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PROFESSIONAL RESPONSIBILITY
IN THE FIELD OF CRIMINAL LAW*

by the Honorable William H. Hastie

The pains and penalties of poverty are many and varied. Sometimes overlooked among them, or at least minimized in our thinking, is the inability of the poor person to defend himself adequately against a criminal charge, from the time police investigation focuses upon him until he is finally either exonerated or convicted of law breaking.

Fortunately, our times are witnessing growing concern with this disability of the needy and increasing recognition of the responsibility the community in general and the legal profession in particular bear in connection with it. But to acknowledge the existence of a social problem and concomitant social responsibility is not enough. Many people must work with persistence and skill in developing and administering effective ways of coping with the recognized need. Therefore, I think it is worthwhile to take a look at some of the things that are now being done in this area.

But first, a look at the past may be worthwhile. Most of us who graduated from law school during the first half of this century will remember the subject of criminal law, in both its substantive and its procedural aspects, as a field of almost negligible concern in the legal curriculum. Indeed, one may be hard pressed to remember any part of his law school experience, except a rather stereotyped introductory course in the first year, which focused upon subject matter or problems in this area.

Moreover, many persons, both within and outside of the profession, have thought of criminal law as a field dominated more by chicanery and questionable stratagem than by high competence and the exercise of first class advocacy. The notion has been prevalent that there was something not quite respectable in this aspect of the practice. And there wasn’t too much money in it either. So, for various reasons it did not seem very important for the prospective lawyer or the society he would serve that legal education and research be very largely or deeply concerned with criminal law and its administration. Such attitudes have persisted within the bar.

Despite this denigration of the criminal law, society relied upon volunteers, lawyers willing to defend the needy without compensation, or conscripts, lawyers assigned to the task by the trial court, to defend the indigent. In retrospect, it is remarkable that both groups have rendered such yeoman service in an often disparaged field. The local squire, whose disordered office and unpressed suit disguise his brilliant and incisive mind, and who never fails to accept—and, of course, to win—the case of the penniless outcast accused of crime, has long since become a stock figure in popular fiction. And if the realities of such volunteer service are less romantic than popular writers would have us believe, the fact remains that the lawyer voluntarily defending unpopular causes and indigent and unprepossessing clients is one of the real heroes of American life. For, in our adversary legal system, he has long carried much of society’s responsibility for achieving justice under law.

*This is the text of the address delivered at the annual meeting of the Law Alumni Society on Law Alumni Day. Judge Hastie, of the United States Court of Appeals for the Third Circuit, is a member of the National Advisory Council for the National Defender Project.
Case by case, often in defending the most unappealing clients against criminal charges, his advocacy has resulted in the development of principles of substantive and procedural law that give decency to our society and safeguard each of us in the enjoyment of civil liberty.

Even in prerevolutionary America the colonists depended upon defense counsel to assert and vindicate great principles of liberty and justice which would protect not only the accused client but the general citizenry as well. This audience needs no reminder that it was in just such context that "Philadelphia lawyer" became a term of encomium. For in 1735, when New York lawyers were reluctant to defend the printer, John Peter Zenger, against a charge of criminal libel for publishing materials critical of His Majesty's government of that colony, it was Andrew Hamilton of Philadelphia who undertook Zenger's defense, and in so doing vindicated both a great substantive principle of free speech and the practical freedom of trial juries from arbitrary judicial dictation.

Skipping to times within our memory, I think of Schneiderman's case, an important Supreme Court decision on the status of naturalized citizens and on the concept that guilt is personal and must be proved as such. The defendant in that case was an avowed Communist. Yet, a lawyer of the greatest eminence, a very distinguished "corporation lawyer," who had recently been the Presidential candidate of a major political party, undertook to represent this unattractive defendant and in so doing vindicated both a great substantive principle of free speech and the practical freedom of trial juries from arbitrary judicial dictation.

Not too many years ago it was widely thought to suffice that counsel be supplied in capital and other very serious felony cases. Now the need is recognized in all but the most trivial misdemeanor cases. Moreover, we now know that it is not only desirable but constitutionally mandatory to provide counsel for indigent accused persons beginning at least as early as arraignment, often at preliminary hearing, and sometime very soon after formal arrest or detention with a view to interrogation. In addition, hearings to determine whether accused juveniles shall be charged and tried as adults, hearings to determine whether probation or parole shall be revoked, habeas corpus proceedings, lunacy hearings and other special proceedings are deemed appropriate, sometimes mandatory, occasions for the representation of the indigent by counsel.

Continued on page 15
LEGAL SERVICES FOR PERSONS OF MODERATE MEANS*

by William Pincus

I shall start my discussion of the topic assigned to me by laying aside immediately consideration of who is a person of moderate means. For the definition of such a person depends in part on what we hold to as a standard for legal services. We have yet to adequately deal with the problem of needs and services by actual test and experiment.

The difficulty I have with the usual approach to this need for legal services is that it starts with the premise that a simple survey or poll of the public will disclose an unfulfilled need for lawyer's services; and that lawyers, consequently, had better get busy, in the public interest and in their own interest, taking care of this new market. I consider the 1964 report of the Committee on Group Legal Services of the State Bar of California to be a landmark document in American legal and social history. More such forward looking reports ought to be coming from the organized bar. Yet even this report contains a chapter summarizing surveys which show a so-called unfulfilled need for legal services.

The usual technique in such surveys is to ask persons if they have consulted a lawyer, when, how often, for what purpose; if not, why not, etc. Every such survey shows that many persons have not used lawyers ever or very often; that there were some occasions when they might have; and that they might have paid a modest fee for such service.

I suppose the failure of the legal profession to serve the public is conclusively demonstrated by the fact that it has not risen to this bait. It has not aggressively gone out to capture this market. One could almost rest his case of failure to serve here, since these surveys, unlike their counterparts in commerce, never are followed by increased sales of legal services by the profession.

But the product of the legal profession is, or should be, justice. Its responsibility is greater and its commitment deeper than ordinary commerce. Its problems are also more complex and important than merchandising electrical appliances. If this is so, then we in the law must get away from the same kind of market survey approach as my local electric utility. It, too, now asks me the same kinds of questions about possession, use, and purchase of electrical appliances as the surveys of unfulfilled needs for legal services use in their investigations. We have to ask different questions.

The first question is: What is the fundamental function of the legal profession as a profession? The answer, I submit, is to do everything possible to further justice for all. This doesn't mean that the organized bar must give up its concerns for the welfare of each practitioner. It does mean, however, that the organized bar should also have a concern for the welfare of each citizen as he is or may be affected by the operation of law. In other words, there needs to be on the priority agenda of the organized bar the question: What's happening to John Doe, who is not my client? From this would follow another question: What can we in the bar

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*This article is a publication of the thoughtful talk the author gave on Law Alumni Day. William Pincus, Esq., is Program Associate of the Public Affairs Program of the Ford Foundation. In introducing Mr. Pincus on Law Alumni Day, Henry T. Reath stated, "He has had a tremendous impact on legal education. Through his leadership in developing Ford Foundation grants he more than anyone else was responsible for the establishment of the National Council on Legal Clinics."
do through legal services to insure that John Doe is adequately protected under the law?

Let me illustrate specifically what I have in mind. Instead of asking individuals when and why they have or haven’t used lawyers, one might delve into the credit system of a community. What are the various forms of contracts used, let us say, in retail credit? I would say that legal services are used quite consistently in developing the systems and contractual arrangements from the creditors’ point of view. The creditor generally knows quite well what is involved in the transaction when the debtor and he sign the printed form. But what about the debtor? Well-educated or not, he can hardly understand all the important parts of the arrangement he undertakes. Even if he can think of the right questions at the moment, he can hardly rely conclusively on the answers and interpretations of the other party. Without any ready source of help or education, the debtor signs, and, of course, in most cases merely complies with the demands of the creditor.

The same kind of situation is found over and over again in regard to leases—leases which have been well prepared by competent attorneys for the landlord. In signing a lease or in interpreting the instrument very few tenants consult lawyers. Some may say they should. But how many landlords would utilize a lawyer regularly if they were renting only one apartment as is the tenant?

I am not suggesting that each and every written transaction be scrutinized by lawyers for both parties. What is important is that the profession as a group begin to pay attention to the other side of whole groups of transactions. Some members or members of the bar have individually earned fees and made their livelihood drawing up contracts and suggesting arrangements for the creditors. The organized bar, therefore, has a correlative duty and responsibility to worry about providing ways and means for the individual debtor and for groups of debtors to know their rights and protect their interests. Obviously, this doesn’t necessarily mean individual consultation with a lawyer every time a retail installment contract is signed, or an application signed for membership in the Diners Club, or a subscription written for a magazine. But, if not this, what? This is the bar’s question to answer.

This failure of the bar to serve the legal needs of the average person involves a failure to be concerned with the requirements of justice which are not automatically served by the rules of the existing marketplace. A landlord with many tenants or a vendor with many customers has enough at stake immediately to make a fee for legal service obviously worthwhile. Each tenant and vendor, in relation to his means, is probably entering an important legal relationship. But his individual transaction does not immediately, under the rules of the existing marketplace, appear to merit payment of a legal fee for advice. He may ultimately get to a point under the contract which would obviously merit an investment in a lawyer’s service—but not in most cases and certainly not at the beginning. The bar tends to sit back and let the individual gamble on not being sorry; the bar prefers to come in when a person is in enough trouble to make him seek a lawyer.

Why shouldn’t the bar reach out in some way to make it possible for average persons with individual transactions and problems to consult lawyers? Is preventive or protective law to be reserved for those persons with large enough transactions obviously to warrant a lawyer’s services at the beginning, before trouble arises? The bar must become concerned with providing preventive law services to persons of average means.

It is also apparent that the bar is not meeting the needs of the average person once he gets into difficulty, unless there is a chance of recovery large enough to bring the contingent fee arrangement into play. There is no financial incentive under existing circumstances for the bar to defend the average person’s rights against the actions of another party. Absent such incentives the bar has not concerned itself, for example, with the protection of tenants against landlords, even though an individual and his family may be seriously affected by a landlord’s action or failure to act. Should one, however, acquire a claim against a solvent and affluent party—should one suddenly become a plaintiff—then even the poorest can easily acquire a lawyer by making him a partner in the claim under a contingent fee arrangement. In fact, some say that it is difficult to fight off certain aggressive lawyers in such circumstances. However, we should not categorize contingent fee clients as fee-paying clients of moderate means in the true sense of the term. In such cases the lawyers become experts in getting money out of defendants with financial resources. The fee again comes from an affluent source—this time it is the defendant who is paying the plaintiff’s fees—quite often an insurance company which has collected money for this purpose through a policy arrangement which involves us all.

If this situation does not reflect glory on the legal profession, the picture on the criminal side is much more tawdry. It is not necessary to elaborate the facts which have received so much attention lately as concern indigents caught in the criminal process. The situation is not much better for those of average means. Here too a specialized segment of the bar is expert in getting money out of defendants and their families because of the threat of jail.

All of these examples underscore the need for the organized bar to look at the totality of the situation in which individual practitioners make a living. Perhaps I am calling for a utopia. But the major concern of the organized bar must shift from the welfare of the practitioner to the needs of the individual citizen involved in the legal process. For the great virtue of the free bar is its capacity to serve the individual, no matter what the official dogma of the times or the demands of the private establishment. And the test of performance may well be: How do we render a service where the rewards of the existing marketplace do not provide adequate remuneration? Perhaps in grappling with these problems the bar will come to a higher conception of service than continued on page 17
There is a great stir in the land. Legal aid has come to the fore.

Although legal aid societies have existed for many decades and gradually have grown in number, until recently only a small fraction of the bar and a very tiny segment of the rest of the community have known much about them, the need for them, and the operating problems they encounter.

The situation in Washington, D. C., just ten years ago was typical. A legal aid society in Washington had been functioning diligently for nearly a quarter century. Yet the Board of Directors of the District of Columbia Bar Association, upon looking into legal aid in 1955, found that even among many of the leaders of the local bar there was scant understanding of the work of the society. Moreover, a vast number of lawyers did not know that the legal aid society existed, or, if they had heard of it, had only the vaguest impression of it and of the needs it was trying to meet. Yet the bar in Washington had always been forward looking and concerned with the responsibilities of the profession.

The main reason for that situation was the very human tendency of busy people to “let George do it.” Nor were Washington lawyers unique. Inquiry in other cities disclosed the same condition.

*This article is a publication of the talk the author gave on Law Alumni Day. Howard C. Westwood, a senior partner in the Washington law firm of Covington & Burling, is a Trustee of the Legal Aid Society in Washington, D. C., and special counsel to the National Legal Aid and Defender Association for the Office of Economic Opportunity. In introducing him, Theodore Voorhees stated, “I think he has done more as an individual to shape the success of the first months of the new OEO program than anyone else.”*
mented, after detailed analysis, that the expense would amount to $225,000 a year. That seemed, then, a huge amount.

A first result of this recommendation was the creation by Congress of an agency to function in the criminal, mental health, and juvenile field with a staff of full-time lawyers and investigators. Despite most efficient operation under a hard working board of directors composed of lawyers in private practice and with the budgetary oversight of the Administrative Office of the United States Courts, the agency has been able to meet only a small part of the need even in the field of its limited jurisdiction. Yet in 1965 its operations cost $255,000. 4

Obviously the 1958 estimate that the full civil and criminal legal aid job could be done in Washington at an expense of only $225,000 a year was so far off target as to seem, in retrospect, almost ludicrous.

It was experience such as this, as well as experience with the program of the Ford Foundation, that demonstrated so that even the most fearful had to face it that adequate, comprehensive legal aid would require so much money that it could not possibly be financed by reliance only on traditional revenue sources—community chests, contributions by lawyers, and occasional payments by city governments. The only possible way to do the job properly would be for the federal government to step forward with its financial help.

Just as this stark fact was beginning to sink in, the federal government did step forward. The Economic Opportunity Act was adopted in 1964, to be administered by the Office of Economic Opportunity. Its program was formulated late that year; it included, most happily, provision for help in the financing of legal aid projects in those communities having the wisdom and initiative to seek them.

Then, indeed, did things begin to stir. The OEO, of course, could not simply hand out funds without inquiry. It had to draw up some general specifications for the projects that it would help finance. In doing so it has performed a great service by emphasizing elements that the pauperized legal aid budgets of the past have had grievously to neglect.

One such element is that of bringing legal aid service physically closer to the people who need it. A most obvious means, in the great metropolis, is through organization of neighborhood offices. Very limited experience in New York City, and even more limited experience elsewhere, demonstrated years ago the compelling need for this kind of organization. But nowhere had funds been available for a truly neighborhood type of operation.

A second element is that of use of the test case and other means for effecting improvement in the law in fields having special impact on the poor, such as in the area of consumers' protection. Lawyers for business enterprise and labor unions have performed distinguished service for their clients in shaping the law to their clients' interest. On occasion legal aid societies also have demonstrated what a great contribution they could make to the suiting of the law to their clients' needs. They have instituted and won notable test cases. They have drafted and won adoption of enlightened administrative regulations and even legislation. But this kind of work, to be consistently and fully effective, requires large resources. However much legal aid societies may have yearned to do this job, none of them ever has had the means sufficiently to concentrate upon it, and most of them have been able to address themselves to it only fitfully if at all.

A third element is that of educating the humble people in a community as to their legal responsibilities and rights and as to the value of a lawyer's service to them, and, incidentally, to everyone. Here again legal aid societies have yearned for resources to undertake this mission; inability to do so has been one of the glaring defects in skeletal legal aid programs heretofore.

A fourth element is that of involving the poor people themselves in the legal aid project by having their representatives on the governing board. This is designed to carry out a requirement of the Economic Opportunity Act. It is significant that such a requirement is even more explicit in a substitute for the Act recently proposed by Republican leadership in the House of Representatives. Hence it cannot be shrugged off as a left-wing, crackpot notion. Whether, in the long run, the requirement will prove feasible is somewhat in doubt. But steps to comply with it in the meantime are having desirable consequences. For, among other things, they have led to a re-examination of the makeup of governing boards of legal aid groups, providing an occasion for the infusing of new blood that has been long overdue.

One aspect of the OEO program is much more prosaic than the things I have mentioned, but it may prove of most abiding benefit. That is the hard headed planning that is called for, and the challenge that is presented to the administrative capacity of legal aid society boards and staffs.

Those in charge of the OEO program are practical people. Quite properly they have been demanding that a local legal aid society seeking OEO's help put together concrete plans, with detailed budgets solidly backed up. In the case of many communities this is a new experience; often legal aiders have been operating on scales so modest that planning and budgeting have been called for, if at all, only to the most elementary degree. In facing the need for genuine planning, a number of communities have run into irritating delays as the

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*Section 302(a) of H. R. 13378, 89th Cong., 2d Sess. (1966) would require that "representatives of the poor" comprise at least one-third of the membership of a "community action board." And see Section 303(a)(2).
FACULTY NOTES

MORRIS L. COHEN, Biddle Law Librarian, has been elected President of the University of Pennsylvania Chapter of the American Association of University Professors.

PROFESSOR CURTIS R. REITZ, '56, participated as a principal speaker at an advanced seminar for Public Defenders and other persons specializing in the defense of indigents accused of crime which was held in Gainesville, Florida. The seminar, the first of its kind in the country, was to be a prototype for Defender seminars in other parts of the country. It was sponsored by the National Legal Aid and Defender Association and by the Florida State Public Defenders Association.

PROFESSOR LOUIS B. SCHWARTZ, '35, testified by invitation before the Antitrust and Monopoly subcommittee of the Senate Judiciary Committee on problems growing out of the use of the supra-national corporation.

Mr. Schwartz took a leading role in the debates before the American Law Institute on Tentative Draft Number 1 of the Pre-Arraignment Code. The proposed code would have authorized the police broadly to "stop and frisk"; i.e., to detain people briefly on suspicion and to search them. Professor Schwartz' brief in opposition sought to confine this to cases involving serious crimes recently committed. The proposal was recommitted to the draftsmen for further study. The same result was reached on another chief proposal of the draft—authorization of the police to detain arrested persons in the station house for the purpose of interrogation and without assurance of a lawyer.

LIBRARY STARTS RECORD COLLECTION

Morris L. Cohen, Biddle Law Librarian, has started a collection of legal recordings thanks to the fund-raising efforts of the Law Wives Group which were begun under the direction of Mrs. William Ewing last year and continued this year by Mrs. Richard Martin.

The collection includes the three album Voice of the Modern Trial Lawyer in which Melvin Belli is heard making opening statements in various types of cases, a jury argument, and illustrating different techniques of cross examination.

Point of Order, a record of the Army McCarthy hearings from the documentary film with Eric Severeid narrating, is also in the collection.

A record which came out in 1963 of Bertolt Brecht's testimony before the Committee on Un-American Activities in 1947 during the hearing on Communist infiltration of the motion picture industry is also in the collection. It is the only recording of Brecht speaking English.

The most recent acquisition is a record from the Library of Congress Folklore Section containing Civil War songs some of which are sung by the late Judge Learned Hand. The reverse side of this record consists of ballads which have been written about the assassinations of Presidents.

KRAVITCH EXEMPLIFIES

DEVOTED PROFESSIONAL RESPONSIBILITY

Aaron Kravitch, '17, is a lawyer whose able and courageous representation of a person in an unpopular case exemplifies notable and inspiring alumni accomplishment and the highest state of the conscience of the bar as discussed on Law Alumni Day this year. Kravitch, of Savannah, Georgia, represented, for no fee, a Negro who had been sentenced to death by the County Court for the murder of an elderly white woman. He argued the case on appeal, and the Supreme Court of Georgia unanimously handed down a landmark decision holding that denial of a commitment hearing was error requiring the case to proceed through the processes of the law of bringing the suspect to trial by indictment of the Grand Jury—the indictment, verdict, judgment and sentence all being null and void. (Manor v. State 1966)

Professor Anthony G. Amsterdam, '60, who knew about this case by virtue of his own unceasing work on civil rights cases throughout the country, commended it as "an epochal victory, and an enormous tribute to Kravitch's courage and capability."

Kravitch modestly deprecates the accolades to his courage stating that he merely tries to live up to his professional responsibilities according to the oath he took on admission to the bar.

Kravitch, who has been City Attorney and Attorney for the Airport Commission, is now active in conducting the gubernatorial campaign for the liberal ex-governor Ellis Arnall in his section of the state. His daughter, Phyllis, '43, a partner with him in the law firm of Kravitch, Garfunkel & Hendrix plays a prominent role in all the cases in the office including much of the research, strategy and brief writing in the Manor case. She is also working on the campaign.

Both father and daughter present inspiring examples of outstanding achievement.

TWO NOTED JURISTS DIE

Two outstanding alumni jurists died in the month of March. R. Stauffer Oliver, '03, died at the age of 86 and Eugene V. Alessandroni, '06, was aged 79.

Judge Oliver had been the very greatly respected President Judge of the Philadelphia Common Pleas Court No. 7 for twenty-two years at the time of his retirement in 1959. He was the author of The Bench is a Hard Seat, his autobiography, published by Dorrance & Company last year.

Judge Alessandroni had served with distinction for thirty-eight years on Philadelphia's Common Pleas Court No. 5 and had been President Judge since 1954. He had received his law degree at the age of 19 and had to wait two years before he was admitted to the bar. He was prominent in Italian-American affairs and was honored many times by these groups as well as by the Italian Government.
Law Alumni Day started off with a luncheon in the new building honoring the five year reunion classes, each of which was asked to rise as a class by Henry T. Reath, '48, President of the Law Alumni Society. Senator Harry Shapiro, '11, represented the earliest class present. All alumni were welcomed by Dean Jefferson B. Fordham.

The topic for the day was "The State of the Conscience of the Bar." Because of the importance of and the current concern with the questions discussed, the seminars were not limited to alumni and were, in fact, well attended by outstanding non-alumni lawyers prominently concerned with the subjects covered.

The distinguished Seminar Committee consisted of Ernest Scott, '29, senior partner in Pepper, Hamilton & Scheetz and Trustee of the University of Pennsylvania; Bernard G. Segal, '31, senior partner in Schnader, Harrison, Segal & Lewis and Trustee of the University of Pennsylvania; and Theodore Voorhees, '29, chairman, a senior partner in Dechert, Price & Rhoads and President of the National Legal Aid and Defender Association.

Henry Reath, moderator of the first seminar on Legal Services for Persons of Moderate Means pointed out in his introductory remarks that as the practice of law becomes more complex, a modern paradox might develop in that resort to law will only be available to either the very rich or the very poor. He further stated "It is an undeniable fact that the population explosion of the last half century or so, coupled with the concentration of people in urban centers—and the development of a more regulated and complex society has created an increasingly large number of persons in need of legal advice and assistance with ability to pay reasonable fees therefore but who don't avail themselves of the opportunity. The question is why? Is this or should this be a concern of the legal profession either as a matter of self interest or public interest? What can or should be done about it? Who is to do it, and how?" He then raised many of the questions connected with the legal profession itself arriving at a solution of the problem.

William Pincus, Esq., of the Ford Foundation, addressed himself to the questions involved in considering the adequacy of legal services for the middle and low middle income prospective client. We are pleased to be able to reprint that talk, as well as the other two talks delivered on Law Alumni Day, in this issue. Mr. Pincus' talk is on page 3.

At the conclusion of this talk, Ernest Scott gave a commentary in which he pointed out that "Only a handful of lawyers have thought about this problem we are talking about today—even thought about it casually—and yet respect for law, lawyers and the court has surely deteriorated greatly while the need for legal services is steadily and daily increasing." He also observed that "the response of the organized bar has been more negative and repressive than affirmative and experimental." He recommended considering the advisability of advertising and possible required modification of the canons of ethics to permit it.

In a lively question period on the subject of this seminar, those who were interested in such aspects of the question as judicare, development of adjunct legal personnel, encouragement of advertising and the general application of other imaginative ideas were countered by lawyers present who felt that the need for legal services was being met or that lawyers were busy enough and overburdened as it is without looking for more work. Mr. Voorhees pointed out that as lawyers have a monopoly in providing legal services they have an obligation to see that all who need those services are provided with them.

In the discussion following his talk, Mr. Pincus reemphasized the need for imaginative experimentation in meeting the problem and foregoing the notion that the values of today and maintenance of the status quo offer
the only channel for the solutions we must reach. Although he did again suggest strengthening of lawyer referral services, he also mentioned such possibilities as the Scandinavian Ombudsman, development of institutions by which controversies can be settled without resort to legal channels and resultant bogged down litigation.

Mr. Reath mentioned some revealing statistics learned from a study performed at the request of the Philadelphia Bar Association on Lawyers Reference Service as it now functions showing that the use per 10,000 population varies from 65.27 in Boston to 11.38 in Philadelphia. This illustrates in one way an underlying point brought out in these seminars of the importance of public information and public relations in helping to solve the problems discussed.

The eminent Judge W. Walter Braham, President of the Pennsylvania Bar Association, approached the problem with a most incisive suggestion that the law itself be used as a means of making sure people of moderate means are treated fairly in relationships now subject to legal regulation—i.e., through the legislature. He mentioned, for example, amending laws so lenders could not get around the usury law, so that confession of judgment could not be used injudiciously as it is now, and so that the amount of property exempted from levy would reasonably carry out the original purpose of such exemption in the light of today's value of the dollar.

In summing up this session, Reath stated "Unfortunately, not many lawyers have any real conception of the dimension of this problem. We can agree that much must be done to shake the profession from this present lethargy and lack of concern. There is a rising undercurrent of thought among more enlightened members of the profession that we have too long been sheltered by the security of the closed shop—and that where the public interest conflicts with the profession’s self interest, the latter must give way."

After a brief break for refreshments, the second seminar, Legal Services for the Poor, was introduced by Mr. Voorhees. He illustrated the magnitude of the subject by telling that in 1964 less than five million dollars was spent for legal aid all over the country, but by the end of this year the federal government will allocate more than twenty million dollars additional. Howard C. Westwood's informed talk on this subject is reprinted at page 5. In his comment following this talk, Bernard G. Segal called for a review of the whole legal framework and exhorted lawyers to be active in meeting the problems besetting the legal profession—for example to do something about the low level of the personnel manning the tribunals in which most people have their only contact with the law, consider how to meet needs for legal services if government money became unattainable, reiterated Judge Braham's comments about the one-sidedness of certain laws and how this lowers public respect for law.

The questions revealed the thoughtful concern of the audience with this problem—they ranged from a lament over the lack of lawyers in communities which wish to provide services to the poor; to a suggestion for a law building, analogous to a hospital, in which law school graduates would serve a supervised internship during which their services would be available to the poor; to inquiry as to whether the hard core ignorant poor can be informed of the services which are now available. Westwood pointed out that the latter situation is now being met not only by sending messages home with school children and speaking to church and community groups, but also, since legal aid is available as part of a broader community action program, by neighborhood workers whose function it is to help people with their difficulties sending them to a lawyer and even making sure they get there. Pincus mentioned the development of adjunct legal personnel to help meet the manpower shortage.

In the question period, Westwood answered questions raised about the actual workings of OEO such as procedure for getting a grant and the extent of independence thereafter. As to the latter, he thought and he has also found in the programs with which he is intimately concerned that the remoteness of the source of the funds and the way in which the program has thus far been administered does not in any way impinge on the independence of the lawyer.

In response to another question he reported on the merging of the Legal Aid Society in Washington with the OEO office and predicted that this is probably what would tend to occur. He mentioned that as this program gets further along, more capable people would be interested in career possibilities in this area of the law.

The annual meeting, presided over by Mr. Reath,
was then held in the tented-over courtyard. He expressed the great sorrow of the Alumni at the deaths in the past year of Walter Alessandroni, Albert Blumberg and Judge Gerald Flood and there was a moment of silence in memory of all deceased members of the Law Alumni Society.

Dean Fordham reviewed highlights of developments in school of special interest to alumni including the high level of the student body and the role of alumni in acting as liaison between the school and prospective students. He announced that Robert M. Bernstein, '14, is chairman of the new Capital Needs Committee.

Reath then presented a plaque to Dean Fordham “in recognition of his unfailing devotion to the Law School since becoming its dean.” (See page 14.)

Edwin H. Burgess, '14, reported on the progress of fund raising—there were more contributors than at the same time last year. He thanked the Alumni for their continued support of the Law School through Annual Giving.

The new officers of the Law Alumni Society were then elected. Carroll R. Wetzel, '30, the new president, presided over the balance of the meeting. He introduced Judge William H. Hastie whose action impelling address, Professional Responsibility in the Field of Criminal Law, is reprinted on page 1.
Colloquium Program Started

Michael V. Forrestal, Abraham L. Pomerantz and E. Z. Dimitrman were the three distinguished guests participating in the various sessions of a Colloquium program introduced in the Law School this year at the instance of the Faculty Curriculum Committee. The purpose of the program as envisioned by the Committee is "to bring to the school outstanding speakers whose presence would enrich the day to day educational program." It was hoped that guests would include lawyers "as well as persons from other disciplines whose work has important implications for lawyers."

Professor Robert H. Mundheim, chairman of the Faculty Colloquium Committee, emphasized that the program is so arranged as to encourage student involvement and participation. Various informal meetings with the guests and more intimate dinner discussions were therefore arranged.

Forrestal, a partner in the New York law firm of Shearman & Sterling, has combined private practice with distinguished public service in various areas of foreign affairs including being senior member of the National Security Staff at the White House in charge of Asian affairs and Special Assistant to the Secretary of State for Vietnamese Affairs. He is the son of James V. Forrestal, the first Secretary of Defense.

He dined with a group of students and there was informal after dinner discussion with a larger group of students. He participated in various meetings with different groups of students the following day—a coffee discussion, the International Law Classes of Professor Noyes E. Leech and Professor John Costonis, and a Forum where he spoke about Viet Nam and decision making in foreign policy matters in the Executive Branch. He then went to dinner with the ten students comprising the Inter-Club Council where discussion included the day to day aspects of private practice.

Pomerantz, senior partner in the New York law firm of Pomerantz, Levy, Haudek & Block, which specializes in shareholder litigation, first spoke to a combined Corporate Finance and Securities Regulation class, both of which are taught by Mr. Mundheim. He discussed the restraints placed on plaintiffs' attorneys in shareholder litigation, and questioned the justification for these restraints. This subject was pursued at a Law School Forum sponsored coffee hour. He then had dinner with eleven students and four faculty members, after which more students joined the group for an informal discussion of Pomerantz's role as plaintiff's attorney in more than a dozen of the suits challenging the management fee structure in the mutual fund industry. This discussion continued until 11 p.m.

The following day, Mr. Pomerantz spoke to Professor James O. Freedman's 8:30 a.m. class in Family Law. As he had represented the defendant in a key case used extensively as an example in the course casebook, "The Family and The Law" by Joseph Goldstein and Jay Katz, his frank and practical explanation of his choice of tactics in this case afforded a particularly enlightening experience for these students. Mr. Freedman had worked on this book while a student at Yale Law School.

E. Z. Dimitrman, Administrative Assistant to the Publisher of the Inquirer, who had been active in the discussions with the Philadelphia Bar Association which resulted in the Bar Association's recommendations concerning fair trial and free press, was a guest at dinner and an after dinner coffee hour.

The students have benefited from the informal and frank discussion with outstanding people in various fields—a somewhat unexpected result is that the various guests have felt that their participation in this program was of benefit to them. Forrestal, for example, sent a most gracious letter telling of his positive response to the experience, and Pomerantz particularly appreciated the freshness and naiveté stimulating him to rethink hard fundamental questions.

The Faculty Colloquium Committee consisting of John Costonis, James O. Freedman, and Robert H. Mundheim, chairman, are now making plans to continue this program next year and expect to have Judge Henry J. Friendly, of the United States Court of Appeals for the Second Circuit, as the first guest in the Fall.

WALTER ALESSANDRONI AIR CRASH VICTIM

Walter E. Alessandroni, '38, Attorney General for the State of Pennsylvania, was killed at the age of 51 in a tragic air crash while campaigning for the Republican nomination for Lieutenant Governor. He was actively engaged in many civic activities and he was also a loyal alumnus held in high esteem by his brothers at the bar. At 43 he became the youngest President of the Philadelphia Bar Association. Prior to his being Attorney General, he served as United States Attorney for the Eastern District of Pennsylvania on appointment by President Eisenhower. He had also been State Commander of the American Legion.

His wife was also killed in the crash on May 8. He is survived by two sons.

COMMITTEE ON ARRANGEMENTS


James D. Evans, Jr., Assistant to the Dean for Alumni Affairs, ably coordinated all phases of the plans.
Successful Reunions Held

A number of reunions were held this spring by special anniversary classes as well as by such classes as 1932 and 1908, which have annual reunions.

This year the members of the Class of 1916 held their 50th Reunion in Philadelphia at the Barclay Hotel. Eighteen members of the class attended. Five others who had planned to come were not able to at the last minute. The arrangements for the fine party were made by Joseph L. Ehrenreich.

The Class of 1931 reunion was held on Friday, May 13, at the Merion Golf Club, Ardmore, Pa. Kellog W. Beck was reunion chairman for the class.

The members of the Class of 1936 held their reunion on May 27, at the Green Valley Country Club in Lafayette Hills, Pa. G.William Shee came the longest distance—from Los Angeles, Calif. David Shotel was reunion chairman for the occasion.

The memorable twenty-fifth reunion of the Class of 1941, held on Saturday, May 21, was the first law reunion dinner dance ever held in the new Law School building. One member, C.W. Creighton, Jr., came all the way from Salem, Oregon. Paul Wolkin was reunion chairman.

North Hills Country Club was the site of the Class of 1951 reunion held non-superstitiously on Friday, May 13. Harold Cramer was reunion chairman for this enjoyable occasion.

Forty-five members of the Class of 1956 attended their tenth reunion dinner dance at the Flourtown Clubhouse of the Philadelphia Cricket Club on May 21. Members of the class came from as far as Washington and New York for the occasion. Arrangements for the most successful evening were handled by Arthur Liebold, the reunion chairman.

Dean Jefferson B. Fordham was a guest at many of these gatherings.

ALUMNI

1898
WILLIAM MAUL MEASEY, of Haverford, Pa., was awarded an inscribed gold certificate by the American Bar Association in recognition of his more than 50 years of continuous membership in the Association. A.B.A. President Edward W. Kuhn pointed out in a letter he wrote to Mr. Measey that only 199 lawyers in the entire country are qualified for this award.

1900
PAUL BEDFORD was one of sixteen fifty-year members of the Bar honored by the Wilkes-Barre Law and Library Association at its 100th anniversary dinner.

1921
J. HOWARD NEELY of Millington, Pa., was elected president of the Juniata County Bar Association.

1926
HON. JOSEPH S. CLARK was awarded one of three honorary degrees by Haverford College this year. Senator Clark was cited by Haverford College President Hugh Borton as an “outspoken advocate of improved housing, civil rights legislation, congressional reforms, and a foreign policy based on negotiations and international agreements.”

1927
JACQUES H. GEISENBERGER, of Lancaster, Pa., was elected president of the Lancaster County Bar Association.

1933
AUSTIN GAVIN was elected president of the Pennsylvania Electric Association. He is vice president of the Pennsylvania Power and Light Company.

1935
DANIEL W. LONG, of Chambersburg, Pa., was elected president of the Franklin County Bar Association.

1937
ALBERT B. GERBER is the author of another book, Sex, Pornography and Justice, published by Lyle Stuart, Inc., N. Y.

1938
MARTIN P. SNYDER was appointed a member of the Valley Forge Park Commission by Governor Scranton, and his appointment was unanimously approved by the Senate.

1940
ANDREW HOURIGAN was named Chairman of the A.B.A. Standing Committee on Unauthorized Practice of Law. FRANK C. P. McGILLIN, senior vice-president of the Fidelity-Philadelphia Trust Company, was elected president of the World Affairs Council of Philadelphia.

ARTHUR E. NEWBOLD, III, was elected chairman of the Committee of Seventy in Philadelphia. This is an organization of outstanding citizens who watch carefully what is going on in the municipal government with an eye to
NOTES

preventing abuse and impropriety of all kinds.

1949
FRANKLIN E. KEPPNER, of Berwick, Pa., was elected president of the Columbia-Montour County Bar Association.

1952
J. SCOTT CALKINS, of Harrisburg, Pa., was elected President of the Dauphin County School Board.

1953
GEORGE A. MOORE, JR., was appointed manager of industrial relations of Bethlehem Steel Corporation in Bethlehem, Pa. He has been associated with Bethlehem Steel in the industrial and public relations department since 1958.

DONALD M. SWAN, JR., is now General Attorney and Assistant Secretary of Bethlehem Steel Company.

1956
LEE D. BELLMER is Manager of Industrial Relations for Westinghouse Electric Corporation in Hyde Park, Mass.

WILLIAM H. CLIPMAN, III, is Counsel for International Operations of AMP Incorporated in Harrisburg, Pa.

CHARLES F. LUDWIG was recently named Assistant Counsel for the Penn Mutual Life Insurance Company in Philadelphia.

B. MITCHELL SIMPSON, III, is a Lieutenant Commander in the Navy currently attending the Fletcher School of Law and Diplomacy.

1957
RUSSELL R. RENO, JR., is now a member of the law firm of Venable, Baetjer & Howard in Baltimore, Md.

1963
J. ASHLEY ROACH, LT., U.S.N.R., is now legal officer, U.S. Naval Air Station Glynco, Brunswick, Ga. He had previously been Assistant Legal Officer at the U.S. Naval Station in Norfolk, Va.

1964
DANIEL J. LAWLER is a partner in the Langhorne, Pa., law firm of Harris, Sykes & Lawler.

1965
ALAN L. REISCHE, a member of the New Hampshire bar, is associated with the law firm of Sheehan, Phinney, Bass & Green, 875 Elm St., Manchester, New Hampshire.

FARBSTEIN AWARDED PRINCETON FELLOWSHIP

Charles M. Farstein, '57, was one of eleven chosen by Princeton from among employees in all federal departments and agencies for a Princeton University mid-career education fellowship. He will study for a year at Princeton's Woodrow Wilson School of Public and International Affairs. Under the fellowship program, his tuition and expenses will be covered, and he will be on salaried leave from the Atomic Energy Commission during his year of study.

Farstein is in the Office of the General Counsel at AEC, and he has worked with legal and administrative aspects of the licensing and regulation of nuclear material and the commercial uses of atomic power. He had previously spent four years in the antitrust division of the Justice Department.

He resides in Potomac, Maryland, with his wife and three children.

University Honors McWilliams

J. Wesley McWilliams, '15, was presented with the General Alumni Society's highest honor, The Alumni Award of Merit, on Founder's Day. His citation read as follows:

"You typify the long line of Pennsylvania-educated legal statesmen who have made the term 'Philadelphia Lawyer' a high professional compliment. True to your dual loyalty to your craft and to your alma mater, you have been president of both the Pennsylvania Bar Association and the great Class of 1915 whose Fiftieth Anniversary Fund program you led. Your greatest contribution to Pennsylvania is yet invisible: Under your leadership as general chairman of the Bequest Program, 1400 living alumni and friends have made provision for the University in their estate plans. Unwilling to wait for these bequests to mature, your fellow alumni salute you here and now."

Officers of Law Alumni Society for 1966-67
Carroll R. Wetzel, '30  President
Harold Cramer, '51  First Vice-President
Joseph P. Flanagan, Jr., '52  Secretary
Manuel Sidkoff, '27  Treasurer

JEFFERSON B. FORDHAM

Dean, since 1952, of the Law School of the University of Pennsylvania, he has that rare combination of qualities which enables one man to accomplish more in each of many roles than many can expect or hope to accomplish in one.

As scholar and teacher, he has published numerous books and articles dealing with the legislative process and the rapidly changing role of state and local governments, while at the same time passing on to future generations of lawyers the benefit of his wisdom and experience.

As architect of the renaissance of the Law School, he has overseen the construction of a modern physical plant adapted for and conducive to effective instruction in the law. In his administration as Dean, the Institute of Legal Research was launched, bold and pioneering changes in the curriculum have been introduced, and both faculty and student body have expanded in quality and quantity.

As servant of his profession, he has been active in bar association affairs. He is a past chairman of the American Bar Association’s Section of Local Government Law, and was a member of the Association’s House of Delegates. He is the principal proponent of the new American Bar Association Section on Individual Rights and Responsibilities.

As public servant and community leader, he has served federal, state and local governments. For both the United States and the city of Philadelphia, he was chosen and has served as advisor on questions of ethics and conflict of interest in government. He has been in the forefront of programs designed to secure equal opportunity for all men, serving as president of the Philadelphia Fellowship Commission and the Philadelphia Housing Association, as well as a member of the Board of Trustees of the Philadelphia Legal Aid Society.

Above all, as leader of the Law School, he has combined the qualities of intellect, integrity, courage, energy, idealism and experience. He has served the Law School and the University of Pennsylvania with a dedication which commands the respect and admiration of all who know him. He has imbued professor and student alike with a spirit of shared enterprise and a mission of excellence.

Born in North Carolina, educated in the University of North Carolina and Yale, Jefferson B. Fordham is a "rare combination of southern charm and northern granite." With infinite patience and skill and notable success, his views on issues are stated vigorously and courageously. His beliefs are forthright, progressive and humanitarian. His conduct exemplifies his beliefs.

The Law Alumni Society of the University of Pennsylvania is honored to present this testimonial scroll to Jefferson B. Fordham in recognition of his fourteen years of inspiration and vital leadership to the profession, to the community, and to the University of Pennsylvania Law School.

May 12, 1966

(signed) Henry T. Reath
Carroll R. Wetzel
Robert Montgomery Scott
Harold Cramer
Manuel Sidkoff

LAW ALUMNI JOURNAL
Moreover, it is being recognized that an accused person need not be penniless to be unable to supply himself with needed professional assistance. The wage earner whose income barely maintains him and his dependents at a subsistence level may not be indigent under a narrow interpretation of indigency, but his need for and entitlement to the assistance of counsel is real and must be met.

So the circumstances and occasions calling for the supplying of legal assistance to accused persons who cannot adequately defend themselves have multiplied many times. To meet that need we must mobilize and organize legal resources in different ways and on a far larger scale than heretofore. And in the process we have to take into account that many lawyers who are highly competent in their respective fields are not expert in the trial of criminal cases, any more than many skilled trial lawyers are expert in corporate reorganizations or bankruptcy proceedings.

One obvious possibility for better meeting the contemporary need for defense counsel is a formally organized system of mandatory assignments that will comprehend the entire active bar and at the same time will provide assigned counsel with expert facilitating and advisory services as needed.

Houston, Texas has taken the lead in adopting and inaugurating such a comprehensive plan. The Houston program is organized around a full time administrator with a staff of six lawyers and five investigators. All 3,500 members of the bar are subject to assignment in criminal causes. The administrator has assembled detailed professional data about each individual member of the bar. As cases arise and courts have occasion from day to day to assign counsel, resort is made to the administrator’s list. Moreover, the background and experience of the individual lawyers are programmed on a computer system to make sure that, in the process of selection, cases are rationally and equitably distributed, and that the lawyer assigned to a particular case is an appropriate choice for the type of case involved. Once a lawyer is assigned pursuant to this system it is my understanding that the Houston courts are not tolerant of any but the most clearly valid excuses for not serving. And since assigned counsel has at his disposal advice and assistance of the professional staff and investigators of the administrative office, the fact that he has not specialized or kept up to date on points of criminal law and procedure is not too grave an impediment to efficiency.
in the representation of his client.

This experiment is still too new for meaningful evaluation. However, its result will undoubtedly be very useful to other large communities which wish and need to mobilize the bar more fully and systematically in the implementation of an assigned counsel system.

The new highly organized and meticulously worked out Houston plan is, of course, not a typical case. There are more than 3,000 counties in the United States. More than 90% of them still rely entirely upon volunteers and the assignment of members of the bar by trial judges in a more or less haphazard fashion. Perhaps nothing else is needed or feasible in some small or rural communities, but elsewhere something different is required.

Some 300 counties, either abandoning or supplementing the assigned counsel system have established defender offices, staffed with salaried lawyers whose full time responsibility is to serve as counsel for the indigent. In some cases, the government provides a public defender, the counterpart of the public prosecutor, if you will. And there are those who think this is the way of the future. Certainly, such a governmental office, as well staffed as the district attorney's office, with lawyers and supporting personnel as well paid, is, in theory at least, a satisfactory solution. Yet, experience shows that numbers of public defenders are very poorly paid with offices very inadequately staffed. It is not easy to persuade the leaders of local government to expand already very tight budgets and perhaps subordinate other public needs to create a defense organization as strong as the prosecutor's office. There is also the often expressed fear that, as a public official, a public defender may be less than diligent in opposing the efforts of the district attorney, who is a fellow public official. This danger is thought to be particularly serious in cases where the accused is the object of public anger and indignation and the local government is under pressure to obtain a conviction. Yet, in fairness, I must concede that I know of no case where a public defender has demonstrably failed to do his duty. Of course, in the nature of the endeavor, and respecting the confidential relation of lawyer and client, it will often be hard to judge the adequacy of a defender's performance.

We come now to yet another alternative, a private legal aid organization. Such an organization may be financed entirely from private sources, or private financing may be supplemented by grants or case by case fees from the public purse. Most of you know that in this city we have one of the best of such organizations, the Defender Association of Philadelphia. A competent legal staff, often aided by volunteers from the practicing bar, provides superior legal services, insofar as limited manpower can, for the needy accused. Even preliminary hearings before magistrates are covered in many cases. Most of the members of the governing board of the association are themselves experienced lawyers, highly qualified to govern such an enterprise. The city provides some financial aid and more is hoped for and in immediate prospect to enable the service to expand. Advocates of this type of organization believe that it is better calculated to provide skilled and wholly independent counsel for the accused than is a public defender system. And certainly it is flexible and can be expanded by the supplementary utilization of volunteers from the practicing bar. Equally important, a first rate defender office can also provide helpful, sometimes invaluable, assistance to members of the general bar who have been assigned to represent particular defendants and who because of inexperience in criminal matters wish the guidance of an office staffed by lawyers and trained investigators who have expertise in the preparation and trial of criminal cases.

I think it likely that in the years ahead this function of assisting assigned and volunteer counsel who are not wholly familiar with the criminal practice, will become one of the most valuable functions of well staffed and organized defender offices in urban centers. For, even after public and private support have resulted in the establishment of well staffed defender offices, large scale participation of the general bar in the representation of needy accused persons will continue to be necessary. The sheer size of the task will require this.

It will be up to the bar to discharge its greatly enlarged and still expanding responsibility willingly and well. Happily, both study and practice in the field of criminal law are being upgraded. More able and inspiring teachers than ever before are offering courses and engaging in research relevant to the criminal law and its administration. This must result in the graduation of prospective lawyers with greater interest and competency in the field than most of us exhibited when we came to the bar. In the meantime, we who already are practitioners will have to represent the indigent or needy as best we can. Fortunately, we are getting valuable help from outside of our ranks. For example, the Ford Foundation has already committed more than six million dollars toward the financing of undertakings to facilitate and expand defender programs and related law school projects throughout the country. In Philadelphia and elsewhere municipal budgets are providing more money for the defense of the indigent. The Congress and the federal courts are moving in the same direction. If in addition, enough members of the bar, sensitive to both professional and social responsibility, give generously some of their time and skill in advocacy, and others give of their money in support of private defender organizations, we will creditably accomplish the work that must be done.

We could abdicate professional responsibility, leaving it to the state to carry most of the burden through salaried public defenders. But in so doing we would be false to the tradition and the basic conception of law as a high public calling. Back in the 1930's a critic observed that "intellectually the profession still commands respect, but it is the respect for an intellectual jobber and contractor." We are not wholly free from such criticism today. Our response to the need for legal services for the indigent can be one important demonstration that such charges are calumny.
the existing obvious standards.

The maintenance of lawyer referral services by bar associations may well provide a good case history of the radical kinds of changes required in the bar's orientation to provision of legal services. Lawyer referral is, of course, a purely voluntary activity maintained by some, but not by all local bar associations. Therefore, the first deficiency of lawyer referral is that it is not universally available.

The organized bar's phobia against so-called advertising results in a situation where even the existence of such a service is not aggressively brought to the attention of the public. The usual lawyer reference service is premised on the assumption that persons of modest means will beat their way to the doors of the local bar association if asked for a reference to a lawyer. There is no real attempt to make this kind of service known to the public. Rather, it seems to work the other way. If an unusually persistent and cantankerous cuss perseveres and camps on the steps of a bar association, he may succeed in winning a reference to a lawyer.

I have not italicized the word "may" without reason. For the staffing for lawyer's referral is not calculated to do an aggressive job of referral. All too often it is casual. Several visits may be required before a contact is made with lawyer referral. It a contact is made, the seeker of legal service who has a modest cause involving small sums, or who has a problem in family or criminal law, faces the next hurdle. He has to await a reference to a lawyer who doesn't place such references high on his priority list, for the existing system of rewards does not hold out the prospect of an adequate fee.

The final hurdle comes in the lawyer's office. All that lawyer referral promises to do is to "guarantee" an interview for a modest fee. There is no guarantee of actual legal service beyond the initial interview. And such service is too often difficult if not impossible to obtain.

In New York City, for example, several thousand cases a year are referred by Legal Aid alone to lawyer referral. No one is really in a position to say what happens to these cases under the existing system—this in a city with an active and concerned bar. All that the organized bar undertakes to do is to provide an initial interview. The service that counts—the service that follows—is considered outside the purview of the bar. It is left up to the individual practitioner.

The shortcomings of lawyer referral should not be taken as a conclusive indication of its doom. Rather the potential of lawyer referral should be explored and developed. Lawyer referral, if revitalized, stands at the center of future expansion of legal services, particularly for persons of moderate means. They are the natural link between the variety of plans already in existence, and others which are possible, to serve both indigents and persons above the indigency level. Properly organized lawyer referral can serve as the means for building the bar's leadership in extending legal services.

The first requirement is a change in the attitude of the organized bar. A progressive outlook is required, such as that evidenced by your own Theodore Voorhees, a leader in the Philadelphia bar and President of the National Legal Aid and Defender Association. I believe Mr. Voorhees was suggesting the crucial potential of lawyer referral when he recommended that lawyer referral offices become members of NLADA at the last annual meeting of that organization last fall. He was suggesting the conversion of lawyer referral from a passive role to an active concern for the provisions of legal services—and a relating of services for persons of moderate means to the traditional legal aid concern for so-called indigents. I would venture that Mr. Voorhees was also calling attention to the fact that the definition of legal indigency is an extremely imprecise matter at the present time.

One of the eventual results of the adoption of Mr. Voorhees' suggestion would be the framing of adequate standards for lawyer referral—analagous to the pioneering work of NLADA in regard to standards for legal aid.

It is not too early to start with a number of steps which will yield us information for adequate standards for lawyer referral—steps which are only elementary, even though they may sound radical in the light of the hitherto conservative and stand-pat attitude of the organized bar. Even more dramatic changes will be required. But as a starter we should certainly take the steps to experiment which were recommended in the 1964 report of the Committee on Group Legal Services.
of the California State Bar. These steps are set forth in the report of that Committee. They provide a truly effective way of ascertaining needs for legal services by persons of moderate means and possible ways of meeting such needs. Such efforts are incumbent upon the organized bar if it is to fulfill its responsibilities to the public. I have edited slightly the pertinent recommenda-

tions of the Committee as follows:
1. The service will attempt to secure agreements with known organized groups such as unions, teacher associations, trade groups, and public employee associations, whereunder the groups and their representatives would refer their members to the reference service rather than to a group attorney, whenever the problem creating the need for legal assistance is an individual problem and something other than a grievance or complaint under a union contract or other problem common to or affecting, or the solution of which would affect, all members of the group.
2. In each reference service, among other specialties as determined by a qualified board, panels would be formed. Qualifications would be established, adopted and applied by the service.
3. A major effort would be made to have a far larger number of attorneys participate in the service than is now the case. Too often the Lawyer Reference has been accused of being designed solely for the young or inexperienced attorney who has no regular clientele.
4. The existence, availability, extent and features of the service will be repeatedly brought to public attention by advertising in all dignified media in the community, without regard to financial return.
5. Dependent upon the population, the service would have one or more attorneys on duty at all times.
6. Interviewing at the service would be so conducted as to produce facts which can be tabulated for study. After securing all data, selection of a specialized panel and actual reference would be carefully and quickly completed. Those applicants having a prior relationship with a particular lawyer would, with their consent, be returned to that lawyer's office and care.
7. A complete 'follow-up' procedure would secure additional data for tabulation.
8. During the course of the experiment, continuing study and surveys would be made to assist in testing the effectiveness of the program from a community standpoint...
9. The experiment would continue until an analysis of the collected experiences will allow a meaningful interpretation of the results achieved.

I would add to the committee's prescriptions the need to experiment with maximum fee schedules to protect cooperating organizations and their members against excessive fees.

Experiments through a revitalized lawyer referral also can operate more effectively when the organized bar also drops the attitude displayed in its deplorable conservatism at the time of the Button v. NAACP and

Brotherhood v. Virginia cases.

The Button case came down in 1963 (NAACP v. Button, 371 U. S. 415). In that case the Supreme Court stated that Virginia could not, because of the First Amendment guarantees, restrain an organization like the NAACP from hiring and paying counsel for members and non-members alike. Arguments against this kind of activity, based on canons of ethics, charges of fomenting litigation, and intervention of lay intermediaries were all brushed aside in the "public interest." That the public interest was paramount and not the special interests of the members of a profession apparently was not made obvious enough to the organized bar by this opinion alone, even though the Court clearly stated that Virginia could not outlaw any arrangement "by which prospective litigants are advised to seek the assistance of particular attorneys." The behaviour of the organized bar only a year later made it perfectly clear that it had not absorbed the Court's point that the canons of ethics might be invalid when they clash with the public interest, and not the other way around.

In charity it might be said that many members of the organized bar looked upon the Button case as a special holding coming out of the civil rights struggle—though such an attitude in itself was far from forward-looking. Nevertheless, how explain the subsequent attitude of the organized bar after the holding by the Court in 1964 in Brotherhood of Railroad Trainmen v. Commonwealth of Virginia, ex rel. Virginia State Bar, 377 U. S. 1. At least the organized bar of Virginia seemed intent on adding to the State's reputation of being "mother of Presidents," the newer distinction of being "mother of precedents" for group legal services. But it must be said in all fairness to the bar of Virginia that the Brotherhood and its legal aid plan had been in the courts of the various states for about thirty years. The California bar had been successful in having the plan stricken down in 1950 (Hildebrand v. State Bar, 36 C. 2nd 504) and subsequent proceedings had involved the states of Montana, California, Nebraska, Iowa, Michigan, Oklahoma, and Illinois.

Anyhow, in BRT, 1964, the Supreme Court, again on the basis of the First Amendment, specifically upheld the following legal aid plan of the Brotherhood:

"Under their plan the United States was divided into sixteen regions and the Brotherhood selected, on the advice of local lawyers and federal and state judges, a lawyer or firm in each region with a reputation for honesty and skill in representing plaintiffs in railroad personal injury litigation. When a worker was injured or killed, the secretary of his local lodge would go to him or to his widow or children and recommend that the claim not be settled without first seeing a lawyer, and that in the Brotherhood's judgment the best lawyer to consult was the counsel selected by it for
that area."

This opinion was handed down on April 20, 1964. The reaction of the organized bar was swift; in part, of course, because of the May 15 deadline for a rehearing petition. The May 15, 1964 issue of the American Bar News made the Court's action and the bar's reaction front page news. A large headline read: "Virginia Moves for Rehearing in Trainmen Case." An accompanying smaller caption stated: "ABA and 41 State Bars Support Petition." A lengthy story followed concerning the Court's opinion and the bar's reaction. Noteworthy is the fact that the story reprinted exactly four lines from the majority opinion, while almost forty lines from the dissent were reprinted, and, in addition, there was editorial-like text of undoubted sympathy with the dissent.

The June 15, 1964 issue of the American Bar News carried the following item at the bottom of an inside page: "Supreme Court Denies Petition for Rehearing of Trainmen Case. The United States Supreme Court June 2 denied a Virginia Bar petition asking a rehearing of Brotherhood of Railroad Trainmen vs. Virginia (Bar News, May 15, 1964). The American Bar Association and more than 50 state and local bar associations have supported the rehearing petition."

One may hope that from here on out the organized bar's attitude will be premised on the public interest in more legal services at reasonable fees, instead of on the economic interest of the bar as narrowly perceived. For in the long run the economic interests of the bar will also be served better if the public interest is served through more legal services made available and paid for. Restrictive practices can only serve the needs of those who are all set under the existing system.

No one can tell what will be the ultimate impact of the Button and BRT cases. In and of themselves they only open opportunities for the lay citizen and for the lawyers of the nation. It is up to the organized bar to seize the opportunities. No one knows how many efforts at group legal services we have had or do have. Here I am referring particularly to efforts to serve the needs of wage and salary earners, and not to other group legal services arrangements, such as those regularly utilized by trade associations or trade unions for business purposes. We do know that group legal services plans have existed and do exist. I believe we can fairly state that, with social trends as they are, there will be more and not fewer efforts at group legal services for wage and salary earners.

I have personally become involved with the experience of the Hotel Trades Council in New York City, which has rendered assistance in certain legal matters to its members—mainly landlord-tenant and garnishee proceedings. From personal observation, I know that neighborhood or other offices close to the wage earner can and do serve as excellent intake points for problems which often turn out to be legal problems. Further, such intake points also permit non-lawyers to gain the expertise to dispose of many problems without the need of a lawyer's special professional skills. This makes the entire process much more efficient. Finally, I know from these experiences that this potential additional legal business may be made available to the bar through lawyer referral, if lawyer referral and the bar are willing to think in terms of moderate and maximum fees and better service to new classes of clients.

There is a great future ahead for the American bar. There will be those who drag their heels, but I am convinced that the leaders and most members of our profession, like the Supreme Court, do follow the elections and the changes in contemporary society. There will be a new approach to legal services across the board, including legal services to persons of moderate means. For some persons and for some causes there will have to be subsidies for fees from public funds and from funds of voluntary associations, as some of the experiences in group legal service already suggest.

Through action the American bar must change its image and its concept of service. It will have to see that legal services are a matter of right; that plans must be devised to make such services available to all including the indigent and those of moderate means or involved in modest causes.

Our record on legal services in the United States is not good so far as the lower and middle income groups are concerned. The Report of the Joint Committee on Legal Aid for the Province of Ontario (March, 1963) slaps hard at the United States, after taking a world-wide look at systems of legal aid. The report points out that in the United States there is still a stigma of charity attaching to legal service when a person cannot afford to pay the going rate. The Ontario report, recommending in effect a British scheme of legal aid, states that the matter is first, one of providing legal service; and second, one of determining how to pay for it, including contribution of part payment by the client himself. In other words, legal services are a right belonging to the person. How the service is to be paid for is a community problem. The individual should contribute what he can—the community should pay the remainder.

We need to adopt this modern view in the United States. Legal services are a right. Everyone should have them. For those who are too poor to pay anything, public subsidies are probably the answer. Contributions of local tax funds for legal aid and the use of anti-poverty money are precedents moving in the right direction.

We need to do much more work on the methods of paying for legal services for persons of moderate means who can pay part or all of a fee. This should be an area of high priority experimentation for all concerned with the better administration of justice. We need to use our imagination.

This is an exciting time for lawyers. Years from now, lawyers may look back and wonder what the excitement and the problems were. Because there will be universal provision for legal services. We are lucky to be around when the revolution is just getting under way.
formulation of projects for OEO has had to undergo repeated revision and refinement. But in this process there has been more thinking about the problems of legal aid and how to meet them, and more participation by more different people, during the last few months than during many years preceding.

In addition to the elements to which OEO has required attention, two points are emerging about which even OEO has not yet given much thought, but which have long cried for notice and for action.

One point is perplexing and delicate. It is accepted, of course, that legal aid service should not be provided to one who can afford to retain private counsel. OEO has been particularly faithful to that limitation.

But the limitation as thus stated, if applied literally, has a grave fault. For in some areas of the law and in some communities there are lawyers in private practice who are available at very low cost but whose service is so bad that its availability should not bar the provision of legal aid. Bar associations sometimes incline to sweep this state of affairs under the rug.

The problem can be illustrated by what happens in misdemeanor courts in nearly every city of considerable size—the operation of the so-called "mourners' bench." Lawyers attend the court, picking up so-called "assignments" where defendants appear without counsel. Some of those lawyers are superb for the job. But some simply prey on the poor. Yet they can be "retained" for whatever few dollars the defendant has in his pocket. Literally applied, the usual limitation would bar the provision of legal aid where such a lawyer is at hand.

In Washington a judge in misdemeanor court recently took action that came dramatically to front page notice. He let it be known that there were certain lawyers who had been in daily attendance at the court whom he would not "assign" to cases.7

The problem in misdemeanor court could be coped with without too great difficulty—although it is shocking that little has been done about it in any city. But the essentials of the problem exist elsewhere in the practice of law. Were the problem compounded only of lawyers' unethical conduct it would be serious enough. But it is compounded as well of sheer incompetence that a bar examination does not expose. That is what makes it perplexing and delicate. But perplexity and delicacy will not excuse sweeping it under the rug.

Another point is looming. That is the extent of the fundamental right of the layman to a lawyer's service, a right so fundamental as to be of constitutional proportions. The constitutional right to counsel has been rec-

Engrossed participants at Law Alumni Day seminars

ognized in criminal cases, even, recently, in some misdemeanor cases.8 A similar right seems to be recognized in certain types of mental competency cases.9 Something closely approaching such a right has been recognized in juvenile cases.10 Thus far there seems to have been an

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8 See Harvey v. Mississippi, 340 F.2d 263 (5th Cir. 1965); McDonald v. Moore, 353 F.2d 106 (5th Cir. 1965).
9 See People v. Breese, 213 N.E.2d 300 (Ill. 1966) (mental commitment proceeding following term of imprisonment); People v. Olmstead, 205 N.E.2d 625 (Ill. 1965) (proceeding to obtain release after commitment).
10 In the District of Columbia it has been held that a juvenile is entitled by statute to the assistance of counsel in proceedings before the Juvenile Court; the reasoning suggests a constitutional right. Shiotzuka v. District of Columbia, 236 F.2d 666 (D.C. Cir. 1956); Black v. United States, 355 F.2d 104 (D.C. Cir. 1965). In Kent v. United States, 34 U.S.L. Week 4228, 4232 (U. S. March 21, 1966), amici curiae argued that constitutional guaranties, including the right to counsel, applicable to adult defendants should be applied in juvenile court proceedings even though these proceedings are said to be "civil" in nature. The Court, holding for the juvenile on other grounds, found it unnecessary to decide this question.
assumption that the right is limited to cases involving personal liberty. This is careless. Is not property, also, constitutionally protected? And since when did equal protection of the laws—a principle forged in the fires of Civil War and which should pervade a democratic society—concern itself with the application only of some and not all process of the state? If a man who can pay for a lawyer can effectively defend himself against an unconscionable contract, is it not constitutionally requisite that a man who cannot pay for a lawyer be enabled also effectively to defend himself? Or, if a man who can pay for a lawyer can invoke judicial process as a plaintiff to protect his legal rights, is it not constitutionally requisite that a man who cannot pay for a lawyer be enabled also effectively to protect his legal rights?

On these questions legal aid societies have been strangely silent. Until they begin to ask such questions and to demand the answer that the professed principles of our society so plainly dictate, they are, I submit, derelict in the safeguarding of those in the community who are supposed to be in their charge. Even though legal aid societies have been mute, I would have thought that long ere this some law school, or at least some law review, would have given voice to this demand. But there has been a great silence. I suggest that the day is not distant, as a result of the stirring in the land, when such questions finally will be posed. When they are, the answer will be forthright, for equality before the law is too precious a principle not to be implemented in the way that can make the principle real.

All this stir in the land is propelling legal aid forward with jet speed as compared with the snail’s pace of only yesterday. It is bringing home to thoughtful people that this legal aid job is, indeed, an enormous one. No longer can it be treated as some George’s pet charity. Evidence is accumulating that the full legal aid job, civil and criminal, in a city of, say, a million people, requires an annual expenditure of far more than a million dollars, with highly trained legal, investigating, and clerical staffs, and with skill and efficiency in administration with which legal aid societies and bar associations have been quite unfamiliar. Challenged as never before is the old leadership of the bar and of legal aid.

One well may wonder, and question, whether old leadership is up to meeting the challenge. If not, we need not greatly worry. For coming along in nearly every city is a generation of young lawyers ready and eager. If present leadership falters, stronger hands are reaching to take hold.

In many law schools today students are beginning to think of legal aid as offering a career—a career, moreover, at least as honorable as, and perhaps far more stimulating than, a career in the service of corporate clients. In another way, also, the younger generation is glimpsing an opportunity. That is the opportunity for constructive service to legal aid by lawyers in private practice, both individual lawyers and lawyers in law firms. Obvious enough, even to the older generation, is the opportunity for participation by becoming a missionary for greater financial support for legal aid.

Becoming obvious also is the opportunity for participation through service on boards, committees, and in other capacities concerned with the difficult problems of successful legal aid operations. Rich is opportunity of this sort—for example, the opportunity to participate in intensive training courses for legal aid staff lawyers. But most interesting—and what is seen, I am sure, more clearly by younger lawyers than by their elders—is the greatly enlarged opportunity for volunteer legal aid work. Quite properly OEO discourages reliance upon volunteer or part-time work for legal aid staffing in the larger communities. But there is a great opportunity for the use of the volunteer to take by referral from a legal aid society cases that are especially taxing either in time required or in the expertise demanded. In providing this resource the practicing private bar, if it has the will and the imagination, can give legal aid a scope and effectiveness of incalculable value. This sort of thing has been done to some degree on a hit or miss basis in the past. What is greatly needed is the bar’s full scale and enthusiastic support with careful programming. That has never been done. It will come, I dare say, only as the younger lawyers seize leadership.

All this stir in the land is no passing matter. Legal aid is on the march, its ranks swelling each month. For behind it all there is the appeal of an idea that will never down. It is an idea that has stirred men for more than three hundred years. It can be expressed today no better than it was in earliest times when, at the grand council of officers of Cromwell’s army, it was stated in these pregnant terms:

“... the poorest he that is in England hath a life to live as the richest he.”


GRADUATION—MAY 23, 1966

One hundred eighty-five members of the Class of 1966 were awarded the degree of LL.B. at commencement. Seven graduate law degrees were also conferred.

Henry W. Sawyer, III ’48, who was made an honorary fellow of the Law School for his work in “generously and effectivly involving himself in the social issues of his times,” addressed the graduating class at Law School. At left, 1966 Class President, Harry T. Boreth, speaks at graduation exercises held in Law School courtyard. Picture on back cover shows Dean Fordham conferring degrees.