 percent.	(1).
Newark.....	10 cents.....	10 percent.....	(1).
Providence.....	25 cents.....	5 percent to 10 percent.....	5 percent to 10 percent.
Rochester.....	do.....	10 percent.....	Fee set by State.
Springfield.....	None.....	Contribution by clients.....	Fee set by industrial accident board.

¹ No figures available.

Of the various societies and bureaus as to which definite information is available 15 charge registration fees and 36 do not; 17 charge a commission for collections or other valuable services and 34 do not. All of the public bureaus are free. Nearly all of the offices which are conducted as departments of organized charity societies (as the united, federated, or associated charities) charge no fees. On the

other hand, most of the privately incorporated societies (and these include the organizations that do about half of all the legal-aid work in the United States) do charge.

The legal-aid organizations have fixed their fees at so low a point that no injustice results, and therefore no principle is at stake. In those courts which are closest in function to legal-aid work, the small-claims courts, the practice varies: In Connecticut, Kansas, and Minnesota there are no fees; in Cleveland the fees are about \$1.40; and in Massachusetts they are \$1.12. No form of social service is conducted on a higher plane today than that rendered by the hospitals in our great cities, and they generally adhere to the rule of charging patients some small fees for the services rendered.

From the legal-aid point of view the world is divided into three groups of persons. First, those who can afford to retain their own attorneys. Such persons are not entitled to legal aid on any terms. Second, those who can afford to pay nothing whatsoever. Third, those who can pay trifling sums which are so small that no private attorney could or would undertake the case for such a fee, as, for example, a fee of 25 cents. To require persons in this last group to pay something for services rendered is not inconsistent with the fundamental concept of legal-aid work, provided that the societies and bureaus never let their rules interfere with their obligation to aid the destitute and to extend to them freely and gladly the maximum assistance within the power of the legal aid organizations.

Chapter XV.—Types of Legal-Aid Organizations

To give practical application to the legal-aid idea in the actual cases of actual clients, some machinery or some kind of organization, whether formal or informal, is necessary. In the course of expansion various types of legal-aid organizations have developed, and as the work is extended into smaller cities and as it is confronted with new conditions the number of types tends to increase. No ironclad uniformity in the details of organization is needed and very likely an absolute conformity to any single type would stifle experiment and therefore be undesirable. It is worth while, however, briefly to enumerate the various kinds of legal-aid organizations now in existence, to compare them, and to venture certain general observations as to their efficiency.

The first to be considered is the group which may be designated as specialized organizations, because their work is limited in one direction or another. Most of the public-defender offices fall in this group because they are limited to criminal cases. In a sense legal-aid work in the criminal field requires specialization; it certainly requires an attorney who is expert in the conduct of criminal cases; but in the long run it would seem to us preferable that all the legal-aid work in any community, both the criminal and the civil cases, should be conducted by one office. Where a legal-aid organization already exists, this could be accomplished by adding to its legal staff a lawyer familiar with criminal practice, as has been done in Cincinnati, Pittsburgh, and elsewhere. Where the public-defender office already exists, the process would be reversed, which is virtually the situation in Los Angeles. Where both a legal-aid office and a defender's office exist in the same city the two might well be merged, as was done in New York.

Another type of specialized body is the National Desertion Bureau, in New York, that deals only with domestic relations cases. A third type is represented by the Legal Aid Bureau of the Educational Alliance, in New York, and by the Legal Aid Department of the Jewish Social Service Bureau, in Chicago, both of which limit their service almost entirely to Jewish applicants and whose field of activity is very largely among immigrants. Through such specialization these organizations attain a high degree of efficiency. It will be noticed that they exist only in our two greatest cities; in the other cities of the country such specialization is not called

for. Most communities can afford only one organization and need only one organization, because a properly equipped legal-aid office can provide service in desertion cases and extend assistance to immigrants as a part of its regular work, and in fact the stronger legal-aid societies and bureaus already do so.

The relationship between organized labor and the legal-aid organizations is yet to be defined and established. Their common interests cover a wide field. It is safe to conjecture that if the facts could be known it would appear that a substantial percentage of legal-aid clients are members of unions and that a still larger percentage consists of wage earners in whose welfare and protection organized labor is concerned. The legal reforms urged in connection with the legal-aid movement are of primary importance to labor. Where efficient small-claims courts, industrial-accident commissions, and administrative officials are secured the chief beneficiaries are wage earners. By reason of their community of interest a better understanding between the two groups in order that they may the more effectively cooperate is eminently desirable. Legal aid has already established its contacts with other organized bodies, such as the bar and the social agencies. To secure to an equal degree the genuine interest and cordial support of organized labor is unquestionably one of the greatest responsibilities, and at the same time one of the most promising opportunities that the National Association of Legal Aid Organizations will face in the immediate future. There is every reason to believe that organized labor would be fully responsive. Three articles on legal aid have already been printed in *The American Federationist*, whose editor, Mr. William Green, is president of the American Federation of Labor.

Other definite progress that has already been made has been considered in chapters IX and X, where were discussed the problems of administering workmen's compensation acts and the collection of wage claims.

Taking up the organizations that engage in general legal-aid work we find that while certain distinctive differences may be noted between various major types of organizations the dividing line is not always clear because one type through a series of minor variations tends to become merged with another. Thus, the simplest machinery of all undoubtedly consists of an individual lawyer who volunteers his services and to whom a social agency refers all its cases. While many examples might be given of this device it is sufficient to record that in Illinois and Michigan where the State-wide plan has been extended to local communities the local arrangements are not much more complex than this. After the individual lawyer comes the bar-association committee. In the preceding chapter we have

listed examples of this type, as in Seattle, Jacksonville, Evansville, and Wheeling. A modification of this type is the legal-aid committee of the State bar association which supplies a degree of leadership in developing the work in the State. Examples of this type may be found in California, Illinois, Massachusetts, Michigan, New York, North Carolina, Pennsylvania, and elsewhere. Because of their significance, such bar-association activities are considered further in chapter XIX. There is still one further step, namely, an unincorporated organization, as in New Orleans, receiving funds from a social agency and employing an attorney to give a definite amount of time to the work. Through these various stages we come to a full-fledged legal-aid society, as, for example, the one in Detroit which functions under the direction of a legal-aid committee of the bar association.

The less formal machinery is, of course, more suitable to the smaller communities where the volume of cases is small and the pressure of the work not too onerous. This is normally the situation in cities of 50,000 inhabitants or less. It is feasible to have the legal-aid work entrusted to a group of lawyers, preferably a group appointed by the local bar association, because the total responsibility that each such lawyer assumes is light and does not interfere with his own private practice. Of the various plans of this general type the Illinois, Michigan, and North Carolina plans seem to be the best. While the Illinois plan has undergone some recent modifications, its general nature may be understood by reading the following brief memorandum which was drawn up in 1922.

Memorandum of agreement for rendering legal aid to the poor between the family social-work societies of the State of Illinois and the Illinois Bar Association

1. The family social-work societies to furnish the Illinois State Bar Association with a list of the cities in Illinois having family social-work societies and the name of the local secretary or manager of each.
2. The Illinois State Bar Association to get in touch with the local bar association in the cities where there are organizations of family social-work societies with secretaries or managers and to invite such local associations to cooperate in furnishing legal aid.
3. The local bar association to furnish the secretaries or managers of the family social-work societies with a list of their own members who will contribute their services without charge on properly signed orders from the family social-work societies.
4. The local bar associations to appoint a committee of one or more members of the bar to act jointly with the local family social-work society's secretary or manager in determining the general policies to be followed in local legal-aid work.
5. The Illinois State Bar Association to furnish proper order blanks to be used by the family social-work societies.

6. The member of the bar to make a notation on the report blank of the advice given or action taken, and upon completion of the service to mail it to the local family social-work society's secretary or manager from whom the case came.

7. The secretaries of the various family social-work societies will issue such orders only on such members of the bar whose names have been furnished by the local bar association, and such orders are to be issued in rotation as such names appear upon the furnished lists.

8. The joint committee above mentioned to determine what cases or classes of cases may be assigned with the understanding that a small fee will be charged.

9. The secretaries of the family social-work societies will make a report to the State Association of Intercity Secretaries of Family Social Work Societies, who will transmit a summary to the Illinois State Bar Association not later than May 1 of each year, beginning in 1922.

The Michigan plan has been described at some length in the reports of the legal-aid committee of the Michigan State Bar Association. In effect it provides for districting the State and securing the services of one or more volunteer attorneys in each district who will agree to handle all legal-aid cases referred to them and report thereon to the committee. The North Carolina plan contemplates the volunteer system as set out above with the additional aid of a strong central body, the Duke Legal Aid Clinic, which is prepared to cooperate with the volunteer groups in the various parts of the State. It seems to us that the presence of this strong central law office is of great value in coordinating the local efforts in aiding individual lawyers by preparing briefs and doing other of the more laborious and time-consuming parts of the work. We believe also that the psychological effect of emphasizing the administration of justice as being of one piece throughout the State is a step in the right direction, since the State is the best unit of judicial organization.

Closely related to the State-wide committee is the State legal-aid organization. During the period from 1923 to 1928 State legal-aid organizations were created in California, Massachusetts, New York, Ohio, and Pennsylvania. These organizations held meetings and encouraged the development of local legal-aid societies. The association in California is still active and has accomplished a substantial amount of work.

For the larger communities, certainly in cities of 100,000 inhabitants and upward, the only efficient way to conduct legal-aid work is through a definite legal-aid office organized and maintained on a definite basis. For this purpose four standard types of organizations have appeared. The bar-association type may first be taken up, the best illustration of which is to be found in the legal-aid bureau of the Association of the Bar of Detroit. This is recognized as one of the finest legal-aid organizations in the country. By rea-

son of the inherent nature of legal-aid work its establishment and conduct under bar-association auspices is logical and thoroughly sound. The only important objection that has been urged against this plan is that bar associations have limited funds, and if they are unwilling or unable to secure financial support from the general community the legal-aid work is sure to be starved. This has been the case apparently in Detroit until the financing was undertaken by the community fund. Lawyers may not be good money raisers, but if adequate financing is assured, the supervision of the actual legal case work may well be intrusted to a committee appointed by the local bar association. The organized bar is steadily assuming a greater and greater responsibility for legal-aid work, as will be shown in chapter XIX, and bar associations have undertaken to start the work in many cities, but they have generally either created a private philanthropic corporation to conduct the work, as in Boston, Louisville, and Providence, or they have worked out some joint arrangement with an existing charity organization, as has recently been done in Chicago.

Legal-aid work conducted as a department of a general charity organization has been successful in many communities, notably in Grand Rapids, St. Paul, and Chicago. An advantage of this plan is that the legal-aid financing is taken care of as part of the general financing of the whole charity organization, which from the community point of view is a sensible arrangement. The corresponding disadvantage is that if the general charity for any reason goes down the legal-aid work goes down with it, as happened in 1923 in St. Paul for a period of several months. The argument that a legal-aid society should be independent in order that it may make its own appeal direct to the community is not substantiated by the facts. In Chicago the legal-aid society, while it existed as an independent entity, received utterly inadequate support even from the bar itself; since it became a bureau of the United Charities it has been able, through the cooperation of an excellent committee appointed by the Chicago Bar Association, to increase its subscriptions from the bar to an extent that is remarkable and sets a pace for the rest of the country. The argument that legal-aid work cannot be managed by the same directors who control the general charity work has some force. Legal-aid work is a specialty; it differs from ordinary family welfare work in many ways; the wise formulation of its policies requires an intimate knowledge of the law and the administration of justice; its control, therefore, should be vested in a governing board composed primarily of lawyers rather than in a body whose chief interest and training is in social work. To the extent that the legal-aid bureau is given autonomy, with its own controlling committee, this

argument has no practical application. Both in Chicago and Grand Rapids the legal-aid bureaus enjoy so large a measure of autonomy in the working out of their own destinies that they are virtually as free as the independent philanthropic corporations. In the past several legal-aid organizations of this type, notably in Minneapolis, have become independent and separate organizations such as are described in the next paragraph.

In the largest cities most of the legal-aid societies have been incorporated as private charitable corporations. New York, Boston, Buffalo, Cleveland, Cincinnati, Milwaukee, Newark, San Francisco, and Providence, to mention a few typical instances, have always adhered to this type. The incorporated society form was also used in Philadelphia until in 1920 the work was assumed by the city, and in Chicago until the society was merged with the United Charities. In 1933 when the municipal support for the Philadelphia Legal Aid Bureau had definitely been withdrawn, the old private charitable corporation was revived and is now in active and successful operation. Much of the pioneer and development work that has been done in the legal-aid field must be credited to the foresight, enthusiasm, and vitality that results from this form of organization. Such a society has initiative because it is free. Control is vested in a board of directors chosen exclusively because of their interest in the work. Though legally independent, these societies have worked in close cooperation with the bar and thus have secured the substantial advantages of the Detroit Bar Association plan. In the judgment of the writers of this report, it is probably safe to say that the privately incorporated societies, taken as a whole, have made a better and more consistent record of performance than any other type, and it is clear that this form of organization is excellently adapted to the needs of the largest centers of population where the volume of legal-aid work is likely to amount to about 5,000 cases a year or more.

The chief weakness of the privately incorporated societies appears on the financial side. The price of their independence is that they must engineer their own financial support. As few legal-aid societies are old enough to have accumulated any endowment by gifts under wills they can be supported only by appealing to the general public for donations. This is the responsibility of the directors and they have never been overly successful at it. While the community support has grown from year to year, it is undoubtedly true that many societies have been starved and the normal development and extension of their work have been retarded by inadequate funds. This objection may be obviated by the increasing tendency of all charities in a community to federate themselves for the purpose of making a joint public appeal for financial support. Where

community chests and like plans exist, the burden of finances has been lifted in a large measure from the boards of directors of the legal-aid societies, leaving them free to devote their time and energy to the management and guidance of the work itself.

Still another type of legal-aid organization is the one known as the legal-aid "clinic." Such an organization is connected with a law school and has two objectives, one in the field of public service and the other in the field of legal education. Legal-aid clinics in connection with legal-aid societies have existed for some time. Legal-aid clinics exclusively in the control of law schools now exist at the University of Southern California and at Duke University. This newest type of organization is of such significance for the future that chapter XVIII will be devoted to a consideration of it.

The last, and in some respects the most interesting, type is that of the public bureau which is generally organized as a department of the municipal government. In addition to the public defenders noted in chapter XI, legal-aid work in the civil field is conducted through public bureaus in Kansas City, St. Louis, Los Angeles, Bridgeport, Dayton, Duluth, Omaha, Hartford, New Haven, and Dallas. The authority for the establishment of organizations of this type will be found in the city charters or in special ordinances.

These public bureaus give rise to certain theoretical considerations that go to the root of legal-aid work and which are discussed at the end of this chapter. They also present certain practical advantages and disadvantages. Whereas the greatest weakness of the private society is the uncertainty of its financial support, a public bureau ought to be comparatively free from this limitation. Once its appropriation is made, its finances are assured. Appropriations are made annually and the amount may at any time be reduced but the general tendency (with unfortunate exceptions) is for a municipal government to continue to provide steady and definite support. In at least one city the work has been stunted by a meager grant, but taken as a whole the cities have been more generous in supporting legal-aid work than the public at large when solicited for subscriptions. This is apt to be the case because legal-aid work is not expensive and the item seems an extremely small one in a municipal budget. It is certainly true that in Philadelphia the work doubled as soon as it was taken over by the city, because the enlarged financial support made possible a larger staff which in its turn could care for more cases.

The greatest asset of the private society, however, is that it is controlled by a free and independent board of directors, and the public bureau is deprived of this advantage. It is normally subject to control by a city council composed of men who may well pass

the final vote on its appropriation but who are not specially qualified to give any intelligent leadership in framing the general policies of a legal-aid office. As was pointed out in chapter XI, where this same problem arose in connection with the public defenders, it may be possible through the bar associations to provide this needed oversight. In a number of instances the local bar association, recognizing the need for supervision over an activity in the lawyer's field, has appointed a legal-aid committee to cooperate with the active organization. Such a committee is often given the authority to extend whatever assistance may be called for. This is an admirable precedent, especially if such a legal-aid committee of the local bar association can be developed into a sort of de facto board of directors for a municipal bureau, giving it the needed leadership in questions of general policy.

The public bureaus have been more successful than any other type of organization in reaching the persons who need their help. The National Association of Legal Aid Organizations has compiled tables on this point which are submitted in the next chapter. They assume that a standard legal-aid office should serve 1 person for each 100 of the population each year, and they show clearly that the public bureaus outdistance all other types in approximating this standard. This is partly because of their better financial support, but it is chiefly due to the very fact that they are public. As such they become better known to the community; their work is deemed of greater interest and is accorded more space in the newspapers; as time goes on the average citizen learns that there is a public legal-aid office, just as he has already learned that there is a municipal court, a police station, and a district attorney's office, to any one of which he is entitled to go for assistance.

If the legal-aid organizations are destined to become auxiliary parts of the administration of justice in modern cities, then unquestionably the public office is the most logical form of organization for legal-aid work to assume. Justice is a public and not a private concern, and it would be intolerable if any essential part of the machinery of justice were wholly dependent on the ability of a group of private individuals to provide the necessary funds. In a republic the administration of justice must be subject to the direction and control of the people acting through their own government, and by the same token every division or department or adjunct of the administration of justice must be obedient to public control.

A democratic form of government undeniably has certain dangers and certain limitations, and any public service is exposed to the same risks, but unless one is prepared to argue against democracy itself

it is idle to complain of the shortcomings that follow in its train. As the technique of government is improved so will the service of all public agencies, including legal-aid bureaus, be improved. Civilization itself depends on the ability of democracies to develop and maintain governments that are competent to deal with the complex problems of modern society. If the people of the United States are to prove competent to manage their own destiny, as we must believe they will prove to be, then it will be safe to entrust the public undertaking of legal-aid work to their charge.

In the face of the disasters which have marked the establishment of the public bureau, the cessation of the various offices, the turnover in personnel, the tendency of the work, unless carefully watched, to fall into a spiritless routine, the risk that appointments to legal-aid offices may not be made on the basis of qualifications for the work, the theory still holds good that the administration of justice is a public function. What the history of legal-aid work has taught us is the same thing of which students of political science are continually aware—eternal vigilance is the price of good government. The public gets just about what it wants in the way of government. The failure of government institutions is not so much the failure of the individual administrative officer as it is evidence of the decline in public morale. The municipal legal-aid bureau to be successful must be hedged about with many more safeguards than it has known in the past.

It is probable that for another generation at least the public and private types of legal-aid organizations will exist side by side. The transition from private to public control will come about slowly and will be made one step at a time. This is eminently desirable because legal-aid work still needs much development in many different directions, and the private societies by virtue of their greater freedom and independence are the natural bodies to undertake experiments. This has been their great contribution in the past, and there is every reason to expect that they will prove competent to manage the same course in the future. As Elihu Root wrote to the delegates assembled at the Cleveland meeting of the National Association of Legal Aid Organizations in 1923, no one can evolve out of his inner consciousness the answers to all the questions that legal aid must face. Progress will be made only through lessons learned in the school of trial and error. The private societies can afford to take chances that the public bureaus cannot, and the private offices will therefore continue for some time yet to provide the leadership in the legal-aid world. It is natural and entirely proper for the public offices to stand by and await developments. As ex-

perience is gained they may appropriate it, and as processes become standardized they may adopt them.

In the long run it is believed that the public bureau will prove to be the prevailing type. But a public bureau need not be a municipal bureau. There are many ways in which a public legal-aid bureau can be organized, supported, and directed. In a later chapter some conjectures as to how this may best be done will be suggested. It is believed by the authors of this report that ultimately all legal-aid work will be taken over by public authority, and it is incumbent on those who are responsible for the direction of the work to shape their course to this end. In no other way, so far as can be seen, can the administration of justice finally be rounded out so that it will be able to extend the equal protection of the laws to all persons in our great urban centers of population.

Chapter XVI.—Present Extent of Legal-Aid Work

To measure the extent of any national movement both quantitatively and qualitatively in order to reach reliable conclusions that are not mere generalizations is a difficult task. In the strictest sense it is an impossible task, because no single eye can follow closely enough 84 or more legal-aid offices transacting 331,970 different cases to determine with unerring accuracy how well each matter was cared for. In order to provide some intelligent basis for the future guidance of the work, the National Association of Legal Aid Organizations has necessarily been bound to inquire into its present extent and condition and in the course of its researches it has secured the data from which the material in this chapter is taken. While these records do not purport to be infallible, they afford the best methods of approach, and seem to reveal a picture that may be accepted as a close approximation to the true state of affairs.

The first and the simplest test is to fix the geographical extent of the work. As noted in chapter XII, legal aid developed first in the East, then in the Middle West, and finally reached the Pacific coast. When the pre-war era ended, two great sections of the country were devoid of legal-aid organizations. The first includes the Mountain States and embraces the territory east of the Pacific coast and west of a line running from Minneapolis to Omaha and to Dallas. This area is in the main sparsely settled, so that there has been less need to make provision for legal aid.

The second section lay in general south of the Ohio and east of the Mississippi. Here, while the population was greater than west of the Mississippi, for some reason the movement in spite of occasional brilliant efforts did not gain much headway. Since 1923 legal-aid organizations have been set up in Denver and Salt Lake City, and legal-aid work is done in Houston and San Antonio. Idaho adopted legislation securing small-claims courts for the State and North Dakota began her interesting experiment with conciliation tribunals. Louisville in 1913 and Atlanta in 1924 formed incorporated legal-aid societies. In Memphis an incorporated society was established and existed from 1923 to 1934. The failure of funds caused it to cease operation. In Lexington, in 1923 an attorney was employed on a part-time basis to care for cases referred by social agencies. This arrangement lasted for several years. The bar asso-

ciation in Jacksonville in 1932 set up a legal-aid committee. Groups in Miami and Tampa intermittently performed legal-aid service. In New Orleans the Prison Aid Society in cooperation with the bar association in 1931 evolved the New Orleans Legal Aid Bureau in addition to the older State bar committee which has operated since 1913. Duke University in Durham established a legal-aid clinic in 1931. At the time this is written groups in Richmond, Knoxville, Orlando, and Greenville are considering the inauguration of the work.

The less consistent development of the work in the two regional sections mentioned here is to be accounted for in many ways other than by criticism of the courageous people who set up and for a time maintained the offices. Recognition of the value of legal-aid service comes only after a long period of community education and adequate experimenting with forms suited to less thickly settled conditions. When these two obstacles have been fully overcome progress, no doubt, will be as rapid and as consistent as anywhere else.

Legal aid in the past has been essentially an urban problem. Owing to the fact that the conditions which require the establishment of some type of organization are found primarily in the larger cities, a test was made to ascertain how far legal-aid work has extended into the cities of the United States. This test shows that in 1934 legal aid was definitely established in all of the 21 cities having a population of over 350,000 in 1930, in 15 of the 20 cities with a population of 200,000 to 350,000, in 5 of the 10 cities with 150,000 to 200,000 population, and was fairly well established in 47 of the cities having populations of 25,000 to 150,000.

In cities of less than 100,000 inhabitants the need for any separately organized work is less clearly manifested. When it was proposed to inaugurate the work in less densely settled districts a different type of arrangement was utilized. In effect the outlines of this plan are already in existence in North Carolina where the Duke Legal Aid Clinic accepts cases from over the entire State and working through a group of volunteer lawyers renders much more than a local service. As an alternative the older Illinois plan promises much, functioning as it does in cities of a population of 11,000, 13,000, 16,000, 25,000, 30,000, and 47,000. In the smaller cities and rural areas where the agencies for the solution of human problems are less highly specialized, it is very likely that legal-aid service will find itself associated with either the work of a social agency or the work of a university. Experience indicates that the extension of the work into such areas, if made on such a cooperative basis, is far more likely to succeed. The arrangements designed to bring about

such joint effort are stated in the following chapters devoted to a consideration of the general relationship between legal aid and social service on the one hand and legal aid and law schools on the other.

In connection with the above statistics, the assumption that where legal-aid work was definitely established the situation might be deemed satisfactory was an arbitrary one. It is true that once the work is organized and begun in a community the probabilities are that it will grow from year to year until the legal-aid office is able to care for all the cases of needy persons, but when we try to ascertain the present extent of the work a more rigid rule must be applied. The best test for this purpose that has thus far been devised is to compare the number of cases handled by a legal-aid office with the population of the city or district that it serves.

The figures in table 15 have been compiled by the secretary of the National Association of Legal Aid Organizations. The construction of this table is more difficult than appears on the surface. The exact population served by a legal-aid office is indefinite; the census figures are not always conclusive because a legal-aid office may serve a territory either larger or smaller than the district used by the census for purposes of enumeration. Furthermore, outside factors enter to affect the number of cases that an office theoretically ought to receive in proportion to population; where small-claims courts exist they handle many cases that in other jurisdictions would come to the legal-aid office, and the same is true of domestic-relations courts and labor commissioners. The figures have been checked with the local legal-aid organizations as far as possible, and even if they contain a margin of error we believe that margin of error is too small to disturb the major conclusions which are based on the table and which follow it. The table reduces the total number of cases received by each organization to a basis showing how many cases were received for each 100 of the population. Under the rough standard set up by the legal-aid organizations, there should be one case for each 100 inhabitants. Thus an office handling 0.75 case per 100 of population may be said to be filling three-quarters of the community's entire need for legal aid; one handling 0.50 case per 100 is meeting one-half the need, and so on. The word "case" deserves a definition. The National Association of Legal Aid Organizations has adopted the following definition:

Any application which, in the discretion of the attorney handling it, may be disposed of under one of the headings of our standard classifications including both matters where legal aid is given and matters in which time and effort alone are given, but not including applications in which neither legal aid nor any appreciable time is given of which a recording is made.

TABLE 15.—Number of cases of legal aid per 100 of the population, by city, and type of organization

City	Type of legal-aid organization	Population served ¹	Number of cases received in 1933 ²	Number of cases for each 100 of population
<i>Members National Association of Legal-Aid Organizations</i>				
Albany.....	Private corporation.....	120,000	966	0.80
Baltimore.....	Bureau of social agency.....	850,000	4,564	.53
Boston.....	Private corporation.....	2,000,000	11,935	.59
Bridgeport.....	Municipal bureau.....	146,000	731	.50
Buffalo.....	Private corporation.....	762,408	8,355	1.09
Cambridge.....	do.....	115,000	689	.59
Chicago:				
Legal Aid Bureau.....	Social agency—clinic.....	4,955,000	24,337	.48
Jewish Social Service Bureau.....	do.....	275,000	1,015	.36
Cincinnati.....	Private corporation.....	464,000	6,942	1.49
Cleveland.....	do.....	1,250,000	8,560	.69
Dallas.....	Municipal bureau.....	280,475	3,003	1.15
Denver.....	Bar association committee.....	300,000	1,978	.65
Detroit.....	do.....	1,500,000	29,284	1.95
Duluth.....	Municipal bureau.....	101,463	2,263	2.23
Durham.....	Clinic.....	62,000	302	.48
Grand Rapids.....	Bureau of social agency.....	168,592	1,185	.70
Hartford.....	Municipal bureau.....	164,072	1,593	.97
Jacksonville.....	do.....	129,549	241	.18
Los Angeles.....	Clinic.....	1,500,000	2,340	.15
Louisville.....	Private corporation.....	360,000	11,302	3.13
Madison.....	Municipal bureau.....	112,738	400	.35
Milwaukee.....	Private corporation.....	766,100	1,828	.23
Minneapolis.....	Social agency—clinic.....	475,000	2,302	.48
Montreal.....	Social agency.....	200,000	1,179	.58
New Bedford.....	Municipal bureau.....	(³)	(³)	(³)
New Haven.....	do.....	162,655	3,614	2.22
New York:				
Legal Aid Society.....	Private corporation.....		34,906	.49
National Deserption Bureau.....	Department of social agency.....	7,000,000	900	.01
Educational Alliance.....	do.....		3,137	.04
Oakland.....	Clinic.....	474,434	2,269	.48
Philadelphia.....	Municipal bureau.....	1,950,961	3,562	.18
Pittsburgh.....	Private corporation.....	1,374,622	4,538	.33
Providence.....	do.....	295,892	1,435	.48
Rochester.....	do.....	350,000	3,521	1.00
Salt Lake City.....	Social agency.....	140,267	482	.34
San Francisco.....	Private corporation.....	600,000	4,193	.69
Springfield.....	Municipal bureau.....	71,864	2,993	4.16
St. Louis.....	do.....	821,960	25,200	3.06
St. Paul.....	Bureau of social agency.....	271,606	1,236	.45
Total.....		30,551,658	219,280	
<i>Nonmember organizations</i>				
Atlanta.....	Private corporation.....	270,366	3,089	1.15
Dayton.....	do.....	200,982	4,200	2.09
Erie.....	Social agency.....	115,967	110	.09
Harrisburg.....	do.....	80,339	111	.13
Kansas City.....	Municipal bureau.....	399,746	9,199	2.30
Los Angeles (civil):				
City defender.....	do.....		15,690	1.04
County defender.....	do.....	1,500,000	41,516	2.70
Newark.....	Private corporation.....	442,337	4,938	1.11
New Orleans.....	do.....	485,000	652	.13
Reading.....	Bar association committee.....	111,171	315	.28
Washington.....	Social agency.....	486,869	803	.16
Wheeling.....	Bar association committee.....	61,659	134	.21
Total ⁴		4,154,436	80,757	1.94
<i>Public or voluntary defenders</i>				
Bridgeport.....	Municipal bureau.....	146,000	200	.14
Cincinnati.....	Private corporation.....	464,000	1,664	.35
Columbus.....	Municipal bureau.....	290,000	5,988	2.06
Hartford.....	do.....	175,000	256	.11

¹ Population figures secured either from reports from the organizations or the World Almanac. The difference in the figures for Hartford may be accounted for on the supposition that the reports on population served did not come from the same source.

² Figures are for organizations reporting.

³ No data.

⁴ With Los Angeles.

TABLE 15.—Number of cases of legal aid per 100 of the population, by city, and type of organization—Continued

City	Type of legal aid-organization	Population served	Number of cases received in 1933	Number of cases for each 100 of population
<i>Public or voluntary defenders—Con.</i>				
<i>Los Angeles (criminal):</i>				
City defender.....	Municipal Bureau.....	1,500,000	24,707	1.64
County defender.....	do.....			
New York City (Manhattan).....	Private corporation.....	1,867,312	1,151	.01
Oakland.....	Social agency.....	474,434	603	.12
Pittsburgh.....	Private corporation.....	1,374,622	769	.06
San Diego.....	Municipal bureau.....	200,000	1,000	.50
Total ⁴		6,491,368	38,946	.60

⁴ With others.

If we add the population figures of the various cities served by legal-aid offices of which we have records, an aggregate of over 39,000,000 is obtained. As these legal-aid offices received in 1933 more than 300,000 cases, it is clear that they must develop much further before they will be strong enough and possessed of sufficiently large staffs to meet the full demand for their assistance.

Grouping the organizations by type yields instructive results. The statistics in table 16 are drawn from the detailed figures in table 15.

TABLE 16.—Number of cases of legal aid per 100 of population by type of organization

Type of organization	Number of organizations	Total population served ¹	Total cases received in 1933 ²	Number of cases per 100 of population served
<i>Member organizations of National Association of Legal Aid Organizations</i>				
Municipal bureaus.....	11	3,936,737	43,600	1.12
Private corporations.....	13	15,345,022	99,170	.64
Departments of organized charities.....	10	21,355,465	40,337	.18
Bureaus of bar associations.....	2	1,800,000	31,262	1.74
Clinics (listed separately as such).....	3	1,936,434	4,911	.26
<i>Nonmember organizations</i>				
Municipal bureaus.....	3	1,693,075	66,405	3.92
Private corporations.....	4	1,398,685	12,879	.92
Departments of organized charities.....	3	638,175	1,024	.16
Bureaus of bar associations.....	2	172,830	449	.26
<i>Public or voluntary defenders</i>				
Municipal bureaus.....	6	2,311,160	34,759	1.50
Private corporations.....	3	3,705,834	3,584	.09
Departments of organized charities.....	1	474,434	603	.12
<i>Recapitulation of totals</i>				
Member organizations.....	39	30,371,653	219,302	.72
Nonmember organizations.....	12	3,902,765	80,757	2.07
Public or voluntary defenders.....	10	5,116,806	38,946	.76
Totals.....		39,391,229	339,005	.86

¹ This figure is exclusive of duplications caused by the presence of more than 1 legal-aid agency in a single city.

² Figures are for organizations reporting.

The actual legal-aid work is performed by the lawyers, stenographers, clerks, and investigators employed by the legal-aid organizations. The number of cases cared for is primarily dependent on the size of the office staff. It is difficult to construct a table showing the number of persons on the legal-aid staffs, because such data are not readily available and because in the smaller offices so many part-time arrangements are in effect. It has been necessary to ascertain the proportion of time such workers devote exclusively to legal aid, and any such apportionment can be only an estimate. Figures prepared by the National Association of Legal Aid Organizations show that of the 21 organizations for which it has reports, 6 have staffs equivalent to 10 or more full-time workers, 2 have 8, 9 have 5 to 6, 2 have 4, 1 has 3, and 1 has 1. It may be assumed that in each of the other organizations not reporting there is the equivalent of one attorney and one stenographer. Exact figures are impossible to secure because of volunteers, legal-aid clinic workers, and others who do not fit into the classification. The statistics show that there is now engaged in legal-aid work in the organizations reporting an aggregate full-time staff of at least 81 lawyers, 70 clerks, and 25 investigators. The organizations have progressed far enough to be able to provide to their clients the services of between two and three hundred specially trained workers. To these overworked and generally underpaid men and women belongs the credit for the excellent record that the legal-aid organizations have made.

The present staffs of legal-aid organizations are already overloaded with cases. To do the more extended work that is necessary means that the offices must have larger staffs and this in turn calls for more adequate financial support. The legal-aid organizations are all poor and they always have been. If they had known in 1916 that a war was coming the effect of which on them, in common with everybody else, would be to double the cost of operations, they would probably have felt that to double their income was an impossibility. Nevertheless, they weathered this storm. The average cost per case was \$1.47 in 1916, \$2.82 in 1923, and \$1.45 in 1933; yet their budgets have expanded rapidly enough during the 18-year period to meet an increased total cost and in many instances to permit a substantially larger volume of work to be undertaken. The following table gives comparative records for 1916, 1923, and 1933. These records are taken from those reported by the National Association of Legal Aid Organizations to the legal-aid committee of the American Bar Association for organizations existing in the years indicated. What can be accomplished in the future is best evidenced by what has already been accomplished.

TABLE 17.—Number of cases and gross expenses, 1916, 1923, and 1933, by organization¹

Organization	1916		1923		1933	
	Cases	Gross ex- penses	Cases	Gross ex- penses	Cases	Gross ex- penses
<i>Members National Association of Legal-Aid Organizations</i>						
Albany.....					966	\$4, 019
Baltimore.....	376		216		4, 564	11, 000
Boston.....	2, 608	\$6, 498	6, 742	\$31, 070	11, 935	41, 360
Bridgeport.....					731	4, 325
Buffalo.....	1, 516	2, 372	3, 416	13, 506	8, 355	26, 862
Cambridge.....					689	1, 018
Chicago Legal Aid Bureau.....	10, 697	18, 318	16, 227	25, 670	24, 337	45, 233
Chicago Jewish Social Service Bureau.....	4, 685	25, 297	790		1, 015	(²)
Cincinnati.....	1, 698	1, 359	1, 016	2, 500	6, 942	10, 122
Cleveland.....	4, 946	3, 210	5, 948	19, 035	8, 560	16, 685
Dallas.....					3, 003	2, 300
Denver.....					1, 978	4, 378
Detroit.....	410	500	2, 803	10, 958	29, 284	17, 818
Duluth.....	5, 629		2, 958		2, 263	
Durham.....					302	(²)
Grand Rapids.....					1, 185	2, 094
Hartford.....	134	114	532	1, 200	1, 593	1, 350
Jacksonville.....					241	66
Los Angeles.....					2, 340	6, 288
Louisville.....					11, 302	8, 780
Madison.....					400	516
Milwaukee.....	1, 174	2, 038	2, 380	6, 867	1, 828	5, 613
Minneapolis.....	3, 029	3, 435	1, 559	6, 402	2, 302	7, 732
Montreal.....					1, 179	7, 200
New Haven.....					3, 614	1, 860
New York Legal Aid Society.....	41, 646	44, 648	29, 270	81, 252	34, 906	124, 108
New York National Deserption Bureau.....	957	11, 699	1, 309	16, 718	900	16, 718
New York Educational Alliance.....	5, 788	6, 959	2, 995	7, 656	3, 137	6, 003
Oakland.....					2, 269	3, 939
Philadelphia.....	4, 845	4, 437	12, 500	28, 555	3, 562	(²)
Pittsburgh.....	684	1, 882	350	1, 685	4, 538	12, 627
Providence.....					1, 435	5, 724
Rochester.....	382	1, 313	1, 056	4, 350	3, 521	11, 153
Salt Lake City.....					482	1, 110
San Francisco.....	242	993	1, 011	7, 818	4, 193	7, 136
Springfield.....					2, 993	6, 500
St. Louis.....	1, 235	5, 857	1, 398	8, 008	25, 200	7, 321
St. Paul.....					1, 236	5, 173
Total.....	92, 681	140, 929	94, 476	273, 250	219, 280	434, 131
<i>Nonmember organizations</i>						
Atlanta.....					3, 089	6, 274
Dayton.....					4, 200	2, 443
Erie.....					110	
Harrisburg.....					111	
Kansas City.....	5, 270	4, 226	4, 163	8, 400	9, 199	6, 500
Los Angeles (civil):						
City defender.....					15, 690	
County defender.....					41, 516	
Newark.....					4, 938	4, 618
New Orleans.....	150				652	
Reading.....					315	
Washington.....					803	
Wheeling.....					134	
Total.....					80, 757	19, 835
<i>Public or voluntary defenders</i>						
Cincinnati.....					1, 664	
Hartford.....			70		200	
Los Angeles (criminal):						
City defender.....	} 8, 848	21, 199	{ 1, 495	992	24, 707	20, 981
County defender.....					2, 608	
New York (Manhattan).....			503		1, 151	
Oakland.....					603	11, 325
San Diego.....					1, 000	2, 484
Total.....			3, 060		31, 933	34, 790

¹ Figures for organizations reporting.² No record kept.³ 4 months.

There is no royal road to finance. The societies have no substantial endowments, and they are maintained by annual contributions or appropriations. Of the organizations named above because of their noteworthy financial record, 18 derived their greater funds from increased public appropriations, 19 from community funds, 7 from more generous backing by members of the bar, and 10 from greater support by the community at large. Table 18 analyzes the various sources from which the legal-aid organizations derive their income.

TABLE 18.—Sources of income of the legal-aid organizations in 1933, by cities

City	Municipal aid	Subscriptions from individuals	Subscriptions from the bar	Grants from social agencies	Community chests, funds, etc.	Miscellaneous
<i>Members National Association of Legal-Aid Organizations</i>						
Albany.....					X	
Baltimore.....	X				X	
Boston.....		X	X	X		
Bridgeport.....	X					
Buffalo.....	X				X	
Cambridge.....						X
Chicago:						
Legal-aid bureau.....					X	X
Jewish social-service bureau.....		X		X		
Cincinnati.....					X	
Cleveland.....					X	
Dallas.....	X					
Denver.....					X	
Detroit.....			X		X	
Duluth.....	X					
Durham.....						X
Grand Rapids.....					X	
Hartford.....	X					
Jacksonville.....			X	X		
Los Angeles.....						X
Louisville.....					X	
Madison.....					X	
Milwaukee.....					X	
Minneapolis.....					X	
Montreal.....		X				
New Bedford.....				X		
New Haven.....	X					
New York:						
Legal-aid society.....		X	X			X
National desertion bureau.....				X		
Educational alliance.....				X		
Oakland.....	X					
Philadelphia.....	X					
Pittsburgh.....					X	X
Providence.....					X	
Rochester.....					X	
Salt Lake City.....					X	
San Francisco.....				X	X	
Springfield.....					X	
St. Louis.....	X					
St. Paul.....					X	
<i>Nonmember organizations</i>						
Atlanta.....					X	
Dayton.....	X					
Erie.....			X			
Kansas City.....	X					
Los Angeles (civil):						
City defender.....	X					
County defender.....	X					
Newark.....					X	
New Orleans.....			X		X	
Reading.....					X	
Washington.....					X	
Wheeling.....			X			

¹ Data are for organizations reporting.

TABLE 18.—Sources of income of the legal-aid organizations in 1933, by cities—
Continued

City	Municipal aid	Subscriptions from individuals	Subscriptions from the bar	Grants from social agencies	Community chests, funds, etc.	Miscellaneous
<i>Public or voluntary defenders</i>						
Bridgeport.....	X					
Cincinnati.....		X				
Columbus.....					X	
Hartford.....						X
Los Angeles (criminal):						
City defender.....	X					
County defender.....	X					
New York City.....		X				
Oakland.....						X
Pittsburgh.....					X	X
San Diego.....						X

The organizations receiving municipal aid are all municipal bureaus except those in Buffalo and Baltimore. The organization in Buffalo receives a public grant, and the one in Baltimore is furnished its office quarters in a municipally owned building. The bureaus supported by social agencies are all operated as departments of some organized charity except in Boston, where the legal-aid society is definitely retained by certain social agencies to care for all the legal questions arising in the course of their own work.

The legal-aid organizations need, and are entitled to receive, greater financial support. The expense of their work, when compared with other forms of social service, is trifling. A vast amount of work can be performed on a small budget. It is easily within the power of each community to maintain a legal-aid office sufficiently manned and equipped to care for all the cases of all the persons who are entitled to its assistance. The experience of the older and more strongly entrenched organizations is, on the whole, distinctly encouraging. Each year the true nature and importance of the work becomes clearer, more persons learn to appreciate the value of this type of public service, a wider interest in the undertaking grows up, and as a result the legal-aid society or bureau receives more funds whether from public appropriations or private subscriptions. In short, legal-aid work must earn its own way. It must command the respect of public opinion, and it must win the sympathy of public-spirited citizens for its ideals and purposes. Where legal-aid work is properly interpreted so that its function is plainly understood, there is every reason to believe and confidently to expect that it will receive adequate support from the community which it serves.

Chapter XVII.—Legal-Aid and Social-Service Agencies

Whether a legal-aid society is visualized simply as furnishing a form of charity, like a hospital or a children's aid society, or is regarded as a modern adjunct to the public administration of justice and as essential thereto as is the district attorney's office or the probation staff in a municipal criminal court, it is clear that between the legal-aid organizations on the one hand and the social-service agencies on the other there should be a close and definite relationship. Both are supported by the same community, both exist to serve the same community. While certain questions as to the precise nature of this interrelationship remain as yet unanswered, there has been during the last 10 years a rapid progress toward a more intelligent and better articulated cooperation.

For many years social agencies have played an active and important part in fostering and conducting legal-aid work. As reported in chapter XV many offices are organized under the auspices of social or charitable agencies. For example, in such cities as Akron, Kalamazoo, Lansing, Seattle, Yonkers, Indianapolis, the social agency has been the central point around which local legal-aid work functions. Attorneys are made available in specific cases where legal advice is necessary. In Plainfield, Wilkes-Barre, Schenectady, Canton, Washington, Jacksonville, Houston, Harrisburg, Montreal, and Troy, the history of the past decade shows legal-aid work for a time at least on what is largely a cooperative basis between committees of lawyers and social agencies. In Baltimore, Grand Rapids, Minneapolis, the National Desertion Bureau in New York, and Springfield, Mass., the legal-aid work was fostered by social agencies although in some instances, such as Baltimore, Minneapolis, and Springfield, the organizations are now independent agencies. Finally, in Chicago, both in the legal-aid bureau of the United Charities and in the Jewish Social Service Bureau, in New York in the legal-aid bureau of the Educational Alliance, and in St. Paul the legal-aid offices are in the same building with the parent charity organization whose executive director maintains a supervision of the work just as over other departments of the organization's activities. In the various state-wide plans that we have described the obligation of legal-aid work to the social-service field is well recognized.

From the beginning the question has been argued: Is a legal-aid society a law office or a social agency? When the national associa-

tion was originally formed it was obvious that an answer to this question must be found. The proceedings of the earlier meetings indicate that some of the liveliest discussion raged around the point and there was some possibility that the movement might split into two irreconcilable factions. The association appreciated the seriousness of the matter and laid plans for its solution. Two committees, one on relations with the bar and the other on relations with social agencies, were appointed. Every effort was made to encourage free discussion and an advance in thought.

During the past 10 years progress toward mutual understanding has been substantial. Individual legal-aid societies and individual social agencies set to work to develop a basis for local cooperation. For example, in 1928 the Association of the Bar of the City of New York and the Welfare Council of New York City published a report of a joint committee for the study of legal aid designed to determine the relationship between the two groups and to provide for more adequate handling of cases. The following statement indicates something of the spirit of the report:

* * * While there may have been, and undoubtedly was, a consciousness that legal-aid work had its distinct place in the welfare field just as organized medical service does, through the very fact that there was need of legal aid in the field of human welfare still, the legal-aid agencies themselves were not thought of as a factor in the general organized welfare field. It is only within the last several years that this consciousness has been developing. At the present time, while legal aid holds an intermediate position between the bar and the social agencies, it is regarded by itself, the bar, and the social agencies as a factor in social control and hence as having a special place and function in the general welfare field. In fact it was this realization which partly roused legal aid to sponsor this survey.

From this there developed a legal-aid section of the Welfare Council of New York City, which has held a number of meetings for the discussion of specific problems. There are other examples of the growth of local harmony. Community funds generally have accepted legal-aid societies as members and have anticipated that they would act as legal-aid advisors to the other member agencies. In Boston certain social agencies specifically retained the Boston Legal Aid Society as their counsel. Individual legal-aid attorneys have served on boards of social agencies and have been active in promoting welfare legislation. In a number of cities—New York, Rochester, and Durham—the legal-aid society has prepared and distributed to the social agencies a handbook describing its work.

The National Association of Legal Aid Organizations also has played a part in the development of these interprofessional contacts. In 1923 the National Conference of Social Work had a section on law and government. Among the speakers in this section were two,

one of whom discussed legal-aid work from the legal side, and the other from the social side. Again in 1926 the section on delinquents and correction had two speakers presenting both sides of the problem. In the following year the section on professional standards and education also presented two speakers. In 1928 at Memphis a round table on legal-aid work was held at which a number of persons in the social-work field who knew about the subject presented their viewpoints. The round-table idea proved so interesting that in 1930 at Boston a special section meeting was held and since 1932 the committee of the National Association on Relations with Social Agencies has annually conducted a round table, attended by many persons from both legal-aid and social-work groups.

Legal-aid work has been presented at the following State conferences of social work: Michigan in 1924; Pennsylvania in 1925, 1926, and 1928; Tennessee in 1926; Ohio in 1927; and Illinois in 1928. At the Illinois meeting a regular course in legal-aid work was presented. In 1930 the California and Minnesota State conferences listened to talks on the subject and a course of lectures was given at the Minnesota conference. The West Coast Conference of Legal Aid Societies has held meetings annually since 1931 with the California State conference. In 1931 the North Carolina conference and in 1932 the Florida conference also had discussions on this subject. A record of these contacts is found in the reports of the committee on relation with social agencies.

As mutual understanding increased it became obvious that among the many agencies in the social-work field the Family Society (often known as the Family Welfare Society) was the one most likely to come in contact with problems of interest also to legal-aid organizations. Consequently, in 1925 under the leadership of Joel D. Hunter of the United Charities of Chicago two committees, one from the Family Society of America and the other from the National Association of Legal Aid Organizations, met in order to examine the limits of the legal-social field and see to it that safeguards are provided so that no case arising anywhere within the jurisdiction of either organization fails to receive an adequate remedy. Those who gathered at this meeting realized that a degree of intellectual cooperation had to be established before any practical advance could be made. Consequently, they set themselves the task of surveying the socio-legal field. The meeting was so successful that further conferences were held annually, the last one being in 1932. The meeting discussed among other matters legal-aid work in rural communities to be accomplished by a cooperative system between bar associations and social agencies, how to handle psychopathic cases, protection for the immigrant, the ethical problems

behind the use of the social-service index by a legal-aid society, the problem of educating the next generation of lawyers and social workers to understand the need for interprofessional relationships. These meetings in themselves signify the greatest forward step that has been made, and they provided an inspiration for much further development.

Among their concrete results are: First, the disclosure of the need to provide a literature before there could be an independent discussion in such a field. In the past few years a number of books and articles have appeared, as will be indicated more definitely by reference to appendix F. Second, in several schools of social work—the Pennsylvania School of Social and Health Work, the Graduate School of Social Service Administration of the University of Buffalo, the School of Social Service Administration of the University of Chicago, Fordham University, Western Reserve, Loyola University, for example—courses in law have been offered. These courses are designed to deal more with interprofessional relationship than with specific fields of law such as crime, delinquents, and probation work. The following quotation from the catalog of the Pennsylvania School of Social and Health Work will suggest the scope:

This course will present, through lectures, readings, and class discussions of specific cases, the essential facts about the law and legal procedure relating to common problems arising in social work. It will include the following topics: Contract law, including partnerships, installments, small loans, and investments; tort law, including workmen's compensation, negligence, slander, fraud, etc.; property law, including real property sales, mortgages, leases, relationship of landlord and tenant, and personal property rights; estate law, including wills, settling estates, trusts, estates of married women and minors, of insane and feeble-minded, life insurance and bankruptcy; domestic relations law, including annulment, divorce, separation and desertion, nonsupport, adoption and guardianship, crimes against children, illegitimacy, etc.; criminal law, including the law of evidence, procedure, defense, etc.; and certain miscellaneous topics. Special attention will be given to the relationships between legal-aid organizations and general social agencies.

It is apparent from the foregoing that much headway has been made in the effort to interpret each field to the workers in the other. It is important to summarize this growth.

The Committee on Relations with Social Agencies, already referred to, submitted at the 1934 meeting of the National Association of Legal Aid Organizations a report of its work during the preceding years. In so doing it expressed the philosophy of the joint movement in the following words:

The substance of this philosophy is that the legal-aid movement is a part of the great enterprise of coordinating law with the other social sciences; that legal-aid work is somewhat like a buffer state with law on the one hand and

social work on the other; that therefore, because of the nature of their support and the class of persons served, legal-aid organizations are definitely charged with a relatively higher degree of social responsibility in their communities than private law offices; and that legal-aid work can be of tremendous value to other social agencies in furthering their purposes by becoming the medium by which the force and sanction of law can be applied to social problems and by initiating and promoting remedial legislation for the protection of their mutual clientele.

This philosophy allows the retention by each group of its identity and particular function in the larger field of social service and yet at the same time permits the fostering and development of effective relations between them.

To achieve this degree of understanding, however, it was necessary that there should be a constant evolution of thought. One starts with the conception of the various professional groups being organized to protect the community from certain hostile conditions. In every professional field there is a movement to prevent disaster to the individual citizen and another movement to remedy his condition after the catastrophe has overtaken him. Law and legal machinery are properly regarded as preventive as well as remedial devices in such a system. If an unpaid wage earner with the help of a legal-aid organization can secure his money from his employer within a reasonable time after it is due, he will not need a relief agency to give him food. If a woman deserted by her husband can find a means of having the machinery of the law function in her behalf, she will not need to go to relief agencies for clothing for herself and her children. If the widow and the orphan can find adequate legal protection in time of need it will not be necessary for them to seek shelter at the hands of charity. It is less expensive to make the machinery of the law work and give people their rights than it is to allow them to become demoralized and then start in the long process of restoring their morale, rehabilitating them physically, and setting them again on the road to self-support. A community which invests its money in devices to make the machinery of the law function is therefore taking a step in the direction of long-time economy.

The position of the legal-aid society in such a concept arrived more slowly. At first the parties interested talked in terms of legal justice and social justice and endeavored to draw a line between them, deciding that certain cases fell on one side and other cases on the other. It became apparent that this was an unsatisfactory view because the individual client coming to the legal-aid society probably had a dozen social problems bothering him of which the legal-aid attorney might be completely unaware. The applicant to the social agency might have a dozen legal problems, not one of

which would make any impression on the social worker. Viewing the problem in terms of serving the client rather than with a hope of marking off the limits of the legal field and guarding it against encroachments, it became clear that legal-aid work was concerned with the administration of justice. The administration of justice was concerned with other social and economic movements. The legal-aid society then became a connecting link between the legal profession and the workers in the fields of the other professions.

It would be pleasant to conclude that the problem is solved. As a matter of fact the acceptance of a philosophy of solution is only the first step. Other steps must be taken promptly. There is still a divergence in viewpoint between lawyers and social workers. Practice lags behind theory. There has not yet been complete acceptance of the idea of a mutual goal, namely, the solving of the client's problems whatever they may be. Much of this can be accounted for by the fact that the legal profession since its inception has functioned amid a mass of rules and precedents. The standards of the social worker are just beginning to crystallize into a similar body of conservative opinion. Obviously two groups with such different backgrounds must take time to adjust themselves one to the other.

A second problem for solution is the adoption of an interprofessional vocabulary or at least a recognition of the fact that a word in one field has connotations quite distinct from what it may have in the other. For example, legal-aid societies are accustomed to speak of clients as "worthy" or "unworthy." This term to the legal mind usually is in no sense a moral judgment but is rather a test of the legal validity of the client's position. The social worker viewing the word from the standpoint of its moral connotation asks by what authority the lawyer presumes to determine such a question. Similarly the word "social" to many lawyers is tied into the idea of socialism. The words "conciliation" and "investigation" have substantially different significance. Some effort at translation is necessary here or the very language that is used will prove a stumbling block.

Other problems should be noted. Social agencies are inclined to complain that legal-aid organizations do not handle as much work as the social agencies think they should. The legal-aid organization replies that it does all it can with the limited funds at its disposal. As a practical matter the cost of handling the average case in the legal-aid field is very much less than the cost of handling the average case in a relief agency, but, even so, legal-aid organizations have not reached the point where they can be said to be handling all the legal-aid problems in their community. Perhaps the most serious obstacle of all is the inability of each group to diagnose

effectively the problems of the client. A lawyer familiar with legal symptoms can tell what the law can do for the particular individual. The social agency is equally expert in detecting social problems. But lawyers fail to call in social agencies and social agencies fail to call in lawyers because neither group realizes as fully as it should the fact that the client's problems extend beyond its own field.

It is clear, therefore, that while progress has been made it is necessary to go much farther before the relationship is cemented.

Looking ahead it seems that the future calls for activity along three lines, i. e., there should be more conferences between the two groups, using as the material for discussion specific actual cases; there should be more literature discussing the whole field for the benefit of those who cannot attend the conferences and for students generally; there should be more courses on law in schools of social work. Doubtless now with the beginning already made these further developments are merely a matter of time and intelligent adjustment.

It would not do, however, to assume that all the educational responsibility should be thrown upon the shoulders of the social worker. The lawyer is at least as much in need of information. So, when we advocate courses in law schools of social work as a means of interprofessional understanding, we should also recommend courses in social work in schools of law. The nearest approach that can be found in the law schools is the teaching usually given in a course entitled "legal-aid clinic" work. This is discussed in the next chapter.

Chapter XVIII.—Legal-Aid Work in the Law Schools

The legal-aid clinic is the outgrowth of certain needs common to the legal-aid movement and to legal education. Each group exploring the boundaries of its own field found in the interstitial area possibilities for mutual development.

From the beginning, legal-aid organizations have been handicapped because of the perennial need of securing new lawyers adequately prepared to assume staff duty. Competition for the high-ranking law-school graduates has been keen. Large law offices and public positions offered larger salaries and enticing prospects. Even after he was secured, the legal-aid attorney might not remain in the position any substantial length of time. A number of men, for example, in New York, Pittsburgh, St. Louis, San Francisco, and Los Angeles, after serving as legal-aid attorneys, have been elevated to the bench. Whenever a vacancy occurred it was necessary not only to discover a suitable successor but to spend much valuable time in training him for the work.

There was a second need. Legal-aid organizations have realized that a large section of the bar does not understand their work and on that account has given it all too little moral support. Leading members of the medical profession are accustomed to give their time to work in free clinics but there was no corresponding device in the legal field. Legal-aid clients hesitated to go to leading law offices not knowing that free service was available. Those who had courage to go felt, as they sat in the waiting rooms, that they were charity clients. So there was little chance for the bar to know at first hand the conditions under which justice was administered to poor people.

At the same time the law-school faculties were faced with the problem of teaching practice to their students. Legal education in the United States beginning with an apprenticeship system and proceeding through stages of lecture, textbook, and case instruction has emphasized the substantive law and brought the teaching of law as a science to a high degree of perfection. The law office originally paralleled the law school and served as a training ground for the young lawyers in learning to apply the law. During the last 50 years, because of competition, specialization, and other reasons, the law office became less and less adapted to the needs of legal education. The client, not the student, was the focus of attention. The lawyer had little time for discussion with neophytes and if he

could do something better and quicker than an assistant, he did it. The administration of justice has suffered because the younger men coming to the bar were not taught to regard practice as an art. They tended to learn the existing system with its good and bad points, accept it, and make no move to keep it abreast of the times. The public, for whom the system was established, has not been so complacent.

There was need, therefore, for some device in the field of legal education which would provide the student with an adequate foundation of practical training which would give him perspective and vision and the ability to view critically and constructively the machinery set up to administer justice. There was need for the development of an ethical idealism which would draw the younger men into the battle for law reform, which would require them to include in their legal thinking the repercussions in a case at law arising because the human element keeps intruding upon the logical field. For such reasons both legal-aid societies and law-school faculties sought a solution.

It was not until 1893 that an answer was foreshadowed. In that year some of the students at the law school of the University of Pennsylvania established a legal dispensary. The analogy to the field of medical education with its training of young doctors during their period of internship is apparent in the use of the word "dispensary" and the later word "clinic." These words were borrowed by the legal field with full knowledge that the legal and medical connotations differed. They are applied to an office and a method where the young lawyer in contact with real clients and real cases, but under supervision of more experienced practitioners, is taught to bridge the gap between theory and practice, and thus qualify himself to serve the public.

The first period in the development of the clinic idea runs from 1893 until 1907. It is marked by two attempts, both of which failed. The enterprise at the University of Pennsylvania was soon discontinued. Eleven years later, in 1904, at the University of Denver a legal-aid clinic was established which functioned effectively for 6 years and then became so popular that the expense of operating it was prohibitive and it was abandoned. It was so successful that the legislature of Colorado passed a law permitting law students to appear in court. In 1907 Arthur V. Briesen, president of the New York Legal Aid Society, published an article in the *New York Legal Aid Review* in which he described the work of a "dispensary" in Copenhagen. It is impossible to tell at this late date just what effect the University of Pennsylvania, the University of Denver, and the Copenhagen experiments had on the development of the

work in the United States. It is clear, however, that a number of persons were interested. Several articles were written and the way was paved for a more impressive advance.

The second period, from 1908 to 1916, was one of very definite growth. The Chicago Legal Aid Society and the Northwestern University Law School entered into a cooperative arrangement which has lasted to the present time. Law students, under supervision, were given an opportunity to handle actual cases in the offices of the society. Eventually the work was made a required course for all students. In 1913 the University of Minnesota Law School and the Minneapolis Legal Aid Society formed a similar partnership which has continued and is still in effect. The clinic work is a part of the practice course at the law school and the students come to the legal-aid society's office for a certain period of time and handle such cases as arise. In 1913 a group of students at Harvard established the Harvard Legal Aid Bureau which, ever since, like the Harvard Law Review, has been run as an honor student enterprise. In 1914, 1915, and 1916, respectively, the law schools at George Washington, Yale, and Tennessee made experiments. These last three ventures were not sufficiently established at the time of the World War to survive the general dislocation of legal-aid work that ensued. In addition to the more formal developments mentioned above, several legal-aid societies formed the habit of taking law students on their staffs. Thus the New York Legal Aid Society for many years has taken such students for their summer work.

This second period was marked not only by the development of permanent organizations but by a greater understanding of the device and its possibilities. The dual objectives of the clinic, active both in public service and in legal education, were recognized. The legal-aid movement benefited by the increasing number of young lawyers who went out from these law schools armed with the information about the value of legal-aid-clinic service. The form of organization, in each instance dependent upon local conditions, was still too experimental to warrant generalizations.

During the long period between 1916 and 1927 no new legal-aid clinics were established. Yet the movement was far from inactive. The organizations at Northwestern, Minnesota, and Harvard Law Schools continued. A few articles were written. Time was needed for the legal-aid movement to recover its pre-war momentum and creative interest. Finally, the occasion arose. In 1927 the legal-aid society in Cincinnati and the law school at the University of Cincinnati formed a clinic partnership. In 1929 the University of Southern California established under its own control an organization for this purpose with offices in the law-school building. In 1930 the University of California at Berkeley and the Oakland

Legal Aid Society entered into negotiations which culminated in a definite organization. In 1931 the new law school at Duke University set up a new kind of clinic which was designed to serve the entire State. In 1934 the law school at the Southwestern University in Los Angeles followed the example of the University of Southern California.

In addition to these definite formal developments, a much wider spread of legal aid and law school cooperation may be noted. In Washington, D. C., the establishment of the Washington Legal Aid Bureau in 1932 formed a nucleus around which the three law schools of the Catholic University of America, Georgetown, and George Washington arranged to give clinical experience to some of their students. The University of Louisville and the Legal Aid Society of Louisville, occupying offices in adjoining buildings, cut a passageway through the dividing wall and thus facilitated access by the students to the office where the cases were handled. At Yale arrangements were made with the New Haven Legal Aid Bureau. Similar plans were worked out at Washington University in St. Louis, at Pittsburgh, and more recently at Stanford and Ohio State University.

This third period has been marked by a greatly increased interest. A substantial literature of criticism and exposition has arisen. There is now sufficient experience so that administrative problems may be discussed and the various solutions compared. A Handbook on Legal Aid Clinics prepared at the University of Southern California presents a first attempt at describing the details of office routine.

There are now three general types of legal-aid clinics. The sole example of the first is the Harvard Legal Aid Bureau. This is operated by students with no official faculty supervision, but with advice when requested from the Boston Legal Aid Society. While the organization itself is an excellent one and does commendable work, yet the type is not likely to be copied widely. It does not reach all the students and very often those men who need it particularly are denied participation. Even under the most rigid supervision mistakes are always being made in law offices. Where the staff is composed of inexperienced students and there is comparatively little supervision, the opportunities for the student to bear responsibility and gather experience are great. But law schools are not likely to favor a plan which calls for their financial aid and yet denies them the right to direct the activities and keep a close check on the student. A medical clinic does not often allow the internes to gain experience at the expense of the public.

The second type of organization has a cooperative or partnership basis. In communities where there is an existing legal-aid organiza-

tion and where local conditions are such that cooperation between it and a law school are feasible, admirable results are obtained. But there are certain inherent administrative problems, namely, the Stanford law students come many miles from Palo Alto to Oakland; the University of California students travel 7 or 8 miles to the Oakland Legal Aid Society; the Minnesota student must find a way to cover the 2 or 3 miles to the Minneapolis Legal Aid Society before he can begin his work. Again, the presence of untrained students in the legal-aid office is not always an unmixed blessing. The attorneys trained to high-speed efficiency are constantly delayed by having to explain procedures and check details in the student's activity. Consequently, it has been found necessary to have at hand a member of the staff, who is also a member of the law-school faculty, specifically in charge of the student. Such a supervisor has time enough to explain the whys and wherefores of the simplest steps. The task requires a great amount of insight, patience, tact, and judgment. To load such a person with the further administrative labors of directing the legal-aid organization, at least in large cities, is impracticable. The development of a cooperative legal-aid clinic usually requires the addition of a new staff member.

The third type of organization, of which the University of Southern California and the Duke University offices are examples, takes the process one step further. The Harvard bureau is a legal-aid society staffed by students. The cooperative bureaus are legal-aid societies with a department devoted to training law students. The third type is a law-school enterprise which fuses the two functions of service to the student and service to the client. Administratively it is easier to operate because the head of the organization may be a member of the law-school faculty and from his own office in the law-school building may direct its operations. The work may be integrated with the other courses in law school, not only in the matter of hours but in the matter of subjects taught. The two examples, one in a large city and the other in an agricultural State, present interesting contrasts in the way in which this device may be adjusted to meet local conditions.

It is believed that of the three types the first is not likely to be copied. In the cities where legal-aid organizations exist the second type should prove a desirable solution. The third type probably represents as effective an agency as is now known to supply legal-aid service in agricultural States and rural communities. It is the strong central organization. It accepts cases from all over the State. It is in a position to aid volunteer committees of lawyers elsewhere, and it is constantly sending out into the younger branches of the profession a group of men whose contact with the law has been of a most practical nature.

There is a substantial literature on the subject. In the early meetings of the National Alliance of Legal Aid Societies there were occasional papers presented describing the work of the Harvard, Northwestern, and Minnesota clinics. In the last 10 years two important steps have been taken. In 1927 the National Association of Legal Aid Organizations appointed a committee on relations with law schools. This committee proceeded to make a study of the existing agencies and through contacts with deans of law schools and other educators aroused much discussion. In 1931 the Association of American Law Schools created a round table on legal-aid clinics, which prepared programs of papers for discussion at the meetings in 1932, 1933, and 1934. Thus, nationally, in the fields of legal aid and legal education there is a forum for the discussion of clinics. The idea has been so interesting that at the 1934 meeting the round table of the Association of American Law Schools on law-school objectives also discussed the clinical method of teaching. Law Review articles have advocated clinical training as a complete substitute for case-book training. The actual clinic movement, however, during a period of experimentation has been content to occupy a small portion of the law-school curriculum.

It is natural that discussion in law-school circles should center around the question of what the student gets out of work in the clinic. Obviously, cooperation in the future by the law schools will depend upon the answer. It is perhaps too early to generalize, but at least a word may be said regarding the development of the idea. Originally legal-aid clinics were regarded as the modern equivalent in the educational process of the apprenticeship system. Some States, such as Pennsylvania and New Jersey, require an internship for law students. Fundamentally this would seem to be unsound, because such internship is necessarily in a law office and it is believed that the present-day law office is no longer an adequate educational device for the student either before or after his theoretical training.

A clinic course which gives merely the details of geography of the courthouse, the task of filing papers and doing what may be termed the leg work of the law may have sufficed at one time. Today, however, the clinic seems to be headed toward a far profounder service to the legal profession.

The effort to fill this educational gap is not limited to legal-aid clinics. The junior bar, the graded bar, the student bar association, and the period of internship in a law office, as required in Pennsylvania and New Jersey, are experiments in the same general direction. The student bar associations at the law schools of Southern California, Duke, and Ohio State have legal-aid committees which present problems of importance in the field to the student bodies.

Valuable as these other devices are, it appears that the legal aid clinic offers a more adequate program than any of them because it recognizes the need for a special sort of supervision of the law student during the period of his adjustment to practice. It gives him elementary training in the geography of the courthouse, the knowledge of how to serve a legal paper on a witness, and similar matters which he needs to know. If it did nothing more than this it would justify its existence because it would present the material in an orderly fashion and insure each student his participation in it.

The less formal arrangement is typified by the practice at the University of Louisville. The 1934 catalog describes it thus:

The school of law is unusually fortunate in its location and in its affiliation with the Legal Aid Society in Louisville. Because of this affiliation it is able to give the student practical training offered by only a few law schools. A course in practice court is designed to teach the student the jurisdiction of the various classes of cases handled by the legal-aid society and to give other practical training. The schedule is so arranged that all students spend a certain number of hours each term in the legal-aid offices. This work is supervised by the staff of the legal-aid society consisting of four practicing attorneys. While there, the student assists in the preparation of cases, interviewing the parties and witnesses, accompanying the staff to court, assisting in the actual trial of cases; thus he receives practical experience in the handling of actual legal problems. The student finds this work very interesting and the faculty believes it is of inestimable value in giving him not only practical training but an insight into the law as it is—not in theory, but in actual practice.

The Northwestern Law School catalog for 1934 marks a much greater specialization in these words:

Legal Clinic.—Established in 1926 by a gift to provide a legal clinic for the poor. It was organized under the superintendence of a joint committee of the School of Law, United Charities, and the Chicago Bar Association. Since its establishment the income from the Foundation, generously supplemented by further gifts, has sustained the clinic in three branches, viz, the civil, industrial, and criminal. These have been under the direction of attorneys of the law school, who have been generously aided by the staff of the legal-aid bureau of the United Charities. In connection with each clinic, instruction is given for a semester by the professor in charge, and each student is required to investigate, prepare for trial, and in the event of trial, take part in the conduct of several cases, under the direction of the attorney in charge. The work of the law school and that of the legal-aid bureau are highly coordinated. In the civil and industrial branches, the attorneys of the law school maintain their offices at the legal-aid bureau. Indigent claimants and defendants in every type of case are represented. The student comes in intimate contact with the routine and problems of office practice and litigation generally. The claims successfully prosecuted aggregate thousands of dollars annually, and the legitimate defenses afforded indigent persons are equally valuable. The Foundation and clinics are the first to be set up in behalf of a law school.

The significance of the clinic movement is not limited to routine matters which a student might learn by himself in 6 months. Its proponents claim four more fundamental possibilities:

(a) After 3 years in law school taking courses each of which deals with a topic more or less arbitrarily set apart from the whole field of law, there is need for the student to synthesize his experience to see the law as of one piece and in working on the case of one client learn to use rules of law that he has studied in a dozen different courses.

(b) Nowhere except in clinic training does the law student meet a flesh and blood client. It is essential that along with his analytical practice in logic he learn to deal with the human factors which are involved in every legal proceeding.

(c) The problem of teaching legal ethics is a complicated one. The clinic, because of the opportunity it gives the instructor to observe the student working under conditions approximating those of general practice, is an admirable observation post. Boards of bar examiners, admissions committees, and grievance committees of bar associations might well look here for evidences of character and technical efficiency in the applicants. The clinic will not determine whether or not the student is likely to steal his client's money but it will give a clearer picture of his dependability, his judgment, his initiative, and various other similar characteristics than any other existing device.

(d) Finally, the clinic teaches the student something about the much neglected art of planning and conducting a campaign in a legal case.

The experiments at the University of Southern California and at Duke University, in particular, prove that the clinic may afford instruction in these four vital directions.

It is the belief of the authors that this device for giving both legal-aid service and practical legal training is sound in theory and that there are now sufficient experiments to form a basis for intelligent development in the future. The value of this agency to the law student and to the legal-aid movement has been noted. A word should be said as to the importance of this clinic movement to the bar.

There is no problem confronting the bar at the present time of greater importance than its prestige in the public eye. Its critics are as vigorous as they have ever been. The demands of modern competition and the tendency toward specialization have gone far to weaken the traditional professional solidity. The question is constantly raised whether the bar is still a profession or if it is now really a business. If it is to continue on a professional basis some one should devote conscious, intelligent, constructive effort to helping the incoming lawyer to see the professional aspect of the work. There is no existing machinery devised to this end which promises more than the clinic. A clinic-trained law student has tasted the

delights of practicing law under conditions where he cannot possibly get a fee. The whole incentive for his work is a desire to learn and a commendable zeal to serve the client. He has had a chance to see the law as an instrument of righteousness and an opportunity himself to participate in making the law extend its protection to the innocent and the helpless exactly as it is intended to do. If a man goes through such an experience without achieving a sound basis for idealism and a true professional sense, one may well question his desirability as a member of the bar. The effect of an annual addition to the bar of a group of young men whose altruism has found expression in concrete service to the public will incalculably improve the lawyers' own attitudes on social welfare and this in turn will produce ultimately a far greater public respect based upon a better understanding of what the bar really is and what it is really trying to do.

In the last two chapters the relationship between legal-aid societies and social agencies and law schools has been discussed. Definite contact with the bar is the third and in many respects the most significant step which legal-aid societies have taken outside of their own field, and to the story of that development the last chapter is devoted.

Chapter XIX.—Legal Aid and the Bar

The relationship between legal-aid work and the legal profession is simple and clear. The legal-aid organizations are the agents of the bar and they are accordingly entitled to receive leadership and direction and moral and financial support from the bar. In the main this relationship is understood and accepted today by both parties and the resulting obligations imposed on both parties are being honored. There is no finer chapter in legal-aid history, no other development contains a brighter promise for the future, than the record of what has been accomplished during the few years since the war in cementing together the organized bar and organized legal-aid work.

Because the practice of law is a profession and not a business, every lawyer has certain ethical obligations which are sanctioned by long tradition and which find their modern expression in definite canons of ethics. Each lawyer is a minister of justice, and before he is permitted to practice he must take a solemn oath in open court. This oath of admission to the bar, as set forth by the American Bar Association, contains as its final clause these words: "I will never reject from any consideration personal to myself the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. So help me God."

By virtue of this promise reputable lawyers have at all times rendered much professional service without hope or expectation of any pecuniary fee or reward. It has been said that the first legal-aid work was done in the first law office established in America, and doubtless that is true. But beginning with the last quarter of the nineteenth century our great cities contained steadily increasing numbers of persons who were legally defenseless and legally oppressed. The bar as a whole did nothing. This inaction was not due to hard-hearted indifference but to the fact that no one appreciated what was happening. As lawyers gradually became aware of the serious shortcomings in the administration of justice they realized that the conditions with which they had to contend were beyond the power of any individual, and they began to undertake collective action through the bar associations. The American Bar Association itself was not formed until 1878, which is 2 years later than the establishment of the first legal-aid office in New York. While legal-aid work was slowly developing with the encouragement and support of a few public-spirited lawyers, the bar associations

were also growing in numbers, prestige, and power. It is now recognized that the individual lawyer can best render efficient public service by cooperating with his fellows and by securing appropriate action through the bar associations. For that reason the relationship between legal aid and the bar, if it was to be a practical relationship productive of tangible results, had to become a working alliance between organized legal-aid work and the organized bar.

The first conference of delegates from the State and local bar associations of the United States was held at Saratoga Springs in 1917, and at that meeting the following resolution was adopted:

It is the sense of this conference that bar associations, State and local, should be urged to foster the formation and efficient administration of legal-aid societies for legal-relief work for the worthy poor, with the active and sympathetic cooperation of such associations.

In 1920 the American Bar Association set aside one morning session for a discussion of legal-aid work, and also voted to create a special committee on legal-aid work. This special committee recommended that the American Bar Association should amend its constitution in order to provide a standing committee on legal-aid work, and said:

Your committee's reasons for these alternative recommendations may be summarized as follows:

1. There is a direct responsibility, both civic and professional, on members of the bar to see to it that no person with a righteous cause is unable to have his day in court because of his inability to pay for the services of counsel.
2. This responsibility is best met by members of the bar acting, not as individuals, but in their collective capacity and through their recognized associations.
3. Legal aid and advice to poor persons are most efficiently and economically secured, at least in the larger cities, through the existing agencies specially created and adapted for this purpose, called legal-aid organizations.
4. There should be, therefore, a direct relationship between the American Bar Association and legal-aid work in its national aspects and as a national movement.
5. This relationship is of a permanent and continuing nature and should be recognized as such by the creation of a standing or annual committee, which should each year report to the association as to the progress, the needs, the advantages, and the shortcomings of legal-aid work in the United States.

At its 1921 meeting the association by unanimous vote did so amend its constitution, and thus legal-aid work became one of the recognized continuing professional responsibilities of the bar in the United States. Pursuant to the recommendation of its standing committee, the American Bar Association in 1922 adopted the following resolution:

The association requests the officers of the section of conference of bar association delegates to bring the subject of legal-aid work before the members of the section as soon as may be, to the end that every State and local bar association may be encouraged to appoint a standing committee on legal-aid work.

Legal-aid committees have been created by the State bar associations in Alabama (1928), California (1928), Colorado (1930), Connecticut (1923), Georgia (1927), Illinois (1924), Louisiana (1929), Massachusetts (1928), Michigan (1923), Missouri (1930), New York (1920), North Carolina (1929), Ohio (1927), Pennsylvania (1923), Rhode Island (1930), Washington (1929), and Wisconsin (1927). How quick the bar has been to extend its cooperation and how clearly it has grasped the true nature of the relationship may be seen by examining what three or four of the State associations have done.

The New York State Bar Association appointed a special committee on legal-aid societies, which filed a most admirable report on January 16, 1920. It sent questionnaires to the 61 bar associations in the State and found "in most of these communities there was little interest in legal-aid work and probably no organized legal-aid societies."

This excellent report covers the ground so perfectly that certain parts of it deserve reproduction here:

The need and opportunity for legal-aid work is apparently more pressing in the larger cities, but we believe that there is ample opportunity for bar associations to make themselves useful in this direction even in the smaller communities. In smaller communities a separate organization may not be justified, and the work may well be carried on by the bar association. In the larger cities, where established agencies exist, the bar association should enter into active cooperation.

It appears that the financial support of legal-aid work is wholly inadequate for the needs of the community, and that our profession is not even meeting its fair share of this.

Justice at prohibitive cost, as is the case with the poor, is not justice.

Free government is in peril when justice is not administered so as to sustain belief in its easy availability and fairness. Any State or society which does not look to the enforcement of the law and the protection of rights for the poor and weak and friendless is wanting in that keystone of the arch upon which a stable society and government rests. Where this essential is lacking you shake the faith of the people in government and bring in question the fundamental fairness of our institutions. Disrespect for law and the spirit of resistance and unrest, which today excite the apprehension of every thinking man, are the natural harvest of inadequate facilities to secure the rights of all, even though they be of small pecuniary magnitude.

For our profession to meet this issue and make a substantial contribution to the support and stability of our institutions, which in these days is the greatest contribution anyone can make, is an alluring achievement.

In 1922 the committee on legal-aid societies of the New York State Bar Association filed its second report. It stated:

In the opinion of your committee the work of providing legal relief to the poor is primarily the duty of the bar as a whole, and instead of officers of legal-aid societies being required, as they now are, to appeal constantly in every quarter for funds to meet legal expenses, local bar associations should take it upon themselves first to see that the work is adequately performed, and then that the cost is fully met.

It called attention to the following resolution which had been adopted by the State association :

Resolved, That the State bar association and all local bar associations should assume greater responsibility for the maintenance and conduct of legal-aid work, and to that end should actively seek support for established legal-aid organizations, and in communities where no such organizations exist should become directly responsible for the systematic conduct of such work.

The admirable work of the Illinois Bar Association in devising the so-called Illinois plan for extending legal-aid work in the smaller cities has already been described. This plan was formulated in 1921 ; it was officially approved at the 1922 meeting of the association, and in 1924 a committee on legal-aid work was appointed.

The Pennsylvania Bar Association considered the subject in 1922 and 1923, and in the latter year authorized the creation of a legal-aid committee. The report of this committee is especially valuable, because it took the thought expressed in the 1920 report of the New York State Bar Association committee as to the duty of the bar in smaller communities and translated it into definite recommendations which were approved by the association. The committee recommendations were as follows :

1. That every bar association in the State of Pennsylvania be requested and encouraged to appoint a standing committee on legal-aid work.

2. That this association and all local bar associations should assume greater responsibility for the maintenance and conduct of legal-aid work, and to that end should actively seek support for established legal-aid organizations and, in communities where no such organization exists, should become directly responsible for the systematic conduct of such work.

3. That in the smaller communities where a separate legal-aid organization may not be justified, the work be carried on by the bar association. That in the larger cities bar associations should actively cooperate in the establishment, maintenance, and supervision of such organizations.

The legal-aid committee of the Michigan Bar Association appointed in 1923 recommended legislation for the establishment of public legal-aid bureaus throughout the State. In its 1924 report it asks "approval and support of legislation which would permit cities in Michigan of over 25,000 population to establish and maintain an office of legal aid as a department of municipal government", and suggests "that the committee on legislation and law reform be requested to prepare and present to the association for consideration whatever bill may be necessary to grant such authority." In its 1924 report it outlined a comprehensive State-wide program for rendering legal aid through volunteer attorney service in the different districts. This plan is now in effective operation.

The legal-aid committee of the California State Bar Association during the past few years has done much to develop the interest of local bar associations in the subject. Its activities have resulted in the creation of a considerable number of local legal-aid committees.

The legal-aid committee of the North Carolina State Bar Association has also gone on record as favoring legal-aid work and in its 1934 report proposed an alternative plan for developing a State-wide system of service with a strong central organization and a group of outlying committees.

So many of the local or city bar associations have taken action in furtherance of legal-aid work that any detailed description of their activities is impossible within the limits of this report. The following list of cities in which bar associations or groups of lawyers have rendered valuable service, either in the establishment or supervision of legal aid, is sufficiently indicative of the widespread interest that is now manifested in all sections of the country :

California: San Francisco, Los Angeles, Long Beach, Santa Barbara, Sacramento.

Colorado: Denver.

Connecticut: Hartford, Bridgeport, New Haven.

District of Columbia: Washington.

Florida: Jacksonville, Miami, Tampa, West Palm Beach.

Georgia: Atlanta.

Illinois: Chicago, and in the smaller cities under the State-wide plan described herein.

Indiana: Indianapolis, Evansville, Fort Wayne.

Iowa: Des Moines.

Kentucky: Louisville, Covington, Lexington.

Louisiana: New Orleans.

Maine: Portland.

Massachusetts: Boston, Worcester, Springfield, New Bedford.

Michigan: Detroit, Grand Rapids, Lansing, Pontiac, Muskegon, and the various cities in the State-wide system.

Minnesota: Minneapolis, St. Paul, Duluth.

Missouri: St. Louis, Kansas City.

New Jersey: Newark, Jersey City, Hoboken, Union City, Camden.

New York: New York, Buffalo, Rochester, Albany, Schenectady, White Plains, Troy.

North Carolina: Durham, Charlotte, Winston-Salem, Asheville.

Ohio: Cleveland, Cincinnati, Canton, Columbus, Toledo, Youngstown, Dayton.

Oklahoma: Tulsa, Oklahoma City.

Oregon: Portland.

Pennsylvania: Philadelphia, Pittsburgh, Wilkes-Barre, Reading, Scranton, Harrisburg, Erie, Easton, Johnstown, Chester.

Rhode Island: Providence, and throughout the State.

Tennessee: Memphis, Nashville, Knoxville.

Texas: Dallas, Houston, San Antonio.

Utah: Salt Lake City.

Virginia: Richmond.

Washington: Seattle, and throughout the State.

West Virginia: Wheeling, Charleston.

Wisconsin: Milwaukee, Madison.

In the local field the bar associations have an opportunity to give extremely practical assistance. One or two illustrations must suffice to show what the bar associations are doing along these lines.

In 1921 the New York County Lawyers' Association adopted and sent to every member a resolution commending legal-aid work and asking members of the bar to support it. In 1923 this association appointed a special committee to examine the work of the Legal Aid Society of New York, and the association at its own expense sent out a copy of this report to all its members urging them to become subscribers to the legal-aid society. The New York City Bar Association appointed a special committee on legal-aid work in 1919, which filed a report calling upon the bar to give more generous support to the legal-aid organizations in the city. In 1923 the executive committee sent to every member a letter stating, "Legal aid is primarily the obligation of the legal profession", pointing out that comparatively few lawyers actually support the work, and urging more lawyers to become contributing members of the legal-aid society. In 1928 the Association of the Bar of the City of New York cooperated with the Welfare Council of New York City in appointing a joint committee to study legal-aid work, and "through orderly, unbiased presentation of the material so gained to carry the right and full impression of what is the state of justice to the poor in New York City * * *." This admirable report (already referred to in chapter XVII), prepared under the direction of W. Bruce Cobb, was the first well-rounded effort at self-appraisal to which the legal-aid movement has been subjected. In Chicago the bar association has assumed the responsibility for raising half of the budget of the legal-aid bureau. In Philadelphia so long as the bureau was supported by municipal appropriations there was little for the bar association to do. When public support was withdrawn, however, the bar association not only contributed generously from its own treasury to the reestablishment of the privately supported legal-aid society, but through an active committee has aided materially in developing policies and supervising the work. In Detroit the bar association has assumed full responsibility for the establishment and conduct of the local legal-aid bureau, the funds for which come from the community chest.

The responsibility of the organized bar for legal-aid work may be analyzed into four major undertakings:

First. In cities where a legal-aid organization is needed and none exists the bar should take the lead in its establishment. In chapter XVI we have pointed out the class of cities which presumably require a definite legal-aid office with a salaried attorney if the work is to be adequately done.

Second. In cities where legal-aid organizations and public defenders already exist the bar's obligation is essentially of a paternal nature. It should support the work through its own financial con-

tributions. There is no reason why the entire expense should fall on lawyers, but there is every reason why the members of the profession should give their full share before other citizens in the community are asked for subscriptions. Equally important is the task of leadership. It is natural that the majority of a board of directors or other governing board should be lawyers, but in addition the bar association, through an appropriate committee, should maintain an independent supervision that may be invaluable in times of emergency and that is of especial importance in connection with the municipal legal-aid bureaus. Such a committee should cooperate in the formulation of the general policies of the work, it should pass on those borderline cases and classes of cases, noted in chapter XIV, where the duty and function of the legal-aid office is in doubt, and it should provide a list of attorneys to whom the legal-aid office may refer clients whose cases for one reason or another it is unable to accept.

In the smaller cities, the bar itself should perform whatever legal-aid work is necessary. Where the population is 25,000 or less, not more than a hundred or so cases are likely to arise each year. No formal organization is required to carry so light a load. By dividing these cases among the members of the bar under some simple system of assignment the burden imposed on each individual lawyer does not interfere with his private practice, and yet under such a plan no poor person need be deprived of his rights because of his inability to pay for legal services.

Finally, the bar must be relied on to take the leading part in shaping and guiding the future developments in this general field along sound and constructive lines. The fundamental idea expressed in the legal-aid organizations has passed the experimental stage. The necessity and importance of their service have won for them the support of such eminent members of the profession as Chief Justice Taft; Chief Justice Hughes; Hon. Elihu Root; Hon. George Wharton Pepper, United States Senator; Dean Roscoe Pound, of the Harvard University Law School; and Dean (emeritus) John H. Wigmore, of the Northwestern University Law School.

On November 15, 1934, a banquet was held under the auspices of the Association of the Bar of the City of New York, the New York County Lawyers Association, and the Legal Aid Society of New York on the occasion of the annual convention of the National Association of Legal Aid Organizations. At that meeting the following telegram was received from Chief Justice Hughes:

I send cordial greetings to those who are engaged in the work of the legal-aid organizations. I am glad to note the cooperation of the bar association in the endeavor to discharge the duty of the legal profession to see that no one

on account of poverty shall go without necessary legal assistance to maintain his rights. The profession, by reason of its opportunity and privilege, has a special obligation to see that equal justice is assured.

I congratulate the legal-aid organizations on their growth and efficiency, and I trust that they will have the support both moral and financial that is essential to their success.

Every bar association has as its primary object the advancement of the administration of justice. The legal-aid organizations need and are entitled to receive a full measure of bar association support, because they constitute an essential feature in any plan for adapting our legal institutions to the requirements of our present industrial and urban communities. The legal-aid societies and bureaus are not an end in themselves. They are the means through which the most formidable barriers in the path of the impecunious citizen who needs legal redress or protection may be removed.

All the chapters of this report have been designed to show that already we have nearly enough experience to construct a definite, comprehensive, and thoroughgoing plan that will serve beyond any reasonable doubt to overcome the difficulties of delays, court costs, and the expense of counsel and thus to make the laws actively effective in behalf of all persons. The plan calls for some simplification of procedure, it requires the adoption of an adequate in forma pauperis statute, it relies on the small-claims courts to provide for the summary adjudication of the smaller controversies and on the industrial accident commissions to safeguard the rights of injured workmen through efficient administration of the compensation acts. In the field of claims for unpaid wages it contemplates more stringent legislation, modeled on the California plan, enforced through the office of a labor commissioner. To make certain that indigent persons who are accused of serious crimes have adequate representation, it advocates the public defenders as slightly more efficient and economical than the alternative system of paid assigned counsel.

To provide the necessary services of attorneys in civil cases it proposes that in the smaller communities some such simple arrangement as the one devised by the Illinois State Bar Association, the Michigan State Bar Association, or suggested by the North Carolina State Bar Association should be applied; that in the great cities where the cases needing attention are numbered by the thousands a definitely organized legal-aid office, whether public or private, should be established and maintained; and that as a final resort every court should have express power to assign any member of the bar in a proper case and to fix his remuneration.

The task for the future is to integrate these separate remedial measures and remedial agencies into one harmonious whole, to coordinate them, to urge their adoption by the legislatures of the several States, and then to maintain a continuing study of their operation in

actual practice, so that such modifications and amendments as may be proved necessary or desirable in the light of further experience can promptly be made.

There is reason to believe that with each passing year the relationship between the organized bar and organized legal aid will steadily grow closer. And it is quite likely that through this more definite association and communion the hardest and most fundamental problem confronting all future legal-aid development will be solved in the best of all possible ways.

To make this clear we must hazard some guesses, but they are all based upon changes and trends that are becoming quite plain. In this age of transition, when institutions and ideas are in flux, the bar associations themselves are moving with the current of events and disclosing new capabilities that are full of promise.

Just as the individual lawyer is a minister of justice, so the bar association must assume many of the attributes of a ministry of justice. This is what is happening. It is reflected in the increasing interest of lawyers in their associations; within the past few years the membership of the American Bar Association, which is entirely voluntary, has increased tenfold. A body of 30,000 highly trained, conscientious, and earnest persons has power. Perhaps even more significant is the movement for the State incorporated bar.

The essentials of this plan, which has already been enacted in a score of States, are that every lawyer, when admitted to the bar, at once and necessarily becomes a member of the all-inclusive State bar association which has been chartered by act of legislature and to which have been delegated, by statute or rule of court, certain definite responsibilities together with commensurate powers, concerning the administration of justice. The powers thus far most commonly relate to standards of admission, standards of conduct, grievance-committee work, and disbarment.

The instant a bar association is vested with legal powers it becomes a quasi-public if not indeed a public institution. The significance of this trend, from the authors' point of view, becomes manifest when three propositions advanced in earlier chapters are recalled.

A democracy cannot tolerate any denial of justice because of poverty but in practical fact, if the laws are to be actively effective, something like legal-aid work is an absolute necessity. The legal-aid organizations, because they have learned to perform the work more efficiently than any other plan yet devised, have become indispensable adjuncts to the administration of justice. It is questionable if any service so directly touching the public welfare should be left entirely in private hands, and it is unpermissible that that service should fail if the private hands are too weak to uphold and support the work.

Though this indicates that public support and control may be in order, the experience of the municipal legal-aid bureaus is so chequered as to give rise to grave apprehensions. The suggestion that legal aid should be under judicial control has never been tried in this country, but analagous experience indicates that it is unfair and unwise to load onto courts too many administrative and executive functions. The judicial and the executive casts of mind are apt to be different and, in any event, the judicial function in and of itself can absorb and utilize all the time and strength and power that any man can bring to its service.

That there is a natural affinity between the organized bar and organized legal aid and that structurally they are complementary has been pointed out in this chapter. As bar associations move in the direction of becoming recognized public or quasi-public bodies, what would be more natural, more effective, or more in accord with democratic principles than that the governance of legal-aid work should be entrusted to such bar associations? It is work they understand better than any other group in the community, work which they have already approved, and work which they are preeminently fitted to guide and lead. It might be that in its open championship of legal-aid work the bar would find a solvent for some of its more acute public-relations problems. The logic and the sequence of events intimate, if they do not yet foretell, that sooner or later, and probably sooner than its leaders now realize, the bar will be called to the task of taking over, definitely and authoritatively, the responsibility for legal-aid work in our country.

To the performance of this task the bar must bring its trained faculty of critical analysis, its intimate knowledge of the constitutional principles on which our legal institutions are based, and its highest vision. While the responsibility for leadership may fairly rest on the shoulders of the bar, its resources and its power are limited, and therefore every other possible aid must be enlisted. From the National Association of Legal Aid Organizations should come whatever expert information concerning technical details and routine may be required. From the social-service agencies which now exist in every city, whether large or small, and which occupy such a strategic position in their relation to this whole problem, there may be expected an increasing spirit of cordial helpfulness. Above all, if progress is to be had, a genuine community interest and the moral support of an enlightened public opinion must be obtained. This task cannot be performed in a day, it may not be completed within our generation, but every advance that is made brings us one step nearer to a practical realization of our American ideal that through the orderly administration of justice all citizens shall receive the equal protection of the laws.

Appendix A.—Second Draft of a Poor Litigant's Statute

INTRODUCTION

The first draft of this statute was submitted to the American Bar Association by its committee on legal-aid work on July 10, 1924, was published in the 1924 report of the American Bar Association (Vol. XLIX, pp. 386 et seq.), and was reproduced as appendix A in Bulletin 398 of the United States Bureau of Labor Statistics. Each draft contains 20 sections. Sections 1 to 4, 9, 13, 15 to 17, and 19 and 20 are identical in both drafts. The first draft commentary on these sections is not reprinted from the report above referred to, but the sections themselves are reprinted so that the statute is presented as a complete unit.

As bearing upon the present draft the report of the international legal-aid conference, made by the Secretary-General to the Assembly of the League of Nations (Geneva, Aug. 22, 1924; A 34, 1924, V.), is of interest and importance. Perusal of this report, of the documents upon which it was based, and of certain other descriptions of foreign in forma pauperis systems which have come to the chairman of your committee from reliable and authoritative sources, leads to the conclusion that so far as practical experience can indicate the present draft follows thoroughly sound general lines. It should be borne in mind that this draft is not intended for a legislative strait-jacket. Judicial procedure in our various States contains, and properly contains, too much individualism for that. The cloth must be cut to fit the diverse local situations.

POOR LITIGANT'S STATUTE

SECTION 1. Any person, whether a resident or non-resident, citizen or alien, may be admitted to participate as a poor litigant in any cause, civil or criminal, pending or proposed, before any court of original or appellate jurisdiction, subject to the provisions hereinafter set forth.

Among the foreign systems, those of Denmark, England, Italy, Norway, Sweden, and some Latin-American countries afford assistance indifferently to their own nationals and to aliens; those of France, Germany, Holland, Japan, Poland, and most other countries afford assistance only to those aliens whose countries offer reciprocity in this respect or have made treaties covering the point. It seems unquestionably desirable for every State in this country to take the more liberal attitude, but unfortunately some have not yet done so. Nor has Congress, except so far as alien claimants are seamen.

SEC. 2. Wherever used in this act (chapter, title)—

A. The term "participation" shall mean and include the prosecution or defense of any cause, or any intervention or joinder whatever therein, whether directly in person or indirectly through a representative party.

B. The term "representative party" shall mean and include any guardian, administrator, executor, trustee, or other person duly authorized to represent in legal proceedings the personal or financial interests of a poor litigant, but said term shall not mean or include a corporation, association, or trust in which a poor litigant has an interest only as stockholder or creditor.

C. The term "cause" shall mean and include any and every proceeding of whatever name or nature before a court, judge, justice, or judicial magistrate.

D. The term "final judgment" shall mean and include any and every judgment, decree, or order in whatever form which terminates any cause or any separable portion of any cause.

SEC. 3. The term "poor litigant" as used in this act (chapter, title) shall mean any applicant found by the public counselor hereafter defined:

A. Not to be worth a sum exceeding \$500, exclusive of his rights in respect of such cause, and also exclusive of property exempt from execution and from being reached or applied upon a creditor's bill; and

B. Not to be receiving or reasonably to be expected to receive an income averaging more than \$25 per week;

And also, except in respect of criminal proceedings wherein the applicant is, or is about to become, a defendant:

C. To have reasonable grounds for participation in the cause in question.

In case participation in a cause is sought not directly but through a representative party, only the beneficially interested party shall be required to establish his status as a poor litigant.

A showing of poverty is necessarily and universally required under all *in forma pauperis* systems. A few countries, one of which is Sweden, require no demonstration of the merits of the applicant's claim. To omit this second requirement seems a great mistake. Baseless or hopeless litigation by the poor should be frowned upon at least as sternly as is similar litigation by those able to pay their own expenses.

SEC. 4. For special and unusual reasons peculiar to the situation of any applicant the public counsellor may in his discretion find that such applicant is a poor litigant although he does not comply with the requirements of the preceding section. The public counselor may in any case refuse to find that the applicant is a poor litigant, notwithstanding the fact that he complies or appears to comply with the relevant requirements of said preceding section.

SEC. 5. Subject to the provisions of section 8, the term "public counselor" as used in this act (chapter, title) shall mean the district (county) attorney for the time being within whose district (county) the cause in question may lawfully be, and is being or is proposed to be, tried or presented. A public counselor may delegate to an assistant or assistants the execution of all or any part or parts of his powers, discretion, and duties in such capacity except those duties imposed by section 18, but he shall be responsible for proper execution by such assistant or assistants. Each public counselor shall maintain an approved attorneys list containing the names of an adequate number of attorneys-at-law residing or having places of business in his district (county) whom he deems qualified to represent poor litigants. He shall submit this list annually not later than the _____ day of _____ to the chief justice of (name the court) for the latter's examination and approval. No name shall remain on said list except with the approval of said chief justice. Subject to said chief justice's approval a public counselor may at any time add the name of an attorney-at-law to, or remove it from, his approved attorneys list, and he shall thus add or remove a name whenever directed to do so by said chief justice. Each public counselor shall furnish every other public counselor with a copy of his approved attorneys list as soon as may be after its examination and approval by said chief justice, and shall promptly inform each other public counselor of any changes in said list.

The first draft provided that clerks of inferior courts should serve as public counselors with respect to causes in their respective courts. This now seems unwise. There should be a central authority and a corresponding central responsibility in each county or district. But clerks of court should receive and transmit applications for relief. The next section specifically provides for such action by them.

The commentary on this section as originally drafted emphasized the importance of not clogging the courts with preliminary investigations. The older and more efficient foreign systems, notably those of Scotland, Italy, and France, thus separate the investigative from the truly judicial operations.

The concluding provisions of this redrafted section are intended to accomplish a double object: First, by judicial endorsement to safeguard the poor against undesirable attorneys and thus to make honest and able attorneys the more ready to do the work called for under the statute. Second, to render easily available to all the public counselors the names of eligible poor men's lawyers throughout the State. It is suggested that if possible the chief justice or other corresponding judicial official to examine and approve the attorney lists should be the head of the highest court in the State. But in some cases it may be desirable to have the head of the principal trial court pass upon the lists.

SEC. 6. Each public counselor shall on request from any intending applicant furnish him with a form of application and shall advise and assist him in filling out or completing such form. Any clerk of court or other corresponding official shall likewise furnish forms, advice, and assistance to intending applicants, and shall forward completed applications to the proper public counselor. Where participation in a cause is sought not directly but through a representative party, such representative party may be permitted to make out and file the application. Unless and until prescribed by rule of court, forms of application shall be prescribed by the respective public counselors. The expense of preparing such forms shall be payable in the same manner as other usual official expenses of district (county) attorneys.

SEC. 7. In passing upon any application the public counselor may make or cause an assistant to make such investigation as he deems advisable. He may in his discretion refer the application to any available legal-aid society or other like organization, or he may appoint as reporting attorney or attorneys, to make such investigation and report thereon, one or more of the attorneys-at-law whose names appear upon the approved attorneys lists described by section 5 of this act (chapter, title). Unless and except so far as otherwise ordered by the public counselor in charge, the report, any documents or information obtained for the purposes of the report, and any documents or information furnished in connection with the application shall be privileged from disclosure in any cause and shall not be disclosed to any party or other person.

Occasionally a public counselor may have to carry on an investigation outside his own district or county. The foregoing section, combined with section 5, will furnish the means for doing so. In many such instances, of course, the investigating public counselor may be able to learn what he needs to know by communicating with another public counselor. The privilege provided by the concluding sentence of this section has been found most important in the English system. Without it, anything like full disclosure would often be unobtainable.

SEC. 8. All findings, decisions, and orders of the public counselor as to matters committed to him by this act (chapter, title) shall be final and binding upon all persons unless and until modified or revoked by him, and shall not be subject to review by appeal or otherwise, except that any applicant aggrieved by the public counselor's refusal to find that he is a poor litigant may apply to a judge (justice) of the (principal civil court in the county) who may if he deems it advisable appoint a special master to inquire into the matter and find whether the applicant is a poor litigant. The finding by such master shall have the same effect as a similar finding by the public counselor, and if the finding be that the applicant is a poor litigant any judge (justice) of said court may authorize and direct the master thereafter to exercise and perform, with respect to the applicant's participation in the particular cause or causes, whether in a lower or an appellate court, all the powers, discretion, and duties given the public counselor under sections 4, 9, 10, 11, 12, 13, 14, 16, 17, and the

last sentence of section 7, of this act (chapter, title). A special master thus authorized and directed shall also make an annual written report to the governor respecting the cause or causes of any poor litigant under his supervision, such report to comply with the requirements of section 18 hereof.

The redrafting done in this section has been intended only to make perfectly clear and unambiguous the powers and duties of a special master, and not in substance to vary the original draft.

SEC. 9. The public counselor may at any time revoke his finding that any applicant is a poor litigant, and with respect to proceedings after such revocation such applicant shall stand as if the finding had not been made. Notwithstanding the finding that any applicant is a poor litigant, the public counselor may at any time or times impose such terms as he deems desirable upon the applicant's participation in the cause. Neither a finding by the public counselor that an applicant is a poor litigant nor any imposition of terms in connection therewith shall have any force or effect except in the particular cause and in the particular court with respect to which it is made.

So far as this section requires a fresh determination as to the granting of *in forma pauperis* on appeal, it follows the better considered foreign systems. It goes without saying that the material for the redetermination would almost always be easily accessible.

SEC. 10. If the public counselor finds that the applicant is a poor litigant, he shall assign to the applicant from his approved attorneys list an attorney or attorneys, hereinafter referred to as the conducting attorney or attorneys, to conduct the proceedings. By special order of a judge (justice) of the court having jurisdiction of any cause, a public counselor or special master appointed under section 8 may be authorized himself to act as conducting attorney for any poor litigant interested in said cause.

The last sentence of this section is new. It seems a provision particularly advisable for States containing districts or counties in which there are few lawyers.

SEC. 11. A conducting attorney assigned by the public counselor shall have the ordinary duties of an attorney-at-law to his client and may conduct the cause in the ordinary way with the following exceptions:

A. No poor litigant nor any conducting attorney assigned to such poor litigant under this act shall withdraw from, discontinue, default, settle, or compromise the cause without leave of court.

B. It shall not be lawful for any poor litigant to discharge any conducting attorney assigned hereunder or make claim against him for breach of duty, without written consent of the public counselor in charge.

C. No conducting attorney assigned hereunder shall be at liberty to discontinue his assistance unless he satisfies the public counselor or the court before which the cause is pending or is to be presented that he has some reasonable grounds for so discontinuing.

D. Every conducting attorney assigned hereunder shall from time to time send to the public counselor reports showing the progress and result of all causes assigned to him for conduct. Unless and until otherwise prescribed by rule of court, the form of reports and the times for making the same shall be prescribed by the public counselor in charge.

E. Should the conducting attorney or the poor litigant discover at any time that the litigant is possessed of means beyond those previously disclosed he shall report the matter at once to the public counselor.

The only change in this section is the suggestion of a general court rule offered by paragraph D.

SEC. 12. Every person appointed or assigned as a public counselor, special master, reporting attorney, or conducting attorney hereunder shall have a duty to serve in such capacity. A person appointed or assigned as special master, reporting attorney, or conducting attorney may, however, be relieved from this duty upon his giving reasons satisfactory to the public counselor or the judge (justice) appointing or assigning him; and any person serving in any of these capacities shall receive a reasonable fee, the amount and time or times of payment to be fixed for a reporting or conducting attorney by the public counselor in charge, for a special master acting in that capacity by a judge (justice) of the court appointing him, and for a special master or public counselor acting as conducting attorney by a judge (justice) of the court authorizing him so to act; provided, however, that save where a public counselor thus acts as conducting attorney no person in receipt of a salary as a public official shall be further paid for services in any of the foregoing capacities unless and except to the extent that the court having jurisdiction over the cause shall otherwise direct.

Where investigation or conduct of cases cannot be placed in the hands of legal-aid organizations, it seems essential to success that persons acting for applicants or poor litigants should receive reasonable compensation. And it seems fair and wise that legal-aid organizations should also receive reasonable compensation to further their useful work. The English system, based upon the idea of service either gratuitous or at bare cost, has failed to function satisfactorily. The Scotch system has been working gratuitously for several hundred years, but now (to quote from the Scotch report to the international conference) "most people are agreed that the agents who undertake this work should be remunerated out of public funds." The Italian report is most emphatic on the point: "However high the bar's standard may be—and it is very high—it has not moral strength to struggle for any length of time against the law of recompense for human activity; and if, taken all together, the system of free help does not measure up to those social exigencies to which one would wish to apply it, this is not to be laid to the attorneys, but exclusively to the illusion of the legislator who believes he can solve a serious problem with fine words: as by announcing that free help is an 'honorable activity' of the legal profession."

At the same time, it seems most important to prevent poor litigants' causes from becoming a happy hunting ground for predatory politicians of the smaller sort. Hence the general provision at the end of this section calling for a court determination wherever compensation is sought by a person already on the public-salary list.

SEC. 13. A person found by the public counselor to be a poor litigant shall not be required to give security for court costs or fees and shall not be personally liable for costs or fees incurred in his cause, except as otherwise provided by terms imposed by the public counselor or by the court which enters the final judgment in the cause. In cases where the public counselor or such court shall find there was substantial misrepresentation or mistake in the information given by the applicant to the public counselor or the reporting attorney and also in cases where the financial condition of the poor litigant has improved prior to final judgment such terms may require the poor litigant to pay all or any part of the costs, fees, and expenses previously paid or accrued.

The substance of this provision is found in practically every well-molded foreign system.

SEC. 14. All fees and compensation provided for by section 12 shall be payable from the Poor Litigants' Fund hereinafter defined. All other necessary fees and expenses for participation in the cause shall be approved in writing by the public counselor from time to time and shall be payable during the course of the litigation from said Poor Litigants' Fund on his warrant or authorization. The public counselor may grant the conducting attorney an appropriation from said fund for necessary fees and expenses. The conducting attorney shall render to the public counselor from time to time such state-

ment of fees and expenses as the latter may require. No party opposing any poor litigant shall be entitled to any payment from the Poor Litigants' Fund on account of his costs or expenses.

SEC. 15. In each county the amount appropriated for poor litigants authorized to apply therein shall be held as a revolving fund entitled the Poor Litigants' Fund. Gifts may be received and added to the fund, and such gifts may be made generally to the fund or limited to particular purposes.

It is scarcely profitable to draw this section in other than general terms. In actual application it must be varied to suit varying fiscal machinery.

SEC. 16. All money recovered by a poor litigant shall be paid in the first instance to the public counselor, who shall distribute such money as follows:

A. He shall first reimburse the Poor Litigants' Fund for all amounts expended for fees, compensation, and expenses in the conduct of the poor litigant's cause.

B. Out of the remaining money recovered he shall make such if any additional payment into the Poor Litigants' Fund as the court which enters the final judgment in the cause may direct. This sum shall be such as to place the reasonable cost of the poor litigant's participation in the cause upon a parity with the reasonable cost to a person not a poor litigant. Direction of such additional payment shall be entirely discretionary.

C. He shall pay over to the poor litigant the net remainder of the money recovered.

In cases where the recovery consists of property other than money no final judgment shall be entered until the payment of items A and B set forth above is made or secured to the reasonable satisfaction of the court or the public counselor.

SEC. 17. No person shall take or agree to take or seek to obtain from any poor litigant any payment, fee, profit, or reward either for reporting, for the conduct of the proceedings, or for out of pocket expenses, and so doing shall be a contempt of the court in which the cause is pending or proposed to be instituted. If any such payment, fee, profit, or reward shall be made, given, or promised the application or the finding as the case may be may be dismissed or revoked, in which case the applicant or poor litigant shall not afterwards be admitted into the same cause or any other proceedings as a poor litigant unless otherwise ordered.

SEC. 18. Each public counselor shall annually on or before the —— day of —— prepare and furnish the governor with a written report respecting poor litigant's proceedings in his district (county), covering such matters as the governor may prescribe.

SEC. 19. Except as expressly provided otherwise by this act (chapter, title) the cause of poor litigants shall be conducted in the same manner as ordinary litigated causes. Wherever the foregoing provisions for remission of costs, fees, or security, or for assignment of attorneys, apply they shall supersede existing provisions for the same purposes.

SEC. 20. Nothing herein contained shall prevent any court from exercising its rule-making power consistently with the provisions of this act (chapter, title) for speeding the causes of the poor.

Appendix B.—Massachusetts Small Claims Court Act and Rules of Court

SMALL CLAIMS PROCEDURE

(Mass. Laws Ann. (Michie, 1933), ch. 218, secs. 21-25)

SECTION 21. The justices or a majority of them of all the district courts, except the municipal court of the city of Boston, shall make uniform rules applicable to said courts, and the justices of the municipal court of the city of Boston shall make rules applicable to that court, providing for a simple, informal, and inexpensive procedure, hereinafter called the procedure, for the determination, according to the rules of substantive law, of claims in the nature of contract or tort, other than slander and libel, in which the plaintiff does not claim as debt or damages more than fifty dollars, and for a review of judgments upon such claims when justice so requires. The procedure shall not be exclusive, but shall be alternative to the formal procedure for causes begun by writ. Actions under this and the four following sections shall be brought in the judicial district where the defendant lives or has his usual place of business.

SEC. 22. The procedure shall include the beginning of actions with an entry fee of one dollar but without writ, and without requirement, except by special order of court, of other pleading than a statement to the clerk or an assistant clerk, who shall reduce the same to concise written form in a docket kept for the purpose. The procedure shall include notice by registered mail instead of the mode of service heretofore required, and shall include provisions for early hearing. The procedure may include the modification of any or all rules of pleading and practice, anything contained in other chapters, sections, or acts notwithstanding, and may include a stay of the entry of judgment or of the issue of execution. The rules for the procedure may provide for the elimination of any or all fees and costs, and that costs shall be in the discretion of the court. In causes begun under the procedure, the court may on application for cause shown issue writs of attachment of property or person as in causes begun by writ.

SEC. 23.—A plaintiff beginning a cause under the procedure shall be deemed to have waived a trial by jury and any right of appeal to the superior court and any right to a report to an appellate division; but if said cause shall be removed to the superior court as hereinafter provided, the plaintiff shall have the same right to claim a trial by jury as if the cause had been begun in the superior court. No other party to a cause under the procedure shall be entitled to an appeal or report. In lieu thereof, any such party may, prior to the day upon which he is notified to appear, file in the court where the cause is pending a claim of trial by jury, and his affidavit that there are questions of fact in the cause requiring trial, with specifications thereof, and that such trial is intended in good faith, together with the sum of three dollars for the entry of the cause in the superior court and a bond in the penal sum of one hundred dollars, with such surety or sureties as may be approved by the plaintiff or the clerk or an assistant clerk of the district court, payable to the other

party or parties to the cause, conditioned to satisfy any judgment for costs which may be entered against him in the superior court in said cause within thirty days after the entry thereof; and thereupon the clerk shall forthwith transmit such original papers or attested copies thereof as the rules for the procedure may provide, and the superior court may try the cause as transmitted or may require pleadings as in a cause begun by writ, but the cause may be marked for trial on the list of causes advanced for speedy trial by jury. Sections one hundred and five and one hundred and seven of chapter two hundred and thirty-one shall apply in all district courts in causes begun under the procedure. Any party, in lieu of filing the bond required by this section, may deposit with the clerk the sum of one hundred dollars and the provisions of section one hundred and six of said chapter two hundred and thirty-one shall apply.

SEC. 24. The court may, in its discretion, transfer a cause begun under the procedure to the regular civil docket for formal hearing and determination as though it had been begun by writ, and may impose terms upon such transfer.

SEC. 25. In any cause begun by writ which might have been begun under the procedure, the rules for the procedure may provide, or the court may by special order direct, that the costs to be recovered by the plaintiff, if he prevails, shall be eliminated in whole or in part.

RULES FOR SMALL CLAIMS PROCEDURE

RULE 1. The plaintiff, or his attorney, shall state the nature and amount of his claim to the clerk, who, after due inquiry, shall cause the claim to be reduced to writing in the docket, in concise, untechnical form, and to be signed by the plaintiff or attorney. The signature shall be deemed the beginning of the action. If the claim involves more than three items, the plaintiff or attorney shall deliver to the clerk a fair list of such items, numbered consecutively. If the clerk deems the statement of claim insufficient to make a prima facie case, the court, at the request of the plaintiff or attorney, shall decide whether such claim shall be received.

NOTE TO RULE 1

(a) For the meaning of "attorney" and "docket," see rule 12.

(b) In using the printed docket cards prepared by the committee on law and procedure, the main card for the record of the case should be numbered in the upper right corner. Where there are two defendants, a second printed docket card bearing the same number with "A" added, should be used to record the name and addresses of, and the notice to, the second defendant. A third defendant may be treated in a similar way. Two plaintiffs with a common place of business may be recorded on the main docket card; a second card "A" may be used for other plaintiffs.

(c) The amount claimed should be stated in unliquidated claims as well as others, for jurisdictional purposes, although the court must assess damages even after default.

(d) The list of items delivered to the clerk has several uses. Whether incorporated into the claim, and therefore into the docket and record, by reference, or not, it serves to show to the defendant, upon inquiry of the clerk, the details of the claim against him; and it assists the court, at the hearing, in arriving at the facts. It may furnish the means of amending the claim, if amendment should be needed.

Where the list of items is short, the clerk may reproduce it in substance in the claim written on the docket card, thus avoiding the permanent preservation of a separate list; to file nothing permanently except the docket card, is an ideal to be attained when practicable. Longer lists of items, when it is deemed necessary to have them become part of the claim, may be incorporated therein by reference, under rule 12, as, e. g., "See list of items filed."

(e) The claim should be reduced to writing in the docket in a form sufficient to apprise the defendant of its nature, to furnish the basis of an intelligible judgment, to preclude any further suit upon that claim, and, when practicable, to show whether the claim is within the class of claims for labor or necessities upon which equitable process may be based. More than that is unnecessary.

The following are suggestions for stating claims:

"Claim: Defendant owes plaintiff \$27.83 for groceries and household goods, sold him between October 16, 1920, and December 28, 1920, inclusive." [If the list of items is to be made a part of the claim, add "See list of items filed."]

"Claim: Defendant owes plaintiff for rent of apartment 10 Allston Street, Boston, for month ending October 31, 1920, \$50, less \$30 paid, balance due, \$20. Interest on same, November 1, 1920, to January 1, 1921, \$0.20. Total claim, \$20.20."

"Claim: Defendant, on or about December 13, 1920, assaulted and beat plaintiff, damages claimed \$35."

"Claim: Defendant, on or about December 28, 1920, converted plaintiff's clock, value \$10, and desk, value \$20. Total claim \$30."

RULE 2. The plaintiff or attorney shall also state to the clerk, the plaintiff's and the defendant's place of residence, usual place of business and place of employment, or such thereof as the clerk may deem necessary, including the street and number, if any; and the clerk shall note the same in the docket. The clerk shall give to the person signing the claim a memorandum of the time and place set for the hearing. Summonses for witnesses, if requested, will be issued by the clerk, without fee.

NOTE TO RULE 2

(a) For the meaning of "attorney," see rule 12.

(b) The defendant's place of residence or usual place of business and in some cases the plaintiff's place of residence or usual place of business, must be shown, to determine the venue. (General Laws, ch. 223, sec. 2.)

(c) Most defendants have no "place of business." *Hanley v. Eastern Steamship Corporation* (221 Mass. 125). Often a notice at the place of employment would be wholly effective. The clerk should use discretion as to the address to which he sends the notice, and if he is in doubt should send notices to more than one address.

(d) The memorandum given to the person signing the claim should state that if the claim is supported by witnesses, books of account, or documents, they should be produced at the hearing; and also that in case of an unliquidated claim the amount of damage must be proved by the plaintiff at the hearing whether the defendant defends or not.

RULE 3. The clerk shall mail to the defendant, at one or more of the addresses supplied by the plaintiff, as the clerk may deem necessary or proper, by registered mail, return receipt requested, the expense being prepaid by the plaintiff, a notice signed by the clerk, bearing the seal of the court and bearing teste like a writ, which, after setting forth the name of the court, shall read substantially as follows:

"To (here insert name of defendant).

"(Here insert name of plaintiff) asks judgment in this court against you for (here insert the amount claimed in dollars and cents) upon the following claim: (here insert the nature of the claim as it appears on the docket; but no list of items need be included).

"The court will give a hearing upon this claim at (here insert the location of the courthouse and the room therein, as may be necessary) at (here insert the hour) o'clock in the (here insert 'forenoon' or 'afternoon' as the case may be) on (here insert the date, including the day of the week, as may be prescribed by general or special order of the court).

"If you deny the claim, in whole or in part, you must, not later than (here insert the date, including the day of the week, of the second day before the day set for the hearing), personally or by attorney state to the clerk, orally or in writing, your full and specific defense to said claim, and you must also appear at the hearing. Unless you do both, judgment may be entered against you by default. If your defense is supported by witnesses, account books, receipts, or other documents, you should produce them at the hearing. Summonses for witnesses, if requested, will be issued by the clerk without fee.

"If you admit the claim, but desire time to pay, you must, not later than (here insert the date, including the day of the week, of the second day before the day set for the hearing), personally or by attorney, state to the clerk, orally or in writing, that you desire time to pay, and you must also appear at the hearing and show your reasons for desiring time to pay."

The clerk shall note in the docket the mailing date and address, the date of delivery shown by the return receipt, and the name of the addressee or agent signing the receipt.

Notice shall be valid although refused by the defendant and therefore not delivered. If the notice is returned undelivered, without refusal by the defendant, or if in any other way it appears that notice has not reached the defendant, the clerk shall issue, at the expense of the plaintiff, such other or further notice as the court may order.

NOTE TO RULE 3

(a) The court should establish hearing days by general order, so that the clerk may set the hearing.

(b) The clerk is expected to use all reasonable means of making the notice effective. In cases of doubt, notice should be sent to more than one address. The docket cards prepared by the committee on law and procedure provide an easy method of recording the address to which each notice is sent, and the result.

If the usual notice by registered mail fails, the court may order service of a notice by registered mail deliverable to addressee only or by a sheriff or constable.

(c) Return receipts are not part of the record. (Rule 12.) The material facts shown by them are to be noted on the docket card. If the clerk desires to keep the return receipts, they may be numbered to correspond with the cases, and kept in any card tray or elsewhere.

RULE 4. A defendant, unless the court shall otherwise order, shall be defaulted unless he shall, personally or by attorney, not later than the second day before the day set for the hearing, state to the clerk, orally or in writing, his defense to the claim. A court sitting in more than one city or town may prescribe by general order other times for stating defenses, and may vary the form of notice to the defendant accordingly. The clerk shall enter the substance of the defense in the docket, and the docket entry shall be deemed the answer. The answer shall state fully and specifically, but in concise and untechnical form, what parts of the claim are contested, and the grounds of such contest. Demurrers, dilatory pleas, and the answer of general denial are prohibited. No case shall be deemed ripe for judgment before the time set for the hearing.

NOTE TO RULE 4

(a) While the English county courts usually require no answer, it is felt to be unjust to require plaintiffs to attend hearings prepared to try claims that will often prove to be undefended. The defense may be stated orally to the clerk, or mailed in season to reach the clerk on the specified day, by the defendant or attorney, so the requirement will not be burdensome. For the meaning of "attorney", see rule 12.

(b) Demurrers and other technical incidents or results of imperfect pleading have been intentionally avoided. The creation of technical questions of pleading would be undesirable. Yet it is desirable that claims and answers should give ample notice of the real claim or defense.

A party who does not make the fair disclosure required by these rules, risks the imposition of discretionary costs under rule 9, and that liability seems sufficient.

(c) Suggestions of answers are:

"ANSWER. Defendant paid \$17 on claim, and owes the balance."

"ANSWER. Defendant owes for the coat, but the hat was never delivered to him."

"ANSWER. The part of claim accruing before January 1, 1915, barred by statute of limitation. The latter part contracted by wife without authority."

"ANSWER. Defendant struck plaintiff in self-defense."

"ANSWER. Plaintiff agreed to do whole job for \$15. Did not do workmanlike job. Did not use proper paint."

"ANSWER. Defendant owes items 1 and 3. Item 2 was not up to sample, and was not merchantable, and was returned by defendant. Item 4 was never ordered, and was returned by defendant." [This answer is adapted to a case where a list of items is incorporated into the claim.]

RULE 5. The defendant, within the time for answer, may, in the manner provided by rules 1 and 2, claim any set-off or counterclaim within the jurisdiction of the court in civil cases. Upon the making of such claim by the defendant, the clerk shall give a notice to the plaintiff, at the expense of the defendant, similar to that provided by rule 3, and shall postpone the hearing of the original claim until the time set for hearing the defendant's claim, and shall notify the parties accordingly. The defendant's claim shall be answered within the time and in the manner provided by rule 4, and the penalties upon defendants provided by said rule shall apply to plaintiffs in respect to claims by a defendant. The original claim, and the claim of set-off or counterclaim, shall be deemed one case.

NOTE TO RULE 5

(a) If the plaintiff chooses to adopt this procedure, it is submitted that he adopts it subject to its rules for set-off and counterclaim. See *Aldrich v. E. W. Blatchford & Co.* (175 Mass. 369). The defendant, seeking to avail himself of this set-off rather than a set-off of judgments which the courts have inherent power to allow (*Franks v. Edinberg*, 185 Mass. 49), can have, it is submitted, no cause to complain if the result happens to be unfavorable.

(b) A set-off or counterclaim may be recorded upon a printed docket card bearing the number of the case with "B" added.

RULE 6. The court may at any time allow any claim or answer to be amended. Interrogatories shall not be filed, nor depositions taken, except by leave of court.

NOTE TO RULE 6

(a) Amendments may be made without any written motion, and the amendment may be noted on the back of the docket card.

(b) Interrogatories and depositions, if allowed, would delay cases intended to be speedily heard.

RULE 7. Witnesses shall be sworn; but the court shall conduct the hearing in such order and form, and with such methods of proof, as it deems best suited to discover the facts and to determine the justice of the case. If the plaintiff does not appear at any time set for hearing, the court may dismiss the claim for want of prosecution, or enter a finding on the merits for the defendant, or make such other disposition as may be proper.

NOTE TO RULE 7

(a) See *Com. v. Rosenblatt* (219 Mass. 197).

(b) Under small claims procedure, the judge is an investigator, not merely an umpire. He, rather than counsel or parties, is in active charge of the proceedings. To allow hearings to be delayed or postponed on account of engagements of counsel is contrary to the spirit of the statute, and subversive of the procedure.

(c) Laymen presenting their own cases cannot be expected to comply with all the technical rules of evidence and trials that the desire to prevent prejudice in jury trials has developed. "The greatest and most remarkable offshoot of the jury was that body of excluding rules which chiefly constitute the English 'law of evidence.' * * * Sharply and technically used, these rules enable a man to go far in worrying an inexperienced or ill-prepared adversary, and in supporting a worthless case." (Thayer, *Preliminary Treatise on Evidence*, 180, 528.) Only the essential principles of justice in procedure are useful to a judicial investigator without a jury.

(d) Where the plaintiff without cause fails to prosecute his claim it is believed that the court should have power to enter a judgment on the merits and end the controversy.

(See *Carpenter, etc., v. N. Y., N. H. & H. R. R. Co.*, 184 Mass 98; *Kyle v. Reynolds*, 211 Mass. 110.) This power should not be exercised, however, except to prevent oppression.

RULE 8. No process of mesne attachment shall issue under this procedure, except upon the order of the court. Such order shall state the amount of the attachment and the property or credits to be attached. The form of the process shall be substantially that required for supplementary process in ordinary civil actions.

RULE 9. The actual cash disbursements of the prevailing party for entry fee, mailing fees, witness fees and officers' fees shall be allowed as costs. No other costs shall be allowed either party, except by special order of the court. The court shall have power in its discretion to award costs, in a sum fixed by the court, not exceeding twenty-five dollars (exclusive of such cash disbursements, or in addition thereto) against any party, whether the prevailing party or not, who has set up a frivolous or vexatious claim or defense, or has made an unfair, insufficient or misleading answer, or has otherwise sought to hamper a party or the court in securing a speedy determination of the claim upon its merits; and to enter judgment and issue execution therefor, or set off such costs against damages or costs, as justice may require.

NOTE TO RULE 9

The discretionary power to award costs will tend to make justice speedy and efficient and to prevent intentional delay and trickery. Where the discretionary costs go against the losing party, they will be included in the judgment. Where they go against the prevailing party, they may be set off or made the subject of a separate judgment and execution—not a novelty in our law. General Laws, ch. 261, secs. 3, 22; *Wison v. Marcus*, 174 Mass. 67.

RULE 10. The court may order that the judgment shall be paid to the prevailing party, or, if it so order, into court for the use of the prevailing party, at a certain date or by specified installments, and may stay the issue of execution and other supplementary process during compliance with such order. Such stay shall at all times be subject to being modified or vacated.

NOTE TO RULE 10

After the hearing on the merits, or after default on the merits, the court may, at the time set for the hearing, consider the question of stay of execution. Often the whole defense, in ordinary civil actions, is caused by a desire to secure a stay of execution; if such stay is authorized it will tend to secure speedy justice without oppression. The court need not feel bound to consider a stay asked by a defaulted defendant who has not asked for a stay according to the terms of the notice to him. (Rule 3.)

RULE 11. The court may at any time upon motion, and after such notice, by mail or otherwise, as it may order, for cause shown vacate any judgment entered under this procedure, for want of actual notice to a party, for error, or for any other cause that the court may deem sufficient, and may stay or supersede execution. The court may also order the repayment of anything collected under such judgment, and may enter judgment and issue execution therefor; but no order shall affect the title of any bona fide holder for value under said judgment. Costs in an amount fixed by the court not exceeding twenty-five dollars may be awarded, in the discretion of the court, for or against either party to a motion to vacate judgment, and judgment may be entered and execution may be issued therefor, and any action by the court may be made conditional upon the payment of such costs or the performance of any other proper condition.

NOTE TO RULE 11

The vacation of judgment "on motion," i. e., by application in the same case, is much more simple than existing methods. No writing is required, only an entry in the docket, (Rule 12.) Proceedings upon such a motion may be recorded upon an unprinted docket card, bearing the number of the case with "C" added.

This rule covers the cases within the scope of motions and petitions to vacate judgment, and writs and bills of review. (See General Laws, ch. 250.) While broad and simple, the provision for discretionary costs will prevent its abuse.

This rule does not prevent the court from correcting its record, of its own motion, under its inherent power, to conform to the truth. (*Karrick v. Wetmore*, 210 Mass. 578; *Hathaway v. Congregation Ohab Shalom*, 216 Mass. 539; *Waucantuck Mills v. Magee Carpet Co.*, 225 Mass. 31; *Wetmore v. Karrick*, 205 U. S. 141.)

RULE 12. The docket shall consist of cards, envelopes, or folders, and such other documents as may be incorporated therein by reference. Nothing shall be deemed part of the record except the docket entries. Any written papers delivered to the clerk shall be merely authority for the clerk to enter the substance thereof on the docket and such papers need not be filed or preserved. The word "clerk" in these rules shall include an assistant clerk. The word "attorney" in these rules shall mean an attorney at law, a person specially authorized in writing to prosecute or defend the claim, one of a number of partners or joint plaintiffs acting for all, or an officer, manager, or local manager of a corporation acting for it. Notice to such attorney for a party shall be equivalent to notice to such party.

NOTE TO RULE 12

(a) The accumulation of a mass of claims, answers, motions, letters, and other papers, drawn by the parties, would be a nuisance. Even the return receipt does not become part of the docket or record. A list of items becomes part of the docket and record only when incorporated into the claim by reference, as, e. g., "See list of items filed." To file nothing permanently except a single docket card is an ideal to be attained when practicable.

(b) The use of the 5 by 8 printed docket cards prepared by the committee on law and procedure and printed by the Library Bureau, 43 Federal Street, Boston, is recommended. These cards are printed from plates owned by the Association of Justices of District Courts. The name of the particular court ordering cards is printed in the margin. Filing envelopes, 5 by 8, to be numbered like the docket cards, for the temporary or permanent filing of lists of items, etc., are also useful. Filing devices for such cards and envelopes are readily procurable.

(c) In small courts the docket cards themselves, filed with any accompanying envelopes by the names of the defendants, may constitute a sufficient index. In larger courts the docket cards and any accompanying envelopes would better be filed and numbered chronologically, with a card index for plaintiffs and defendants.

RULE 13. Actions shall be brought in the Judicial District where the defendant lives or has his usual place of business. Rules of practice in ordinary civil actions, which are applicable to this procedure and not inconsistent with these rules, shall apply to cases under this procedure.

RULE 14. Upon removal of a cause to the superior court, the original docket entries, or in case of removal by some of several defendants, an attested copy thereof, shall be transmitted to the clerk of the superior court.

RULE 15. In actions of contract or tort, other than slander and libel, hereafter begun by writ, in which the recovery of debt or damages does not exceed fifty dollars, no costs other than the taxable cash disbursements shall be recovered by the plaintiff, except by special order of the court for cause shown.

RULE 16. If any question of law arises under this procedure which the court is of the opinion requires review, it may submit the matter, in the form of a report of a case stated, to the appellate division. The report shall go on the next calendar of that division, shall take precedence over other business, no briefs shall be required, and the order of the appellate division thereon shall not be appealable.

Appendix C.—First Draft of a Model Statute for Facilitating Enforcement of Wage Claims

PRELIMINARY STATEMENT

While the statute books of all or nearly all our States contain provisions for enforcing prompt payment of wages, these laws are often imperfect. This statement is not intended as an adverse criticism of their draftsmen. The earlier laws were courageous experiments. They had to steer a tortuous course among outjutting constitutional difficulties. They suffered considerable judicial misunderstanding and disapprobation. From tentative small beginnings they have grown unevenly and frequently have not attained comprehensive symmetry. They have included many provisions which proved futile when put to the practical acid test. States which resolutely forced their way through the stages of trial and error may wisely continue to build upon the workable residue of their old accustomed forms. But it is doubtful policy to shape fresh legislation in other jurisdictions by such irregular models, and obviously wasteful to repeat primitive mistakes. Hence, this first draft of what is intended to become a scientific model statute is now published for the purpose of inviting criticism and suggestion. It is not proposed as a uniform law for general adoption in fixed phrasing. Local variations render utterly impracticable any idea of nation-wide uniformity. Omissions and additions should be freely made to fit particular needs. But the draftsmen have striven to produce a statute which, in general outline and method of approach, reflects the best features of existing laws, combined with certain helpful new features of substance and form.

It is respectfully suggested that the most helpful criticism will proceed from fully informed minds. Fortunately, certain Government publications, by no means so widely studied as they should be, furnish a wealth of conveniently organized source material and comment thereon. The existing American legislation on the point through 1925 is either reprinted or described in United States Bureau of Labor Statistics Bulletin No. 408 (June 1926), pp. 42 et seq. In this same publication and in United States Bureau of Labor Statistics Bulletin No. 229 (December 1917), are citations and discussions of a large number of court decisions relating to the validity and interpretation of such legislation. See also United States Bureau of Labor Statistics Bulletin No. 370 (May 1925), and *id.*, Bulletin No. 403 (March 1926), the first containing a general collection of labor laws in the United States and the second the 1925 labor legislation in the United States.

One remark is ventured upon the contents of the foregoing publications to emphasize a consideration which seems supremely important to the draftsmen and which goes far to explain the nature of their draft. The Government bulletins excellently show the quantity and form of prior wage-payment legislation, the extent to which it has broken upon or avoided constitutional obstacles, and the interpretation given the more common provisions. This legalistic foundation is essential. The bulletins do not, however, purport to picture the success or failure in everyday application of the statutes now

operative. Here the draftsmen believe two simple and almost self-evident points are to be made. First, a vigorous administrative agency is essential to successful wage-law enforcement. The mere words of an act are but *brutum fulmen* without human driving power behind them. Second, a good wage law must show so many effective teeth that its threat will be ever present to all whom it is meant to curb. Wage claimants as a class pitifully lack the means for enduring even a moderate amount of delay. That law helps them most which forestalls wrongs meditated but yet undone, not confining its effect to the correction of wrongs already done. And since some cases of correction must be encountered and quickly dealt with, there is a double reason for giving the administrative agency more than one clear method of inflicting prompt painful pressure on defaulting employers. The agency should have a set of thumbscrews so assorted as to fit every unfairly grasping hand.

NOTE.—In this draft alternative wordings are put in parentheses (). Tentative provisions are put in square brackets [].

SECTION 1. The following definitions are prescribed for the interpretation of this act (chapter, etc.):

(a) The term "employer" shall mean any individual, partnership, business trust, association, joint stock company, or corporation who or which is conducting in this State directly or through an agent any business engaging personal services of not fewer than ——— employees [for an aggregate of not fewer than ——— working hours per week]. The term shall include any successor to the business of any employer, or any lessee or purchaser of any employer's business property for the continuance of the same business, so far as such employer shall not have paid employees in full. The term shall exclude the United States [and any State, county, municipal corporation, town, or other governmental division]. The term shall also exclude trustees and assignees in bankruptcy or insolvency, and receivers, whether appointed by Federal or State courts, and persons otherwise falling under the definition of employers so far as the times or amounts of their payments to employees are regulated by laws of the United States, or regulations or orders made in pursuance thereof.

(b) The term "employee" shall mean any individual who otherwise than as copartner of the employer or as an independent contractor renders personal services wholly or partly in this State to an employer who pays or agrees to pay such individual at a fixed rate, based on the time spent in the performance of such services or on the number of operations accomplished [which averages not in excess of ——— dollars per working day]. Provided, however, that the term "employee" shall not include any selling agent the amount of whose compensation is wholly or partly dependent upon the number or amount of his sales. And provided that where services are rendered only partly in this State an individual shall not be an employee under the meaning of this paragraph unless his contract of employment has been entered into, or payments thereunder are ordinarily made or to be made, within this State. [In determining at any time the average rate of payment of an individual in pursuance of this paragraph, there shall be considered only amounts paid and payable by the employer for services rendered during the immediately preceding 30 days, or the total time of the immediate employment, whichever is the shorter period.]

(c) The term "pay" shall mean to deliver or tender compensation at a previously designated and reasonably convenient place in this State, during working hours, in legal tender or by order or negotiable instrument payable and paid in legal tender, without discount, on demand in this State. The term

["rate of payment" shall mean the rate at which payment is made or is to be made in the manner described in this paragraph and the term] "payment" shall mean the delivery or tender of compensation in the medium of payment described in this paragraph. Such delivery or tender shall be made to the employee concerned or to any person having due authority to act in said employee's behalf.

(d) The term "demand" shall mean a written or oral demand for payment made during business hours on an employer or an appropriate representative of an employer by an employee or by some person having and exhibiting due authority to act in said employee's behalf.

(e) The term "wage claim" shall mean an employee's claim against his employer for compensation for his own personal services which [does not exceed ——— dollars in aggregate amount, has accrued at a rate averaging not in excess ——— dollars per working day during the particular employment, and] is unpaid in violation of any provision of section 3 of this act (chapter, etc.).

(f) The term "commissioner" shall mean the commissioner of labor for the time being.

(g) The term "court" shall mean a court of competent jurisdiction and proper venue to entertain the proceeding referred to by the context.

COMMENTARY ON SECTION 1

The general purpose of this defining section is to insure satisfactory interpretation and at the same time to avoid complex and confusing wording in the operative sections.

Paragraph a.—The provision that the employer must be "doing * * * business" is inserted as a brief and adequate substitute for many complex excepting clauses in existing acts. The phrase probably appears somewhere in the statutes of every State. Its meaning is well understood. This part of the definition, of course, excludes domestic service from the operative field of the statute.

The alternative or complementary limitations based on number of employees and number of working hours are inserted to exclude very small business concerns, the average run of farmers, etc. Observe that the limitation referring to number of employees is so worded as not to require that the entire time of these employees be used in the particular business. Hence this limitation provides a less precise standard than does the other limitation based upon aggregate working hours. Whether the latter more precise standard is desirable seems somewhat questionable to the draftsmen. Consequently they have placed the wording in square brackets. Generally speaking, throughout the act the draftsmen have placed in square brackets those passages which they believe ought to be considered but which they think may be wisely omitted.

The matter of the last two sentences of paragraph (a) should be stated explicitly to avoid difficulties of interpretation. On the whole the draftsmen would prefer to see the State and its governmental divisions included within the scope of the statute. But as it is common to exclude governmental units they have inserted a bracketed clause accomplishing this result.

Paragraph b.—The draftsmen feel that the statute should display an unequivocal intention to include piece workers as well as time workers. But they do not believe that such persons as traveling salesmen who work on commission should be included. They have taken pains in this paragraph to show that the "truck system" is not to be tolerated. While serious doubts have arisen in the past with respect to "truck acts", examination of the more recent decisions leads to the conclusion that legislation forbidding this method of payment is now likely to be held constitutional.

The two passages in square brackets call for some explanation. Unless these passages are inserted it is theoretically possible that very highly paid executives or professional advisers might claim the benefits of the statute. This of course seems somewhat ridiculous. Men of such financial standing are well able to employ their own lawyers and fight their own battles in court. However, the draftsmen believe that in few, if any, cases would this theoretical possibility be realized. Consequently it seems to them that the two square-bracketed passages might be omitted without any practical damage. The reader will notice that if these passages are included the paragraph has been so worded as to prevent tips, Christmas presents, and other gratuities from being included for the purpose of calculating average rate of payment.

Paragraph c.—The requirement that any order or commercial paper must not only be payable but actually paid in a certain way is a brief and adequate substitute for the complex provisions sometimes found as to the state of the employer's bank account, etc. The definition included in the square brackets seems superfluous to the draftsmen; but to make assurance doubly sure they have tentatively inserted it.

Paragraph d.—The shift from "working hours" in the preceding paragraph to "business hours" in this paragraph is intentional. To this extent it would seem that the employer's convenience should be consulted. The draftsmen assume that to a considerable extent "working hours" and "business hours" will coincide. Where this is not true a situation arises for special treatment under section 10. The shift of phrasing from "having due authority" in the preceding paragraph to "having and exhibiting due authority" in this paragraph has an obvious justification.

Paragraph e.—As to the bracketed matter in this paragraph compare the discussion of paragraph *b*, supra. Here again the draftsmen feel that as a practical matter the clause in brackets might well be omitted. Indeed, their feeling is somewhat stronger in the present connection. A good-natured stupid employee may be wheedled along by his employer until his unpaid claim exceeds even a rather liberal maximum amount. Yet because of the very amount tied up, such an employee will have less money in hand with which to seek ordinary legal assistance.

Obviously it is impractical to split a wage claim into the part payable for services within the State and the part payable for services outside the State. It has seemed to the draftsmen that the requirement in paragraph *b*, supra, of some services within the State is proper and not essentially inconsistent with the more broadly inclusive provisions of paragraph *e*.

Paragraph f.—The existence or institution of a public official or board charged with seeing to the enforcement of the statute is absolutely vital. Legislation of this type is the reverse of automatic in operation. It is safe to say that the great things accomplished of late years by wage-payment legislation and other social legislation of related types are attributable to the operation of proper administrative machinery for enforcement. On this point see R. H. Smith's article on Administrative Justice (18 Ill. Law Review, p. 211, 1923). For practical examples one may refer to the widely separated States of Massachusetts and California. The wage-payment laws of these States are very different in form. In Massachusetts enforcement of the statute ultimately depends upon criminal proceedings; the commissioner is not empowered to do collection work. In California, criminal proceedings are available as a last resort, but the bureau of labor statistics brings numerous civil actions to collect unpaid wages; as a matter of fact these collections consume most of the time of the bureau's staff, and in this work its accomplishments are greatest. Each of these statutes brings about large social benefit because an active executive organization impels it.

The model statute assumes the existence of an appropriate administrative official for its enforcement. Of course, the official title will vary from State to State. The duties of this office ought to extend to many other matters affecting labor besides the mere payment of wages. For that reason no attempt is made to insert a draft section creating such an administrative official or board for States where he or it is now nonexistent.

SEC. 2. Any employer may designate regular pay days for employees or any class or group of employees. Pay days so designated shall occur not less often than ——— in each calendar month and at intervals of not more than ——— days. In the absence of such designation, regular pay days shall fall on Friday of each week. When any regular pay day falls on a holiday or a Sunday, it shall shift to the next preceding business day. Every employer shall post and keep posted at each regular place of business in a position or positions easily accessible to all employees one or more notices on forms supplied from time to time by the commissioner containing (1) a copy or summary of the provisions of this act (chapter, etc.), (2) a statement of the regular pay days, and (3) a statement of the place or places and the time or times for payment of employees.

COMMENTARY ON SECTION 2

This section is purposely so drawn that the operation of the statute does not depend upon action by the employer in designating pay days. It is also drawn to permit designation of different sets of pay days by the same employer. In some large business organizations part of the employees are paid every day to spread the financial work. Normally the blanks in this section would be so filled as to make the statute call for

not fewer than 2 days per month at intervals not greater than 16 days; or for not fewer than 4 pay days per month at intervals not greater than 7, 8, or possibly 10 days. The provision that the commissioner shall prepare and supply the notices enables this part of the statute to be put very briefly. It also permits flexibility in the form of notice so that an ineffective form may be withdrawn from circulation and replaced by an effective one.

SEC. 3. Every employer shall pay employees as follows:

(a) On demand, after a discharge or decrease of compensation has become operative with respect to any employee, such employer shall pay said employee in full to the time of discharge or decrease of compensation.

(b) On each regular pay day such employer shall pay in full each employee voluntarily leaving employment on or since the last preceding regular pay day.

(c) On each regular pay day such employer shall pay each other employee in full for services rendered to within — working days of said pay day.

(d) If because of absence from the place of payment any employee is not paid on any regular pay day the sums then payable under this section, he shall be paid at any time thereafter on demand said sums, or he shall, if he so demands, be paid said sums by mail, less the actual cost of transmission.

(e) The mailing of compensation in the medium described by section 1, paragraph c, of this act (chapter, etc.) to an employee in time to reach his post-office address by usual course of mail on the proper regular pay day shall be due compliance with the requirements of this section.

None of the foregoing provisions shall make unlawful more frequent or earlier payment of any employee. Violation of any of the foregoing provisions of this section [shall give rise to a civil right of action on any resulting wage claim, and violation of any of said provisions] or of any provision of the last sentence of section 2 of this act (chapter, etc.) shall be a misdemeanor punishable on complaint of the employee affected or of the commissioner as hereinafter provided.

COMMENTARY ON SECTION 3

The corresponding sections of a number of existing acts call for payment of wages "earned" or "due." This seems dangerous wording, opening the way to devious legal quibblings. The model statute avoids it.

Paragraphs a, b, and c.—These are commonplace provisions found in the majority of existing acts. The model statute is so drawn that even if employees leave their employment for the purpose of going on strike they are entitled to prompt payment. It has seemed to the draftsmen that if a strike is to be recognized as a legitimate method of protest, discriminations should not be made against those who employ this method.

Paragraphs d and e.—These provisions are less usual and in some particulars unique to the model statute. They are self-explanatory.

In the concluding paragraph of this section it is assumed that minor criminal proceedings may be commenced by "complaint." It is also assumed that the district, county, or prosecuting attorney is not necessarily or usually engaged in such minor prosecutions. Hence there is no explicit provision requiring him to act at the instance of the commissioner. Such provision may be inserted if desired and practicable. The words in square brackets may well be omitted in view of the first sentence in section 8.

Ferry v. Kinsley Iron & Machine Company (195 Mass. 548, 81 N. E. 305 (1907)), serves at once as a concrete illustration of the difficulty indicated by the first paragraph of the commentary upon this section and also as a warning on an important point. In this case an employee who had left his employment without giving advance notice sued the former employer for unpaid wages. The employer's defense was based upon a contract between himself and the plaintiff whereby the latter agreed to forfeit "whatever wages [might] be due him" if he left without giving notice 10 days in advance. The Massachusetts wage-payment statute provided that an employee leaving his employment should be paid in full on the following regular pay day the wages earned by him. The statute also contained a provision that no person should by special contract or by any other means exempt himself from its operation. The court held that because of the agreement between plaintiff and defendant as to the giving of notice, the compensation which plaintiff claimed had not been "earned" in such sense that he could successfully sue for it.

The draftsmen have prepared their statute with the idea of preventing such contracts as the one involved in the foregoing case except where the commissioner's approval

is obtained. See section 10 and commentary thereon. But they realize that in some jurisdictions other legislation or judicial decisions might require this intention to be more explicitly indicated. Since they have in view a general object they do not attempt to deal with such peculiar situations. They also realize that as contracts of the kind above discussed will cause only moderate forfeitures when operating under a law compelling frequent periodic wage payments, it might be deemed advisable to permit these contracts. If so, it would probably be wisest to indicate this fact in a special provision. See also the commentary on section 12, which refers to another feature of the foregoing Massachusetts case.

SEC. 4. Any employer may not less than ——— days after the death of any employee and before the filing of a petition (application, etc.) for letters testamentary or of administration in respect of the decedent's estate, make payment of decedent's compensation [if not in excess of the maximum amount of a wage claim as above defined] to the wife, children, father or mother, brother or sister of the decedent, giving preference in the foregoing order; or, if no such relatives survive, may apply such payment or so much thereof as may be necessary to paying creditors of the decedent in the order of preference prescribed for satisfaction of debts by executors and administrators. The making or application of payment in this manner shall be a discharge and release of the employer to the amount thus paid or applied.

COMMENTARY ON SECTION 4

This is a convenient provision found in the laws of about half a dozen States in slightly varying forms. As it is optional, there is no need to spell out the details. An employer who does not feel safe in thus making payment is not required to do so. The usual time limits run from 30 to 120 days. Retention or exclusion of the matter enclosed in square brackets depends upon the way in which the bracketed matter of section 1, paragraph e, is dealt with.

SEC. 5. Any employee may sue his employer on a wage claim without giving security for payment of costs. In any such proceeding the court may allow the prevailing party in addition to all ordinary costs a reasonable sum not exceeding ——— dollars for expenses. No assignee of a wage claim shall be benefited or affected by this section except as expressly provided by paragraph b of section 6.

COMMENTARY ON SECTION 5

The provision of the first sentence may often be important particularly to nonresidents and is not likely to be held unconstitutional. The provision of the second sentence avoids one-sidedness and is almost undoubtedly constitutional. Holdings of unconstitutionality with respect to such provisions have generally occurred where an act gave an expense allowance to the employee only. The reason for preventing an assignee from having the benefits of this section is spoken of in the commentary on section 6, paragraph b.

SEC. 6. It shall be a (the) duty of the commissioner to enforce the provisions of this act (chapter, etc.), and to that end he shall have the following powers:

(a) He may investigate and attempt equitably to adjust controversies between employers and employees in respect of wage claims or alleged wage claims.

(b) He may take assignments of wage claims in trust for the assigning employees. All such assignments shall run to the commissioner and his successors in office. The commissioner may sue employers on wage claims thus assigned with the benefits and subject to the provisions of section 5. He may join in a single proceeding any number of wage claims against the same employer, but the court shall have discretionary power to order a severance or separate trials or hearings.

(c) He may make complaint in a criminal court for any violation of the provisions of section 3 or of the last sentence of section 2. Such complaint

shall be made not later than ——— months after the violation complained of. The employer complained against shall, if found guilty, be liable to a fine of not less than ——— dollars nor more than ——— dollars. Judgment may be entered for such fine and costs and may be enforced by execution and otherwise in the same manner as if rendered in a civil proceeding [but payment may not be enforced by imprisonment]. [Any such judgment shall have the same preference as a judgment for taxes in favor of the State.]

(d) He may, after entry of final judgment against an employer in any proceeding in pursuance of section 5 or the foregoing paragraphs of this section, require such employer to execute and deliver to him a bond conditioned upon the full future performance for a period of 1 year from its date of the provisions of section 3 and the last sentence of section 2. Every such bond shall run to the commissioner and his successors in office; shall be for a sum not exceeding — the average aggregate compensation payable monthly by such employer to employees in the business with respect to which judgment was entered; and shall be executed by one or more sureties satisfactory to the commissioner [or approved in the same manner as bail in criminal proceedings]. In determining the maximum amount for such a bond, there shall be computed the monthly average of the aggregate compensation paid and payable for services rendered by employees in such business over the 6-month period immediately preceding the commissioner's written notice or over the period during which said employer has been conducting said business, whichever period is shorter.

Before requiring such bond the commissioner shall give such employer not less than 7 days notice in writing to enable the employer to show cause why such bond should not be executed and delivered. Unless such bond is executed and delivered when duly required, any court shall, on suit by the commissioner, enjoin such employer from doing business in this State until the requirement is met, or shall make other, and may make further, orders appropriate to compel compliance with the requirement. In any legal proceeding respecting such bond, the employer shall have the burden of proving the amount thereof to be excessive.

The commissioner shall prosecute all legal proceedings [as a corporation sole] under his official title.

COMMENTARY ON SECTION 6

The paragraphs of this section are made optional rather than mandatory in terminology because the commissioner cannot possibly succeed unless he has substantial discretion. Of course the proper and effective use of the discretion depends upon the incumbent's ability and character. The best administrative machinery in the world will break down utterly if intrusted to incompetent officials.

Paragraph a.—This brief paragraph gives ample basis for conciliation procedure. American legal-aid organizations have shown how effectively conciliation can be carried on without special tribunals or elaborate special provisions or machinery. Experience in such States as Massachusetts indicates that it is unnecessary, and therefore unwise, to set up special administrative tribunals for handling wage claims.

Paragraph b.—This paragraph in less elaborate form is an important part of the California wage payment law. Its merits are debatable. The operation of a collection system entailing use of the civil courts requires a considerable force of public officials including lawyers and accountants. The cases of Massachusetts and California have already been contrasted. They afford material for comparison on the present point. The populations of the two States are very nearly equal. Massachusetts can scarcely be considered inferior in industrial activity. Yet while California during 1926 was collecting nearly \$900,000 on 25,000 wage claims, Massachusetts dealt with fewer than 2,000 wage claims on which between twenty-eight and twenty-nine thousand dollars were paid. The difference in the elaborateness and expense of the two administrative organizations may be imagined. Nor is the Massachusetts law ineffective. Its enforcement is admirable. But the Massachusetts criminal courts very expeditiously handle com-

plaints as to violation of the wage payment law. Nor is their hand weakened by constitutional provisions forbidding imprisonment for debt. Elsewhere, under different judicial and constitutional conditions the Massachusetts law might fail utterly and civil proceedings for wage collection might be the swiftest and best enforcement method. Hence the draftsmen insert the paragraph with the suggestion that it be promptly deleted wherever it is a needless extravagance.

Assignment of claims to the commissioner is provided for because he must have complete control of any claim which he takes in hand. If he merely obtained an appointment as attorney in fact complications and wrangles over control might impede or prevent successful collection. It will be observed that paragraph e of section 1, and section 5, and this paragraph combine to make the commissioner the only assignee who may have an allowance for expenses. It does not seem sound policy to hold out such golden possibilities to money lenders and other small speculators. The statute is so framed that the commissioner will in many cases have a choice between civil and criminal proceedings. Of course, he may resort to both under section 8.

Paragraph c.—Here again a "complaint" is assumed to be the normal method of commencing a minor criminal case. A very short period of limitation—perhaps not more than 3 or 6 months—ought probably to be prescribed. The matter enclosed in the first pair of brackets should be omitted, if possible. But where the local constitution forbids imprisonment for debt it is perhaps a discreet qualification. The matter in the next pair of brackets is a mere suggestion susceptible of entire omission or of great variation.

Paragraph d.—The draftsmen suggest that the maximum amount of the bond might be twice the aggregate monthly compensation. The matter enclosed in square brackets is a suggestion only. In a specific jurisdiction there may be other convenient methods of approving such bonds. Obviously the equitable proceedings contemplated for enforcement of the provisions of this paragraph might lead to imprisonment for contempt. But it does not seem that this would be "imprisonment for debt"; the whole hypothesis is that potential, not existing, creditors are to be given protection. Of course, a clause might be inserted forbidding enforcement of a decree or an order by imprisonment. But in connection with this and the preceding paragraphs, see section 11.

In the last brief paragraph the bracketed provision is probably superfluous. The idea sought here is to make substitution of successor commissioners automatic.

SEC. 7. Violation of any provision of section 3 or of the last sentence of section 2 by a corporation organized and existing under the laws of this state shall be sufficient cause for forfeiture of its charter, and such violation by a foreign corporation shall be sufficient cause for forfeiture of its right to do business in this State. At the request and upon the advice of the commissioner the attorney general may commence proper proceedings to enforce the forfeiture prescribed. Before commencing such proceedings the attorney general shall give the corporation affected not less than 7 days' notice in writing to enable it to present reasons why forfeiture should not be enforced. In such proceedings a prior civil judgment against the defendant on a wage claim shall place upon the defendant the burden of disproving its liability to forfeiture and a prior judgment under complaint made in accordance with paragraph c of section 6 shall be conclusive evidence of such liability.

COMMENTARY ON SECTION 7

The provisions of this section are suggested by a Colorado statute. (Colorado Comp. L., 1921, secs. 4238, 4239, and 4240.) The section has been drawn with the idea that the commissioners should be the primary moving force in forfeiture proceedings. The attorney general is assumed to be the proper public officer actually to institute and to carry on such proceedings. It has seemed wiser to make his action discretionary rather than mandatory. If the provision is enacted as it stands in the draft no corporation would be subjected to this serious penalty unless and until two responsible administrative officers had concurred as to the desirability of taking the step.

Since the attorney general brings his proceedings as a representative of the State it is fair and reasonable to give him the benefit of *res judicata* if a successful criminal prosecution for violation of the statute has already occurred. Some decisions state in broad terms that a legislature may not declare what shall be conclusive evidence of a fact. (*Johnson v. Theodoron*, 155 N. E. 483 (Ill., 1927).) But the draftsmen believe that this principle would not extend to a case where the evidence is a prior judgment of a domestic criminal court. Giving a prior civil judgment the effect of shifting the

burden of proof is calculated to extract an adequate explanation, if one exists, from the party having control of the evidence on the point. The draftsmen have hesitated to say that a prior civil judgment shall be either *prima facie* or presumptive evidence against the defendant because of the lack of precision with which both judges and legislators have used these terms. It might perhaps be wise to insert in this section a time limit similar to that contained in section 6, paragraph c.

It has occurred to the draftsmen that where special partnerships, joint stock associations, or business trusts receive special statutory privileges they, as well as corporations, might be subjected to the loss of these privileges for violations of the wage payment statute. But as provisions for translating this idea into legislation must of necessity be drawn according to the statutes of each particular State, no attempt is made here to suggest the proper wording.

SEC. 8. The remedies provided by this act (chapter, etc.) shall be additional to and not in substitution for other remedies now or hereafter existing or provided, and may be enforced simultaneously or consecutively so far as not inconsistent with each other. No payment or tender after the filing of a criminal complaint or commencement of any proceeding by the commissioner or the attorney general shall affect the liability therein of an employer for expenses, or prevent such employer from being subject to fine or forfeiture, or to the giving of bond for the performance of the provisions of this act (chapter, etc.). So far as any civil proceeding hereunder is brought in [or appealed to] a court of limited jurisdiction, allowance to the prevailing party for expenses shall be taxed as additional costs, shall not oust such court of jurisdiction, and may be enforced despite the fact that the total judgment thus rendered exceeds the ordinary maximum jurisdictional amount.

COMMENTARY ON SECTION 8

This section chokes off a number of questions which have arisen under existing acts.

SEC. 9. For the purpose of paying expenses and costs of the commissioner's proceedings under this act (chapter, etc.) there is hereby created a [trust] fund to be known as the contingent fund of the commissioner, and to be payable at any time or from time to time on order of the commissioner. This fund shall be self-sustaining. All sums collected by the commissioner for costs, expenses, and fines shall become part of this fund. A reasonable portion of the amount recovered on any assigned wage claim may also be added to the fund if the court in which judgment is entered so orders at the request of the commissioner. For the establishment of said contingent fund the sum of _____ dollars is hereby appropriated to be placed to the credit of said contingent fund as a temporary loan and paid out from time to time on order of the commissioner. This loan so far as availed of shall be repaid to the State treasury by applying any accumulations above _____ dollars in said fund on the _____ day of _____, 192—, and by applying subsequent accumulations annually thereafter until repayment without interest is completed.

COMMENTARY ON SECTION 9

A recent Nevada act suggests this section. (Nevada acts 1925, c. 95.) The provision seems desirable. The two difficulties which have been encountered in Nevada should be anticipated and avoided. The original Nevada appropriation for establishing the special fund amounted to only \$500. This sum was so small that it would hardly suffice to carry through one good case. Moreover, the formalities of drawing upon the fund in Nevada were too complicated. It is worthy of note that a former labor commissioner of Nevada met the second difficulty by borrowing \$500 on his personal responsibility and placing this sum in bank as the "special contingent fund", subject to personal check. By means of a small fee, which the law allowed him to exact, the loan was repaid, and in January 1927, a small balance existed at the bank. This practical experience in Nevada strongly indicates that such a revolving fund can be maintained at an adequate level without continued drafts upon the public treasury. The experience of legal-aid organizations in handling their expenses also leads to this favorable con-

clusion. So far as the wording of this section covers the matter of a public appropriation, it will need expansion and alteration to suit local usages.

SEC. 10. No employer may by special contract or any other means exempt himself from any provision of or liability or penalty imposed by this act (chapter, etc.) except so far as the commissioner in writing approves a special contract or other arrangement between an employer and one or more of such employer's employees. The commissioner shall not give his approval unless he finds that such contract or arrangement will not prejudicially affect the interests of the public or of the employee or employees involved, and he may at any time retract such approval, first giving the employer not less than 30 days' notice in writing. None of the provisions of this act (chapter, etc.) shall [affect the right of any employer under lawful contract to retain part of the compensation of any employee for the purpose of affording such employee insurance, or hospital, sick, or other similar relief; nor shall any of said provisions] diminish or enlarge the right of any person to assert and enforce a lawful set-off or counterclaim or to attach, take, reach, or apply an employee's compensation on due legal process.

COMMENTARY ON SECTION 10

The first sentence might be rhetorically strengthened by saying in so many words that contracts of this sort are null and void, or even by making it a misdemeanor to attempt to form such a contract or make such an arrangement. But a similarly worded clause has proved adequate in Massachusetts, substantially the only difference in phraseology being the substitution here of the word "may" for "shall" in the Massachusetts form. On the whole the draftsmen doubt whether the rhetorical strengthening would add much to the actual strength of the section. The provision for the commissioner's approval seems desirable as giving the statute reasonable elasticity and thus obviating the necessity of elaborate legislation as to peculiar cases. The draftsmen are very doubtful about the wisdom of inserting the words included in square brackets. They know the story of the camel who got his nose inside the tent door, and fear that this part of the section might turn out to be a legal camel.

SEC. 11. Despite any determination that any provision, or any application of any provision, or any particular method of enforcing any provision, of this act (chapter, etc.) is unconstitutional, the remaining provisions and applications and methods of enforcement shall be unaffected and shall remain in full force and effect.

COMMENTARY ON SECTION 11

In view of existing decisions respecting the constitutionality of such legislation this seems the most apt wording for a clause intended to accomplish the purpose of sustaining and holding together as many provisions as possible. The draftsmen wish to state that no conventional provision has been inserted in the model statute without careful weighing of precedents and that no novel provision has been inserted without a belief that the chances are in favor of its being declared constitutional. One favorite punitive provision—that imposing in one form or another a cumulative daily penalty for delay in payment of wages—the draftsmen have intentionally omitted. This provision, where it becomes severe enough to accomplish results, is very likely to be declared unconstitutional. Also it contains a "get rich quick without any work" flavor which is undesirable.

SEC. 12. Repeal, etc.

COMMENTARY ON SECTION 12

Since the object of this draft is to present a smooth, compact, and comprehensive statute, it is almost certain that any State enacting legislation based upon the draft would have to do a certain amount of repealing. For example, in *Ferry v. Kinsley Iron & Machine Company*, the Massachusetts case described in the commentary on section 3, it appears that the statute book contained a provision laying down certain requirements of mutuality with respect to agreements between employer and employee for advance notice of intention to discharge or to leave employment. The court very properly said that this constituted an implied recognition of the validity of these contracts.

Appendix D.—Legal Aid Directory

April 1935¹

[Compiled by the National Association of Legal Aid Organizations]

City	Name of organization	Address
Akron, Ohio.....	Legal Aid Committee of the Family Service Society.	76 South High St.
Albany, N. Y.....	Legal Aid Society.....	82 State St.
Atlanta, Ga.....	do.....	422 Fulton County Courthouse.
Baltimore, Md.....	Legal Aid Bureau, Inc.....	327 St. Paul Pl.
Boston, Mass.....	Legal Aid Society.....	16A Ashburton Pl.
Bridgeport, Conn.....	Legal Aid Division, Department of Public Charities.	Public Welfare Bldg.
Buffalo, N. Y.....	Legal Aid Bureau, Inc.....	367 Main St.
Cambridge, Mass.....	Harvard Legal Aid Bureau.....	Gannett House.
Chicago, Ill.....	Legal Aid Department of the Jewish Social Service Bureau.	1800 Seiden St.
Do.....	Legal Aid Bureau of the United Charities.....	203 North Wabash Ave.
Cincinnati, Ohio.....	Legal Aid Society.....	312 West 9th St.
Do.....	Voluntary Defender.....	Room 231, City Hall.
Cleveland, Ohio.....	Legal Aid Society.....	614 Fidelity Bldg., 1940 East 8th St.
Columbus, Ohio.....	Family Bureau.....	337 South High St.
Do.....	Legal Aid Clinic.....	Ohio State University.
Do.....	Clyde H. Wright, Esq.....	44 East Broad St.
Do.....	Lytle G. Zuber, Esq.....	43 West Long St.
Do.....	Public Defender.....	17 North High St.
Dallas, Tex.....	Free Legal Aid Bureau.....	404 City Hall.
Danville, Ill.....	Legal Aid Committee of the Illinois State Bar Association.	
Dayton, Ohio.....	Bureau of Legal Aid.....	
Denver, Colo.....	Legal Aid Society.....	303 Community Chest Bldg.
Detroit, Mich.....	Legal Aid Bureau of the Detroit Bar Association.	51 West Warren Ave.
Duluth, Minn.....	Legal Aid Bureau.....	177 City Hall.
Durham, N. C.....	Legal Aid Clinic.....	Duke University.
Erie, Pa.....	Legal Aid Committee of the Erie County Bar Association.	
Grand Rapids, Mich.....	Legal Aid Bureau of The Family Welfare Association.	306 Association of Commerce Bldg.
Hartford, Conn.....	Legal Aid Bureau.....	Municipal Bldg.
Do.....	Public Defender.....	750 Main St.
Indianapolis, Ind.....	Legal Aid Committee.....	520 Bankers Trust Bldg.
Jacksonville, Fla.....	Legal Aid Committee of the Jacksonville Bar Association.	1009 Greenlief Bldg.
Kalamazoo, Mich.....	Civic Improvement League.....	440 S. Burdick St.
Lansing, Mich.....	Legal Aid Bureau of the Ingham County Bar Association.	c/o Social Service Bureau, 567 Hollister Bldg.
Long Beach, Calif.....	Legal Aid Committee.....	635 First National Bank Bldg.
Los Angeles, Calif.....	Southern California Legal Aid Clinic Association.	712 W. 36th Place.
Do.....	Legal Aid Clinic.....	Southwestern University, 1121 S. Hill St.
Do.....	City Public Defender.....	Room 291, City Hall.
Do.....	County Public Defender.....	Hall of Justice.
Louisville, Ky.....	Legal Aid Society.....	312 Realty Bldg.
Madison, Wis.....	do.....	Cantwell Bldg.
Milwaukee, Wis.....	do.....	502 Safety Bldg.
Minneapolis, Minn.....	do.....	200 Citizens Aid Bldg.
Montreal, Canada.....	Legal Aid Bureau.....	1421 Atwater Ave.
Do.....	Legal Aid Department.....	c/o Baron De Hirsch Institute, 2040 Bleury St.
Nashville, Tenn.....	Legal Aid Bureau of the Chamber of Commerce.....	217 Chamber of Commerce Bldg.
Newark, N. J.....	Essex County Legal Aid Association.....	222 Market St.
New Bedford, Mass.....	Legal Aid Society.....	234 Union St.
New Haven, Conn.....	Municipal Legal Aid Bureau.....	City Hall.
New Orleans, La.....	Legal Aid Society.....	1406 Whitney Central Bank Bldg.
Do.....	Legal Aid Committee of the Bar Association.....	602 United Fruit Co. Bldg.

¹The National Association has been obliged to rely solely upon information sent to it in reply to questionnaires and upon such information as it had on file. It cannot therefore be held responsible for the accuracy of the information given.

City	Name of organization	Address
New York City	Legal Aid Society	11 Park Place.
Do	Legal Aid Bureau of the Educational Alliance	197 East Broadway.
Do	National Desertion Bureau	71 West 47th St.
Do	National Council of Jewish Women	1122 Forest Ave.
Do	Legal Aid Committee of the New York State Bar Association.	
Oakland, Calif.	Legal Aid Society	602 Security Bldg.
Do	Public Defender	2d Floor, Court House.
Omaha, Nebr.	do	Court House.
Peoria, Ill.	Associated Charities and Philanthropies	302 City Hall.
Philadelphia, Pa.	Legal Aid Society	400 Harrison Bldg., 4 South 15th St.
Do	Voluntary Defender Association	do
Pittsburgh, Pa.	Legal Aid Society	519 Smithfield St.
Plainfield, N. J.	Case Conference Committee, Society for Organizing Charity.	City Hall.
Portland, Oreg.	Legal Aid Committee of the Oregon State Bar Association.	212 Terminal Bldg.
Providence, R. I.	Legal Aid Society	100 North Main St.
Reading, Pa.	Legal Aid Committee of the Berks County Bar Association.	18 South 5th St.
Reno, Nev.	Frank W. Ingram	Clay Peters Bldg.
Rochester, N. Y.	Legal Aid Society	500 Aetna Bldg., 25 Exchange St.
Sacramento, Calif.	Legal Aid Committee	706 Capital National Bank Bldg.
St. Louis, Mo.	Legal Aid Bureau.	Department of Public Welfare 302 Municipal Courts Bldg.
Do	Legal Aid Committee of the St. Louis Relief Committee.	2221 Locust St.
St. Paul, Minn.	Legal Aid Department of the United Charities	106 Wilder Bldg.
Salt Lake City, Utah.	Legal Aid Society	612 Beason Bldg.
San Antonio, Tex.	Legal Aid Department of the Social Welfare Bureau.	4th floor, Court House.
San Diego, Calif.	Public attorney	Community Welfare Bldg., 645 A St.
San Francisco, Calif.	Legal Aid Society	913 Hearst Bldg.
Seattle, Wash.	Legal Aid Committee of the Washington State Bar.	Central Bldg.
Springfield, Mass.	Legal Aid Society	Community Welfare Bldg., 104 State St.
Springfield, Ohio.	Legal Aid Committee of the Springfield Bar	M & M Bldg.
Washington, D. C.	Legal Aid Department of the Council of Social Agencies.	1010 Vermont Ave. NW.
Wheeling, W. Va.	Legal Aid Committee of the Ohio County Bar Association.	607 Board of Trade Bldg.
White Plains, N. Y.	Bar Association of Westchester County with Social Agencies through Children's Association.	Bar Bldg.
Wilkes-Barre, Pa.	Charles N. Loveland	1111 Miners Bank Bldg.
Youngstown, Ohio.	Legal Aid Committee of the Youngstown Bar Association.	Court House.

Appendix E.—Work of Legal-Aid Organizations

The figures have been secured from the reports of such organizations as publish reports and by direct correspondence with other organizations. In a few instances where exact figures were not available reliable approximations furnished by responsible officials have been used. The detailed statistics begin with the year 1905 and continue to 1933. For the few organizations that existed prior to 1905, only the total figure to 1905 is stated. The detailed annual figures for such organizations can be found in the tables appended to *Justice and the Poor*, published by the Carnegie Foundation for the Advancement of Teaching, copies of which may be obtained by request addressed to the foundation at 522 Fifth Avenue, New York City. Where the fiscal year of an organization does not coincide with the calendar year, the figure has been placed in the column opposite the later calendar year; thus a figure for a fiscal year of 1922-23 has been placed in the column opposite the calendar year 1923. Annual figures are published by the legal-aid committee of the American Bar Association and by the National Association of Legal Aid Organizations. The figures of the American Bar Association show the number of cases handled and the expense of operation. The figures of the national association show the source, nature, and disposition of cases where such figures are available.

The first three tables, giving figures for separate organizations, include only those organizations for which we have data extending over a considerable number of years. These are followed by a summary table which includes figures for all organizations combined, so far as data are available.

TABLE 19.—Number of cases received by specified legal-aid organizations (existing in 1933)

[Member organizations of National Association of Legal Aid Organizations]

Year	Albany	Baltimore	Boston	Bridgeport	Buffalo	Cambridge	Chicago Legal Aid Bureau	Chicago Jewish Social Service Bureau	Cincinnati	Cleveland	Dallas	Denver	Detroit	Duluth	Durham	Grand Rapids	Hartford	Jack-sonville	Los Angeles
Prior to 1905			1,405				106,017	1,471											
1905			664				2,929	823											
1906			707				4,955	811		456									
1907			1,085				4,990	1,358		606									
1908			996				6,169	1,478		907									
1909			1,107				5,102	1,666		1,208									
1910			1,175				6,282	2,888		1,158									
1911			1,114				8,442	3,124		1,382			73						
1912		287	1,041		630		13,904	3,515	885	1,533			70						
1913		499	1,154		966	191	15,409	4,167	1,179	2,435			117	607					
1914		687	1,352		1,384	153	16,121	4,747	1,509	3,925			148	2,294				78	
1915		504	2,229		1,257	147	10,674	2,537	1,688	5,805			206	4,564				86	
1916		376	2,608		1,516	104	10,697	4,685	1,698	4,946			292	5,629				134	
1917		301	4,196		2,089	104	12,951		1,762	6,580			410	4,571				158	
1918		360	5,178		2,019	96	11,265		1,446	6,624			493	2,418				282	
1919		243	4,770		2,417	66	8,293		1,107	6,781			366	2,502				347	
1920		275	4,646		2,047	108	8,432		798	7,286			2,364	2,287				367	
1921		310	5,233		2,815	150	12,491		892	7,409			3,112	2,424		250		448	
1922		274	6,732	1,921	3,186	232	14,254	690	844	7,155			5,450	2,840		720		472	
1923		85	6,742	1,790	3,416	126	16,227	790	1,016	5,948			2,803	2,958		822		532	
1924		375	7,378	98	3,709	85	14,631	645	1,443	6,711	600		3,016	2,557		980		583	
1925		651	7,759	1,414	4,086	80	14,653	688	1,903	7,260		2 10	3,778	2,213		932		606	
1926		632	8,134	1,376	4,802	73	16,418	610	1,669	7,179			542	4,146		1,213		720	
1927		681	8,241	1,295	5,254	107	20,856	646	2,689	6,999			796	4,978		1,002			
1928		634	8,983	388	5,314	203	18,876	553	4,136	6,827	1,829		892	10,377		1,236		1,055	
1929		611	8,953	412	5,695	212	20,449	521	5,389	6,855	4,000	1,013	12,183	1,738		1,203			4 660
1930		752	1,450	10,227	1,253	6,250	252	23,309	611	6,572	3,700	1,279	15,422	1,647		1,427			1,400
1931		777	2,061	11,600	1,272	6,569	294	27,565	6,563	9,985		1,459	28,425		6 66	1,421			2,401
1932		958	3,180	12,961	1,346	6,815	823	29,731	998	7,038		7,200	1,860	38,145	1,553	226	1,446	1,575	154
1933		966	4,564	11,935	731	8,355	689	24,337	1,015	6,942		1,978	3,003	29,284	2,263	302	1,185	1,593	241
Total	7,122	16,237	150,205	13,296	80,591	4,378	506,429	41,631	59,168	151,056	22,626	10,314	165,658	51,843	594	14,089	10,038	395	9,621

¹ Work discontinued.

² 1 month.

³ Reorganized in 1929.

⁴ Legal-aid bureau organized.

⁵ 4 months.

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WORK OF LEGAL-AID ORGANIZATIONS

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TABLE 19.—Number of cases received by specified legal-aid organizations (existing in 1933)—Continued

[Member organizations of National Association of Legal Aid Organizations]

Year	Louis-ville	Madi-son	Mil-wau-kee	Min-neap-olis	Mont-real	New Haven	New York Legal Aid Society	New York National Deser-tion Bureau	New York Educa-tional Alli-ance	Oak-land	Phila-delphia	Pitts-burgh	Provi-dence	Roch-ester	Salt Lake City	San Fran-cisco	Spring-field	St. Louis	St. Paul
Prior to 1905.....							185,544		7,187		566								
1905.....							21,372		6,371		701								
1906.....							23,175		5,431		1,278								
1907.....							26,399		6,983		1,165								
1908.....							31,036		7,737		1,422								
1909.....							30,105		7,744		1,333	197							
1910.....							32,499		4,324		1,477	246							
1911.....							33,869	852	4,402		1,816	375		157					
1912.....							37,796	1,991	7,687		2,514	378							
1913.....				1,039			39,189	1,997	2,584		3,476	506						723	284
1914.....				1,905			40,430	1,998	7,997		3,874	649						1,905	930
1915.....				1,965			42,000	1,101	6,715		4,290	771						1,859	1,551
1916.....	113		297	3,029			41,646	957	5,788		4,845	684						1,235	1,749
1917.....	78			1,174	2,506		44,620	898	6,375		4,972	(⁶)						1,314	
1918.....				1,183	1,004		38,287	1,252	4,992		5,026	(⁶)						1,426	
1919.....				1,352	1,077		34,355	922	4,397		5,301	(⁶)						1,351	841
1920.....				1,410	1,460		30,466	1,009	3,986		6,991	(⁶)						1,376	975
1921.....				1,411	1,496		26,294	1,391	4,430		13,404	(⁶)	237	831				1,519	1,040
1922.....	730			1,549	1,701		30,128	1,337	4,706		12,231	(⁶)	367	800				1,313	931
1923.....	1,121			2,380	1,559		29,270	1,309	4,630		12,500	350	320	1,056		1,011		1,398	
1924.....	1,059			3,970	1,720		30,474	1,168	4,705		13,023	500	351	1,136		1,533		1,335	304
1925.....	1,084			3,970	1,514		29,502	1,129	3,892		12,692	235	385	1,225		1,532		1,359	613
1926.....	1,217			4,121	1,742	420	27,583	1,053	3,070		12,602	420	486	1,281		1,672		2,404	
1927.....	1,260			3,153	1,982	585	31,411	1,318	2,834		14,201	424	474	1,325		1,947	830	2,295	
1928.....	2,437			3,286	2,198	454	32,142	1,471	3,123		14,903	557	547	1,498		2,202	982	2,798	631
1929.....	3,858	10		3,184	1,989	548	35,103	1,372	2,777	467	14,559	1,044	594	2,349	137	2,578	1,220		
1930.....	4,730	80		3,175	1,959	534	31,881	1,363	4,294	1,106	18,253	1,550	746	3,174		3,978	1,800		782
1931.....	5,052	98		3,365	1,817	580	40,200	1,285	3,808	4,889	23,467	3,184	1,067	3,519		4,611	2,077		815
1932.....	8,010	279		2,528	2,105	886	3,452	40,867	934	3,326	2,232	4,136	1,425	3,200		4,116	2,355	3,362	1,119
1933.....	11,302	400		1,828	2,302	1,179	3,614	34,906	896	3,137	2,269	4,538	1,435	3,521		4,193	2,993	25,200	1,236
Total.....	42,051	867	43,356	38,159	5,186	15,750	1,152,489	26,303	149,143	10,963	237,557	21,092	8,434	29,534	619	33,160	12,257	56,241	14,619

⁶ No exact record; about 2,700 during 1917-22, inclusive.⁷ Reorganized in 1922

TABLE 20.—Number of cases received by specified nonmembers of the National Association of Legal Aid Organizations and public or voluntary defenders (existing in 1933)

Year	Nonmembers of national organization											Public or voluntary defenders							
	Atlanta	Dayton	Erie	Harrisburg	Kansas City	Los Angeles (civil cases) ¹		Newark	New Orleans	Reading	Washington	Wheeling	Cincinnati	Hartford	Los Angeles (criminal cases)		New York City (Manhattan)	Oakland	San Diego
						City defender	County defender								City defender	County defender			
Prior to 1905.....																			
1905.....								443											
1906.....								492											
1907.....								790											
1908.....								1,001											
1909.....																			
1910.....																			
1911.....					2,313														
1912.....					5,406														
1913.....					5,354										13,199				
1914.....		727			6,573						83				10,391				
1915.....		768			6,202			2,140	50		97				10,277	562			
1916.....		922			5,270			2,155	150		75				8,848	402			
1917.....					5,270				74		(3)			90	6,373	463	484		
1918.....					5,238				765		(3)			122	6,007	495	533		
1919.....					6,649				1,196		(3)			104	5,917	525	700		
1920.....					5,092	6,263		4,839			(3)			97	5,608	558	463		
1921.....		2,060			4,896	8,078		2,615	1,027					126	1,989	675	613		
1922.....		1,509			4,013	9,630		2,433	1,223		514			101	2,504	956	575		
1923.....		1,379			4,163	14,000			790					76	1,495	992	503		
1924.....	196	1,667			4,619			2,778			398			80		1,360	544		
1925.....	598	1,659			5,524	17,519		3,296						97	1,602	2,450	602		
1926.....	597	1,541			6,463	19,439		3,428	40		17			129	3,050	4,250	525		
1927.....	1,645	1,714			6,190	12,367		4,174			630			150	3,473	3,273	558		
1928.....	1,054	1,690			5,905			4,310			82			71	4,432				
1929.....	1,236	1,515		50	7,523			4,334			97			519	7,373		1,016	1,380	
1930.....	1,758	2,051		50	8,072			4,800						1,734	18,793	10,008	1,235	1,752	
1931.....	2,784	3,546		49	8,761	14,805		5,003						2,693	20,128	14,805	1,229	2,773	
1932.....	3,049	3,000		95	9,671	16,096		5,271	425		851			400	19,529	16,096	1,180	690	3,500
1933.....	3,089	4,200	110	111	9,199	15,690	41,516	4,938	731	315	803	134	1,664	200	24,707	2,608	1,151	603	1,000
Total.....	16,006	29,957	110	355	138,366	133,887	41,516	55,240	7,452	1,754	3,943	199	8,704	1,936	163,695	60,478	11,911	7,198	4,500

¹Early statistics combined civil with criminal matters—where only 1 figure appears both have been combined.
²Combined with county defender.
³No records.

⁴Reorganized in 1920.
⁵Part time.

TABLE 21.—Amount of money collected for clients by specified legal-aid organizations (existing in 1933)

[Members National Association of Legal-Aid Organizations]

Year	Albany	Balti- more	Boston	Bridge- port	Buffalo	Cam- bridge	Chicago Legal Aid Bureau	Chicago Jewish Social Service Bureau	Cin- cinnati	Cleve- land	Dallas	Den- ver	Detroit	Duluth	Dur- ham	Grand Rap- ids	Hart- ford	Jack- sonville	Los Angeles
Prior to 1905.....			\$8,416				\$125,898												
1905.....			5,917				3,857	\$6,548											
1906.....			8,100				7,206	9,794											
1907.....			8,888				7,009	19,198											
1908.....			5,760				9,503	23,354											
1909.....			7,748				5,954	21,006											
1910.....			6,686				7,845	28,516											
1911.....			6,686				9,048	22,192					\$610						
1912.....			6,131				17,200	19,740					820						
1913.....			3,989				22,861	26,679	\$1,175				1,151	\$5,230					
1914.....			4,005			\$1,159	29,066	30,623	1,659				2,751	8,086					
1915.....			25,195		\$948	1,647	18,528	29,269	2,086		\$949		1,202	8,927			\$218		
1916.....			22,808		2,881	410	21,529	32,737	2,271		3,889		1,776	16,408			390		
1917.....			47,556		3,128	410	22,508		2,229	\$2,705			2,587	21,964			323		
1918.....			52,180		4,196	605	36,460		1,843	6,136			5,757	25,363					
1919.....			90,542		4,153		28,267		2,482	11,647			2,104	35,490					
1920.....			54,046		4,153		32,157		2,461	18,455			10,800	29,569					
1921.....			44,457		4,153		58,448		2,194	19,234			12,848	37,129					
1922.....			26,524		31,048		53,884	3,317	2,475	9,404			11,300	27,159					
1923.....	\$928	(1)	44,260		27,662		68,428	4,206	2,825	30,442			12,500	32,585			\$2,201		
1924.....	5,442	(1)	62,241	\$2,733	33,268	300	64,660	5,204	5,222	29,942	900		19,196	44,676			3,407	1,000	
1925.....	7,398	(1)	106,074		44,084	400	86,165	2,499	4,680	17,137	1,741	\$2,000	15,282	45,704			3,228	10,400	
1926.....	11,971	(1)	93,393		39,541	330	80,103	2,092	3,056	8,972			18,832	35,711			5,097		
1927.....	13,844	(1)	188,095		7,236	41,902	1,117	100,336	3,844	17,742			1,700	17,971			4,053		
1928.....	10,966	(1)	85,876		8,437	49,967	3,858	82,563	4,046	8,944	3,738		7,506	20,491			4,234		
1929.....	17,441	\$3,000	152,037		7,202	33,814	4,011	127,049	5,607	20,353		9,000	28,118	29,119			4,271		\$500
1930.....	7,543	(1)	137,399		7,242	42,157	2,501	147,929	5,387	17,230	24,000	6,144	30,729	22,225			3,093		889
1931.....	9,607	(1)	113,000		5,231	18,317	2,839	119,888	6,144	9,869		2,809	33,446			(2)	3,215		40
1932.....	9,948	(1)	129,897		2,874	9,886	2,544	110,900	11,056	7,240	30,000	(1)	55,600	2,101	(3)		350	\$191	3,000
1933.....	7,458	(1)	82,660	4,386	8,043	2,666	122,029	9,677	4,794	6,264	22,000	(1)	57,127	1,623	(3)	1,983	321	(*)	6,000
Total.....	102,546	8,000	1,630,566	54,601	403,301	24,797	1,627,328	332,785	112,095	236,572	87,217	29,159	362,498	474,940		44,811	13,002	191	10,429

1 No record.

2 Reorganized in 1929.

3 None.

Year	Louisville	Madison	Milwaukee	Minneapolis	Montreal	New Haven	New York			Oakland	Philadelphia	Pittsburgh	Providence	Rochester	Salt Lake City	San Francisco	Springfield	St. Louis	St. Paul
							Legal Aid Society	National Deser-tion Bureau	Educational Alliance										
Prior to 1905							\$1,121,300		\$1,070		\$724								
1905							61,140		1,649		909								
1906							72,633				489								
1907							90,286				1,134								
1908							86,063			2,000	974								
1909							100,074				1,323								
1910							101,724				2,076								
1911							122,838	\$1,000	10,822		3,257								
1912							142,429	857	12,164		5,046							\$1,852	
1913				\$3,530			138,046	6,191	7,125		3,987	\$2,572						8,457	\$1,429
1914				5,707			134,895	6,330	14,413		6,676	5,648	\$812					4,893	5,086
1915				5,450			139,327	10,894	14,566		7,073	4,191	900					7,390	5,781
1916	\$73		\$546	7,401			128,005	12,511	16,537		11,286	6,800	689		\$685			5,109	6,477
1917			1,892	5,184			135,221		15,546										
1918			1,886	5,018			112,238		12,598										
1919			5,569	4,513			130,859		14,100										7,910
1920			4,504	3,531			147,371	28,800	16,224				1,850						8,500
1921			9,157	2,499			145,893	34,700	17,512	19,074			1,700						6,297
1922	1,678		11,638	2,264			171,656	46,800	22,199	21,341		\$700	4,500		9,010				6,043
1923	2,213		14,253	4,726			142,715		21,897	18,173		1,000	5,349						6,170
1924	3,115		13,157	4,020	\$11,403		133,370	100,000	22,046	20,533		1,000	4,450		10,679				4,914
1925	5,104		9,177	2,620	21,968		158,383		20,096	40,382	(1)		7,176		10,453				8,682
1926	7,952		9,109	3,111	29,000		127,451		19,556	38,653	(1)	2,125	8,289		6,804	\$5,513			7,399
1927	4,881		11,826	1,807	28,000	\$450	112,334		16,668	39,189	(1)	2,538	6,595		9,862	20,104			7,875
1928	18,080		5,290	1,170	28,360		105,581	23,160	18,195	30,207	(1)	2,294	20,070		10,000	20,467			8,219
1929	21,800	(2)	7,236	1,213	25,493		137,283		13,700	30,762	(1)	4,124	8,805		12,204	15,388			(1)
1930	26,600		8,409	6,056	29,418		198,687		11,981	40,136	4,398	3,769	16,629		10,000	25,275			(1)
1931	32,185	\$100	9,232	4,725	26,132		146,159	22,718	11,301	28,793	9,644	7,079	29,725	\$50	5,273	21,518			(1)
1932	33,964		4,270	1,775	21,641		144,793		23,215	64,042	5,465	530	22,009		5,356	24,117			(1)
1933	42,342		2,506	2,231	25,350		122,507		17,996	250	5,780	6,148	1,800	31,514	4,263	23,000	18,000		(1)
Total	199,937	100	129,657	78,551	246,765	5,036	4,811,266	293,961	388,524	1,200	442,019	47,366	27,701	171,062	50	94,589	155,382	136,418	20,85

¹ No records.

² None.

TABLE 22.—Amount of money collected for clients by specified nonmembers of the National Association of Legal Aid Organizations (existing in 1933)¹

Year	Atlanta	Dayton	Kansas City	Los Angeles (civil) ²	Newark	New Orleans	Reading	Washington
Prior to 1905					\$15,770			
1905								
1906					827			
1907								
1908					1,908			
1909								
1910								
1911			\$6,046					
1912			8,904					
1913			10,962					
1914		\$746	10,140					
1915		669	7,705	\$26,273	3,589			
1916		1,209	6,914	23,183	6,704			
1917			5,143					
1918			3,901	21,678				
1919			10,542	19,635				
1920			10,520	15,844	1,550			
1921			14,896	22,939	3,030			
1922			10,965	30,583	2,782			
1923			5,345	38,308	1,423			
1924	\$100		11,274	27,494	1,945			\$3,123
1925	(³)		11,273	37,721	4,031			
1926	(³)	3,600	15,489	48,058	3,066			
1927	(³)	6,000	17,585		5,344			
1928	(³)	6,750	18,828		8,911			
1929	8,137	4,500	17,000		5,141			
1930	7,421		21,646		6,731			
1931	9,413	4,500	20,632		4,477		\$250	
1932	23,550	2,500	17,592		3,517		500	
1933	24,137	950	14,032		3,892	\$1,242		
Total	72,758	31,424	277,844	311,716	84,638	1,242	750	3,123

¹ No collections made by public or voluntary defenders in criminal cases.

² City defender.

³ No records.

TABLE 23.—Gross operating expense of specified legal aid organizations (operating in 1933)

[Member organizations of National Association of Legal Aid Organizations]

Year	Albany	Baltimore	Boston	Bridge- port	Buffalo	Cam- bridge	Chicago		Cincin- nati	Cleveland	Dallas	Denver
							Legal Aid Bureau	Jewish Social Service Bureau				
Prior to 1905.....			\$5,749				\$126,897	\$13,178				
1905.....			1,500				4,224	3,900				
1906.....			1,788				7,457	4,600		\$1,064		
1907.....			2,704				8,080	6,666		1,523		
1908.....			2,469				8,253	7,679		1,409		
1909.....			2,560				8,361	10,020		1,864		
1910.....			2,899				8,991	12,175		2,382		
1911.....			3,741				12,851	14,518		2,382		
1912.....		\$1,107	4,567		\$1,742		19,180	19,859	\$492	2,298		
1913.....		809	5,030		2,015		24,826	19,075	1,220	2,603		
1914.....		2,025	5,331		2,158		26,853	22,300	1,238	1,841		
1915.....		1,020	5,396		2,336		17,593	23,900	1,209	3,248	\$2,430	
1916.....		1,020	6,498		2,372		18,318	25,297	1,359	3,210	2,415	
1917.....			8,625		2,702	\$100	19,330		1,800	4,013		
1918.....			11,248		2,585		25,493		1,800	4,666		
1919.....			14,139		6,250		14,153		2,300	5,700		
1920.....			18,548		4,150		18,855		2,300	13,360		
1921.....			20,246		9,020	499	21,718		2,400	17,714		
1922.....			29,836	\$4,700	12,216		21,305		2,500	17,582		
1923.....	\$500	(1)	40,914	5,200	13,506		25,670		2,500	19,035		
1924.....	2,163	2,400	30,006	4,500		100	32,847		3,500	23,058		
1925.....	3,000	2,400	32,516	4,500	15,227	300	34,163	10,000	3,500	25,625		\$2,130
1926.....	3,500	2,400	36,431	5,270	16,981	423	30,101		4,024	23,255		2,301
1927.....	3,713	2,400	38,318	5,270		430	37,866		6,195	18,813		4,673
1928.....	4,275	2,400	40,536	5,270	18,190	500	38,027		8,914	26,191		4,915
1929.....	3,845	4,500	41,124	5,470		601	38,065		12,528	26,730		4,762
1930.....	4,128	6,500	46,753	3,000	23,400	527	42,501		13,702	26,861	1,800	4,801
1931.....	4,437	8,275	46,348	3,000	22,599	857	49,451		11,830	26,316	1,800	4,772
1932.....	4,218	10,250	46,751	2,825	22,041	922	49,476		10,922	23,060	1,800	4,974
1933.....	4,019	11,000	41,360	4,325	26,862	1,018	45,233		11,622	16,685	2,300	4,378
Total.....	37,798	58,506	593,931	53,330	206,352	6,277	836,138	193,067	107,855	342,448	12,845	37,706

WORK OF LEGAL-AID ORGANIZATIONS

TABLE 23.—Gross operating expense of specified legal aid organizations (operating in 1933)—Continued

Year	Detroit	Duluth	Durham	Grand Rapids	Hartford	Jacksonville	Los Angeles	Louisville	Madison	Milwaukee	Minneapolis	Montreal	New Haven
1910.....	\$500												
1911.....	500												
1912.....	500												
1913.....	500										\$1,324		
1914.....	500	\$2,391									2,940		
1915.....	500	3,032			\$135						2,231		
1916.....	500	4,280			114					\$877	3,435		
1917.....	672									3,017	3,971		
1918.....	696									4,323	3,657		
1919.....	650									5,048	4,489		
1920.....	6,266									5,447	5,702		
1921.....	8,180									5,594	5,866		
1922.....	9,301			\$3,158				\$3,950		5,870	6,140		
1923.....	10,953			3,687	1,200			6,683		6,043	6,402		
1924.....	12,629			4,176	1,200			6,893		7,571	6,732	\$3,000	
1925.....	12,689	1,825		4,144	1,200			6,622		7,948	7,237	4,500	
1926.....	13,781	1,050		4,691				6,765		8,054	6,644	3,000	
1927.....	14,322	2,280		5,009	1,350					8,526	7,695	4,000	\$2,150
1928.....	15,456	3,465		5,164				7,585		8,396	8,065	5,620	2,200
1929.....	15,055	3,465		5,377			\$2,500	7,611	\$110	8,367	8,787	5,500	2,328
1930.....	15,112			5,516			8,919	6,904	180	8,144	8,504	5,500	2,400
1931.....	17,089		(?)	5,579			10,000	7,700	160	7,662	8,814	5,500	2,180
1932.....	28,924	1,620	(?)	5,579	1,500	\$739	(?)	8,467	240	7,193	7,655	5,600	2,200
1933.....	17,818			2,094	1,350	883	6,288	8,780	516	5,613	7,732	7,200	2,200
Total.....	203,093	23,408		54,174	8,049	1,622	27,707	77,960	1,206	113,693	124,022	49,420	15,658

1 No records.

2 Cannot estimate.

Year	New York			Oakland	Phila- delphia	Pitts- burgh	Provi- dence	Roches- ter	Salt Lake City	San Fran- cisco	Spring- field	St. Louis	St. Paul
	Legal aid society	National Desertion Bureau	Educa- tional Al- liance										
Prior to 1905.....	\$191,564		\$33		\$2,457								
1905.....	28,553		2,903		1,654								
1906.....	32,116		3,960		2,362								
1907.....	38,682		3,061		1,904								
1908.....	41,485		3,102		2,137								
1909.....	41,641		5,381		1,685	\$658							
1910.....	39,409		6,169		1,713	1,046							
1911.....	43,114	\$5,000	6,740		1,846	933		\$251					
1912.....	46,194	7,516	7,053		2,295	1,176		619					
1913.....	45,200	8,973	3,765		2,510	1,024		833				\$2,803	\$1,175
1914.....	44,140	9,381	7,388		3,344	1,295		688					1,384
1915.....	45,609	10,446	6,870		4,316	1,615		989				2,381	1,662
1916.....	44,648	11,699	6,959		4,437	1,882				\$993		5,867	1,839
1917.....	45,000	11,848	7,457			1,791		1,400					
1918.....	43,989	10,779	7,347			1,799		2,560					
1919.....	47,051	16,746	7,696					3,200					
1920.....	57,277	17,980	6,895			2,116		3,600				6,611	
1921.....	61,739	16,149	6,661		27,000	2,738		4,100				7,479	
1922.....	63,968	16,475	7,656		27,935	1,913	\$3,032	4,100				8,167	
1923.....	63,603	16,718	7,656		28,555	1,685	2,905	4,350		5,000		8,168	4,040
1924.....	91,143	17,944	7,656		27,023	1,456	2,905	5,000		9,014		8,008	3,054
1925.....	93,434	19,894	7,656		28,938		3,338	5,904		10,852		7,851	2,064
1926.....	96,444	22,304	8,968		29,000	1,763	3,338	6,215				7,432	3,854
1927.....	97,267	22,222	7,170		28,600		3,818	7,217				7,691	9,360
1928.....	105,581	23,160	9,613		33,713		4,647	7,200				8,032	
1929.....	124,343	22,656	8,354	\$1,681	30,000	8,810	5,067	7,420	\$900		9,487	\$5,600	
1930.....	100,585	23,125	10,000	5,064	33,993	13,155	5,765	6,794			9,497	6,200	
1931.....	145,979	22,718	7,691	5,149	31,698	15,031	5,939	10,203			10,447	6,550	
1932.....	141,617	18,303	6,888	5,407	25,934	14,597	6,158	11,042	900		8,000	7,114	5,348
1933.....	124,108	16,718	6,003	3,939		12,627	5,724	11,153	1,110		7,672	7,284	5,362
											6,885	7,293	4,719
											6,500	7,321	5,173
Total.....	2,185,483	369,254	194,551	21,240	385,049	89,110	54,655	106,151	2,910	93,410	46,133	102,978	48,934

TABLE 24.—Gross operating expense of specified legal-aid organizations (operating in 1933)

Year	Nonmembers of national organization							Public or voluntary defenders						
	Atlanta	Dayton	Kansas City	Newark	New Orleans	Reading	Wheeling	Cincinnati	Hartford	Los Angeles (civil and criminal) ¹		New York	Oakland	San Diego
										City defender	County defender			
Prior to 1905.....														
1905.....														
1906.....														
1907.....														
1908.....														
1909.....														
1910.....														
1911.....			\$1,338											
1912.....			5,394											
1913.....			5,107							\$4,641				
1914.....		\$552	5,283							18,831				
1915.....		1,222	5,609	\$1,440						21,613				
1916.....		1,315	5,144	3,132						21,199				
1917.....			4,226							21,133				
1918.....			4,225							21,846		\$13,474		
1919.....			5,878							18,496	\$14,072			
1920.....			6,180	3,370						20,982	3,920	10,706		
1921.....			7,169	5,697						24,806	5,202	17,292		
1922.....			7,666	5,568					\$2,500	24,749	5,619	18,000		
1923.....			8,400	3,210					3,000		6,483	18,000		
1924.....	\$1,836	1,570	6,912	5,294					3,000			18,500		
1925.....	4,000	2,500	5,400	4,895					2,743	32,539	6,513	19,885		\$3,360
1926.....	5,561	2,500	5,400	4,943					2,900		6,904	20,550		
1927.....	6,139	2,500	8,400	4,671					2,900	7,317	7,433	18,300		
1928.....	6,456	2,500	7,000	4,050		\$650			2,663	9,673	9,900	20,000		
1929.....	5,828	2,500	6,200	5,465		650		\$1,500	2,700	11,935		31,000	\$9,785	2,400
1930.....	6,180	2,500	5,355	6,210		650			2,700	13,109		32,181	10,307	2,400
1931.....	7,181	2,500	7,455	6,497	(?)	650		2,000	2,900	13,386		34,506	12,272	2,500
1932.....	7,316	2,500	6,120	5,723		650		1,515	2,700	14,635		35,270	12,480	2,700
1933.....	6,274	2,443	6,500	4,618	\$900	650			2,700	20,981		26,777	11,325	2,484
Total.....	56,771	27,102	136,361	74,683	900	3,900	51	5,015	33,406	321,871	66,046	334,441	56,169	15,844

¹ Includes figures of Los Angeles nonmember organizations.² Prior to 1920.³ No records.

TABLE 25.—Summary of work of legal-aid organizations in the United States by years (for organizations reporting)

Year	Member organizations of N. A. L. A. O.			Nonmembers of N. A. L. A. O.			Public or voluntary defenders ³	
	Number of cases received	Amounts collected for clients	Operating expenses	Number of cases received	Amounts collected for clients	Operating expenses	Number of cases received	Operating expenses
Prior to 1905.....	302, 190	\$1, 257, 408	\$339, 878	443	\$15, 770	(?)	-----	-----
1905.....	32, 860	80, 020	42, 737	492	-----	-----	-----	-----
1906.....	36, 813	96, 222	53, 347	790	827	(?)	-----	-----
1907.....	42, 596	126, 515	62, 620	-----	-----	-----	-----	-----
1908.....	48, 942	127, 654	66, 534	1, 001	1, 908	(?)	-----	-----
1909.....	48, 212	136, 105	72, 170	-----	-----	-----	-----	-----
1910.....	50, 308	160, 195	75, 294	-----	-----	-----	-----	-----
1911.....	55, 547	176, 453	91, 856	2, 313	6, 046	\$1, 338	-----	-----
1912.....	72, 365	206, 239	114, 598	5, 406	8, 904	5, 394	-----	-----
1913.....	77, 186	232, 422	126, 685	5, 354	10, 962	5, 107	3, 199	\$4, 641
1914.....	91, 460	261, 947	136, 197	7, 383	10, 886	5, 835	10, 391	18, 831
1915.....	91, 375	284, 683	136, 718	9, 257	38, 236	8, 271	10, 839	21, 613
1916.....	95, 147	301, 201	149, 322	8, 572	38, 010	9, 591	9, 250	21, 199
1917.....	95, 922	260, 930	111, 786	5, 344	5, 143	4, 226	7, 410	34, 607
1918.....	85, 766	264, 280	120, 942	6, 003	25, 579	4, 225	7, 157	21, 846
1919.....	77, 952	327, 636	134, 033	7, 845	30, 177	5, 878	7, 246	32, 568
1920.....	77, 581	361, 921	169, 975	13, 215	27, 914	9, 550	4, 726	35, 608
1921.....	87, 791	415, 295	220, 823	19, 190	40, 865	12, 766	3, 403	47, 300
1922.....	101, 496	465, 141	258, 786	19, 134	44, 330	13, 234	4, 136	50, 868
1923.....	100, 375	444, 859	286, 645	20, 370	45, 076	11, 610	3, 060	27, 483
1924.....	103, 999	699, 214	313, 131	9, 658	43, 936	15, 612	1, 090	21, 500
1925.....	105, 640	627, 067	360, 828	28, 636	53, 025	32, 407	3, 751	65, 040
1926.....	107, 946	573, 320	352, 800	31, 753	70, 223	18, 454	7, 954	30, 354
1927.....	121, 589	688, 294	352, 423	26, 720	28, 929	21, 710	7, 454	35, 950
1928.....	134, 510	616, 372	412, 664	13, 488	34, 489	20, 656	4, 667	42, 236
1929.....	144, 103	735, 993	422, 953	14, 810	34, 778	20, 643	19, 196	59, 320
1930.....	165, 147	852, 673	454, 096	16, 825	35, 798	20, 895	33, 522	60, 697
1931.....	203, 509	694, 078	509, 095	35, 248	39, 272	24, 283	41, 628	67, 564
1932.....	234, 566	757, 514	504, 493	38, 699	47, 659	22, 360	43, 418	69, 300
1933.....	219, 276	641, 697	436, 788	80, 836	44, 253	21, 385	31, 933	64, 267
Totals.....	3, 213, 170	12, 885, 328	6, 886, 187	428, 785	782, 995	315, 430	266, 330	832, 792

¹ Montreal is a member of the N. A. L. A. O.
² No figure.
³ No collections in criminal cases.

TABLE 26.—Recapitulation ¹

Type of organization	Number of cases received	Amounts collected for clients	Operating expenses
Member organizations.....	3, 213, 170	\$12, 885, 328	\$6, 886, 187
Nonmember organizations.....	428, 785	782, 995	315, 430
Public or voluntary defenders.....	266, 330	-----	832, 792
Total.....	3, 908, 285	13, 668, 323	8, 034, 409

¹ For organizations included in table 25.

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List of Bulletins of the Bureau of Labor Statistics

The following is a list of all bulletins of the Bureau of Labor Statistics published since July 1912, except that in the case of bulletins giving the results of periodic surveys of the Bureau only the latest bulletin on any one subject is here listed.

A complete list of the reports and bulletins issued prior to July 1912, as well as the bulletins published since that date, will be furnished on application. Publications indicated by an asterisk, which are not available for free distribution, can in some cases be obtained by purchase from the Superintendent of Documents, Government Printing Office, Washington, D. C.; all can be consulted at libraries which are Government repositories.

Collective agreements

- *No. 191. Collective bargaining in the anthracite coal industry. [1916.]
- *No. 198. Collective agreements in the men's clothing industry. [1916.]
- No. 341. Trade agreement in the silk-ribbon industry of New York City. [1923.]
- *No. 402. Collective bargaining by actors. [1926.]
- *No. 468. Trade agreements, 1927.

Conciliation and arbitration (including strikes and lockouts)

- *No. 124. Conciliation and arbitration in the building trades of Greater New York. [1913.]
- *No. 133. Report of the industrial council of the British Board of Trade on its inquiry into industrial agreements. [1913.]
- *No. 139. Michigan copper district strike. [1914.]
- *No. 144. Industrial court of the cloak, suit, and skirt industry of New York City. [1914.]
- *No. 145. Conciliation, arbitration, and sanitation in the dress and waist industry of New York City. [1914.]
- No. 283. Operation of the Industrial Disputes Investigation Act of Canada. [1918.]
- *No. 255. Joint industrial councils in Great Britain. [1919.]
- *No. 283. History of the Shipbuilding Labor Adjustment Board, 1917 to 1919.
- *No. 287. National War Labor Board: History of its formation and activities, etc. [1921.]
- *No. 303. Use of Federal power in settlement of railway labor disputes. [1922.]
- *No. 481. Joint industrial control in the book and job printing industry. [1928.]

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- *No. 313. Consumers' cooperative societies in the United States in 1920.
- *No. 314. Cooperative credit societies (credit unions) in America and in foreign countries. [1922.]
- *No. 437. Cooperative movement in the United States in 1925 (other than agricultural).
- *No. 531. Consumers', credit, and productive cooperative societies, 1929.
- *No. 598. Organization and management of consumers' cooperative associations and clubs (with model bylaws). [1934.]
- No. 606. Organization and management of cooperative gasoline and oil associations (with model bylaws). [1934.]
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- No. 612. Consumers', credit, and productive cooperation in 1933.

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- *No. 109. Statistics of unemployment and the work of employment offices [in the United States]. [1913.]
- *No. 172. Unemployment in New York City, N. Y. [1915.]
- *No. 183. Regularity of employment in the women's ready-to-wear garment industries. [1915.]
- *No. 193. Unemployment in the United States. [1916.]
- *No. 196. Proceedings of Employment Managers' Conference, held at Minneapolis, Minn., January 19 and 20, 1916.
- *No. 202. Proceedings of the conference of Employment Managers' Association of Boston, Mass., held May 10, 1916.
- *No. 206. The British system of labor exchanges. [1916.]
- *No. 227. Proceedings of Employment Managers' Conference, Philadelphia, Pa., April 2 and 3, 1917.
- *No. 235. Employment system of the Lake Carriers' Association. [1918.]
- *No. 241. Public employment offices in the United States. [1918.]
- *No. 247. Proceedings of Employment Managers' Conference, Rochester, N. Y., May 9-11, 1918.
- *No. 310. Industrial unemployment: A statistical study of its extent and causes. [1922.]
- *No. 409. Unemployment in Columbus, Ohio, 1921 to 1925.
- *No. 542. Report of the Advisory Committee on Employment Statistics. [1931.]
- *No. 544. Unemployment-benefit plans in the United States and unemployment insurance in foreign countries. [1931.]
- No. 553. Fluctuation in employment in Ohio, 1914 to 1929.
- *No. 555. Social and economic character of unemployment in Philadelphia, April 1930.
- No. 610. Revised indexes of factory employment and pay rolls, 1919 to 1933.
- *No. 611. Unemployment insurance and reserves in the United States: A selected list of recent references. [1935.]
- No. 613. A average annual wage and salary payments in Ohio, 1916 to 1932.

Housing

- *No. 158. Government aid to home owning and housing of working people in foreign countries. [1914.]
- *No. 263. Housing by employers in the United States. [1920.]
- No. 295. Building operations in representative cities, 1920.
- No. 545. Building permits in the principal cities of the United States [1921] to 1930.
- No. 608. Organization and management of cooperative housing associations (with model bylaws). [1934.]

Industrial accidents and hygiene (including occupational diseases and poisons)

- *No. 104. Lead poisoning in potteries, tile works, and porcelain-enameled sanitary ware factories. [1912.]
- No. 120. Hygiene of the painters' trade. [1913.]
- *No. 127. Dangers to workers from dusts and fumes, and methods of protection. [1913.]
- *No. 141. Lead poisoning in the smelting and refining of lead. [1914.]
- *No. 157. Industrial accident statistics. [1915.]
- *No. 165. Lead poisoning in the manufacture of storage batteries. [1914.]
- *No. 179. Industrial poisons used in the rubber industry. [1915.]
- *No. 188. Report of British departmental committee on the danger in the use of lead in the painting of buildings. [1916.]
- *No. 201. Report of the committee on statistics and compensation insurance costs of the International Association of Industrial Accident Boards and Commissions. [1916.]
- *No. 209. Hygiene of the printing trades. [1917.]
- *No. 219. Industrial poisons used or produced in the manufacture of explosives. [1917.]
- *No. 221. Hours, fatigue, and health in British munition factories. [1917.]
- *No. 230. Industrial efficiency and fatigue in British munition factories. [1917.]
- *No. 231. Mortality from respiratory diseases in dusty trades (inorganic dusts). [1918.]
- *No. 234. The safety movement in the iron and steel industry, 1907 to 1917.
- *No. 236. Effects of the air hammer on the hands of stonecutters. [1918.]
- *No. 249. Industrial health and efficiency. Final report of British Health of Munition Workers' Committee. [1919.]
- *No. 251. Preventable death in the cotton-manufacturing industry. [1919.]
- *No. 256. Accidents and accident prevention in machine building. [1919.]
- No. 267. Anthrax as an occupational disease. [1920.]
- No. 276. Standardization of industrial accident statistics. [1920.]
- *No. 280. Industrial poisoning in making coal-tar dyes and dye intermediates. [1921.]
- *No. 291. Carbon monoxide poisoning. [1921.]
- *No. 293. The problem of dust phthisis in the granite stone industry. [1922.]
- No. 298. Causes and prevention of accidents in the iron and steel industry, 1910-1919.
- No. 392. Survey of hygienic conditions in the printing trades. [1925.]
- No. 405. Phosphorus necrosis in the manufacture of fireworks and in the preparation of phosphorus. [1926.]
- No. 427. Health survey of the printing trades, 1922 to 1925.
- No. 428. Proceedings of the Industrial Accident Prevention Conference, held at Washington, D. C., July 14-16, 1926.
- No. 460. A new test for industrial lead poisoning. [1928.]
- No. 466. Settlement for accidents to American seamen. [1928.]
- No. 483. Deaths from lead poisoning, 1925-1927.
- No. 490. Statistics of industrial accidents in the United States to the end of 1927.
- No. 507. Causes of death, by occupation. [1930.]
- *No. 532. Occupational hazards and diagnostic signs: A guide to impairments to be looked for in hazardous occupations. (Revision of Bul. No. 306.) [1933.]
- No. 602. Discussions of industrial accidents and diseases at the 1933 meeting of the International Association of Industrial Accident Boards and Commissions, Chicago, Ill.

Industrial relations and labor conditions

- *No. 237. Industrial unrest in Great Britain. [1917.]
- *No. 340. Chinese migrations, with special reference to labor conditions. [1923.]
- *No. 349. Industrial relations in the West Coast lumber industry. [1923.]
- *No. 361. Labor relations in the Fairmont (W. Va.) bituminous-coal field. [1924.]
- No. 380. Postwar labor conditions in Germany. [1925.]
- No. 383. Works council movement in Germany. [1925.]
- No. 384. Labor conditions in the shoe industry in Massachusetts, 1920-1924.
- No. 399. Labor relations in the lace and lace-curtain industries in the United States. [1925.]
- No. 483. Conditions in the shoe industry in Haverhill, Mass., 1925.
- No. 534. Labor conditions in the Territory of Hawaii, 1929-1930.

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- *No. 211. Labor laws and their administration in the Pacific States. [1917.]
- *No. 229. Wage-payment legislation in the United States. [1917.]
- *No. 285. Minimum-wage laws of the United States: Construction and operation. [1921.]
- *No. 321. Labor laws that have been declared unconstitutional. [1922.]
- No. 322. Kansas Court of Industrial Relations. [1923.]
- No. 343. Laws providing for bureaus of labor statistics, etc. [1923.]
- No. 370. Labor laws of the United States, with decisions of courts relating thereto. [1925.]
- No. 408. Laws relating to payment of wages. [1926.]
- *No. 581. Laws relating to employment agencies in the United States, as of January 1, 1933.
- No. 583. Proceedings of the National Conference for Labor Legislation, held at Washington, D. C., February 14 and 15, 1934.
- No. 590. Labor legislation, 1931 and 1932.
- *No. 592. Decisions of courts and opinions affecting labor, 1931 and 1932.
- *No. 596. Laws relating to prison labor in the United States, as of July 1, 1933.
- *No. 603. Comparative digest of labor legislation for the States of Alabama, Florida, Georgia, South Carolina, Tennessee. [1933.]
- No. 609. Discussions of labor laws and their administration at the 1933 convention of the Association of Governmental Officials in Industry of the United States and Canada, Chicago, Ill.

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- *No. 142. Administration of labor laws and factory inspection in certain European countries. [1914.]
- No. 494. Labor legislation of Uruguay. [1929.]
- No. 510. Labor legislation of Argentina. [1936.]
- No. 529. Workmen's compensation legislation of the Latin American countries. [1930.]
- No. 549. Labor legislation of Venezuela. [1931.]
- No. 554. Labor legislation of Paraguay. [1931.]
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- *No. 342. International Seamen's Union of America: A study of its history and problems. [1923.]
- No. 461. Labor organizations in Chile. [1923.]
- *No. 465. Beneficial activities of American trade-unions. [1928.]
- *No. 506. Handbook of American trade-unions: 1929 edition.

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- *No. 167. Minimum-wage legislation in the United States and foreign countries. [1915.]
- *No. 176. Effect of minimum-wage determinations in Oregon. [1915.]
- *No. 285. Minimum-wage laws of the United States: Construction and operation. [1921.]
- *No. 467. Minimum-wage legislation in various countries. [1928.]

Old-age care, pensions, and insurance

- *No. 386. Cost of American almshouses. [1925.]
- *No. 465. Beneficial activities of American trade unions. [1928.]
- No. 477. Public-service retirement systems, United States, Canada, and Europe. [1929.]
- *No. 489. Care of aged persons in the United States. [1929.]
- No. 505. Directory of homes for the aged in the United States. [1929.]
- No. 561. Public old-age pensions and insurance in the United States and in foreign countries. [1932.]

Prison labor

- No. 372. Convict labor in 1923.
- No. 595. Prison labor in the United States, 1932.
- No. 596. Laws relating to prison labor in the United States, as of July 1, 1933.

Proceedings of annual conventions of the International Association of Government Labor Officials

- *No. 266. Seventh, Seattle, Wash., July 12-15, 1920.
- No. 307. Eighth, New Orleans, La., May 2-6, 1921.
- *No. 323. Ninth, Harrisburg, Pa., May 22-26, 1922.
- *No. 352. Tenth, Richmond, Va., May 1-4, 1923.
- *No. 389. Eleventh, Chicago, Ill., May 19-23, 1924.
- *No. 411. Twelfth, Salt Lake City, Utah, August 13-15, 1925.
- *No. 429. Thirteenth, Columbus, Ohio, June 7-10, 1926.
- *No. 455. Fourteenth, Paterson, N. J., May 31 to June 3, 1927.
- *No. 480. Fifteenth, New Orleans, La., May 21-24, 1928.
- No. 508. Sixteenth, Toronto, Canada, June 4-7, 1929.
- *No. 530. Seventeenth, Louisville, Ky., May 20-23, 1930.
- *No. 563. Eighteenth, Boston, Mass., May 18-22, 1931.
- *No. 609. Nineteenth, Chicago, Ill., September 14-15, 1933.

Proceedings of annual meetings of the International Association of Industrial Accident Boards and Commissions

- No. 210. Third, Columbus, Ohio, April 25-28, 1916.
- *No. 248. Fourth, Boston, Mass., August 21-25, 1917.
- No. 264. Fifth, Madison, Wis., September 24-27, 1918.
- *No. 273. Sixth, Toronto, Canada, September 23-26, 1919.
- No. 281. Seventh, San Francisco, Calif., September 20-24, 1920.
- No. 304. Eighth, Chicago, Ill., September 19-23, 1921.
- No. 333. Ninth, Baltimore, Md., October 9-13, 1922.
- *No. 359. Tenth, St. Paul, Minn., September 24-26, 1923.
- No. 385. Eleventh, Halifax, Nova Scotia, August 26-28, 1924.
- *No. 395. Index to proceedings, 1914-1924.
- No. 406. Twelfth, Salt Lake City, Utah, August 17-20, 1925.
- No. 432. Thirteenth, Hartford, Conn., September 14-17, 1926.
- *No. 456. Fourteenth, Atlanta, Ga., September 27-29, 1927.
- No. 485. Fifteenth, Paterson, N. J., September 11-14, 1928.
- No. 511. Sixteenth, Buffalo, N. Y., October 8-11, 1929.
- No. 536. Seventeenth, Wilmington, Del., September 22-26, 1930.
- No. 564. Eighteenth, Richmond, Va., October 5-8, 1931.
- No. 577. Nineteenth, Columbus, Ohio, September 26-29, 1932.
- *No. 602. Twentieth, Chicago, Ill., September 11-14, 1933.

Proceedings of annual meetings of the International Association of Public Employment Services

- *No. 192. First, Chicago, December 19 and 20, 1913; second, Indianapolis, September 24 and 25, 1914; third, Detroit, July 1 and 2, 1915.
- *No. 220. Fourth, Buffalo, N. Y., July 20 and 21, 1916.
- No. 311. Ninth, Buffalo, N. Y., September 7-9, 1921.
- *No. 337. Tenth, Washington, D. C., September 11-13, 1922.
- No. 355. Eleventh, Toronto, Canada, September 4-7, 1923.
- *No. 400. Twelfth, Chicago, Ill., May 19-23, 1924.
- No. 414. Thirteenth, Rochester, N. Y., September 15-17, 1925.
- No. 478. Fifteenth, Detroit, Mich., October 25-28, 1927.
- *No. 501. Sixteenth, Cleveland, Ohio, September 18-21, 1928.
- No. 538. Seventeenth, Philadelphia, Pa., September 24-27, 1929; eighteenth, Toronto, Canada, September 9-12, 1930.

Productivity of labor and technological unemployment

- No. 356. Productivity costs in the common-brick industry. [1924.]
- No. 360. Time and labor costs in manufacturing 100 pairs of shoes, 1923.
- No. 407. Labor cost of production and wages and hours of labor in the paper box-board industry [1926.]
- *No. 412. Wages, hours, and productivity in the pottery industry, 1925.
- No. 441. Productivity of labor in the glass industry. [1927.]
- No. 474. Productivity of labor in merchant blast furnaces. [1928.]
- No. 475. Productivity of labor in newspaper printing. [1929.]
- No. 550. Cargo handling and longshore labor conditions. [1932.]
- No. 574. Technological changes and employment in the United States Postal Service. [1932.]
- No. 585. Labor productivity in the automobile-tire industry. [1933.]
- No. 593. Technological changes and employment in the electric-lamp industry. [1933.]

Retail prices and cost of living

- *No. 121. Sugar prices, from refiner to consumer. [1913.]
- *No. 130. Wheat and flour prices, from farmer to consumer. [1913.]
- *No. 164. Butter prices, from producer to consumer. [1914.]
- *No. 170. Foreign food prices as affected by the war. [1915.]
- No. 357. Cost of living in the United States. [1924.]
- No. 369. The use of cost-of-living figures in wage adjustments. [1925.]
- No. 495. Retail prices, 1890 to 1928.

Safety codes

- *No. 336. Safety code for the protection of industrial workers in foundries.
- *No. 350. Rules governing the approval of headlighting devices for motor vehicles.
- *No. 351. Safety code for the construction, care, and use of ladders.
- *No. 375. Safety code for laundry machinery and operations.
- *No. 382. Code of lighting school buildings.
- No. 410. Safety code for paper and pulp mills.
- *No. 430. Safety code for power presses and foot and hand presses.
- No. 447. Safety code for rubber mills and calenders.
- No. 451. Safety code for forging and hot-metal stamping.
- No. 463. Safety code for mechanical power-transmission apparatus—first revision.
- No. 509. Textile safety code.
- No. 512. Code for identification of gas-mask canisters.
- No. 519. Safety code for woodworking plants, as revised 1930.
- No. 527. Safety code for the use, care, and protection of abrasive wheels, as revised 1930.
- No. 556. Code of lighting: Factories, mills, and other workplaces. (Revision of 1930.)
- No. 617. Safety codes for the prevention of dust explosions.

Vocational and workers' education

- *No. 159. Short-unit courses for wage earners, and a factory school experiment. [1915.]
- *No. 162. Vocational education survey of Richmond, Va. [1915.]
- *No. 199. Vocational education survey of Minneapolis, Minn. [1917.]
- *No. 271. Adult working-class education in Great Britain and the United States. [1920.]
- No. 459. Apprenticeship in building construction. [1928.]

Wages and hours of labor

- *No. 146. Wages and regularity of employment and standardization of piece rates in the dress and waist industry of New York City. [1914.]
- *No. 147. Wages and regularity of employment in the cloak, suit, and skirt industry. [1914.]
- *No. 161. Wages and hours of labor in the clothing and cigar industries, 1911 to 1913.
- *No. 163. Wages and hours of labor in the building and repairing of steam railroad cars, 1907 to 1913.
- *No. 190. Wages and hours of labor in the cotton, woolen, and silk industries, 1907 to 1914.
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