A Reading of the British Statute on Legal Aid and Advice

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By Warren Freedman*

"Legal Aid and Advice

A BILL

To make legal aid and advice in England and Wales, and in the case of members of the forces, legal advice elsewhere, more readily available for persons of small or moderate means, to enable the cost of legal aid or advice for such persons to be defrayed wholly or partly out of moneys provided by Parliament, and for purposes connected therewith."

In November 1948 the English Government inaugurated in a Bill before Parliament1 a full-fledged plan for providing legal assistance to persons of moderate incomes on a nationwide basis financed by public funds.1a This measure, then known as the legal Aid and Advice Bill, 1948,2 embodied the important report of the Rushcliffe Com-

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1 In this article, effort has been made to set forth a lucid, objective analysis of the Legal Aid and Advice Bill, and data included herein are primarily based upon the following official sources: "Report of the Committee on Legal Aid and Advice in England and Wales," presented by the Lord High Chancellor to Parliament in May 1945 (CMD 6641); "Summary of the Proposed New Service, Legal Aid and Advice Bill, 1948," (CMD 7568); "Legal Aid and Advice Bill, 1948," (12 Geo. 6); and "Legal Aid and Advice Bill, 1949" (13 Geo. 6, c. 51).

1a For Scotland, the The Legal Aid (Scotland) (General) Regulations 1950 (No. 1513, s. 109); The Legal Aid (Scotland) Act, 1949 (Commencement) (No. 2) Order 1950 (No. 1512, s. 108); and, in general, The Scotsman, (September 14, 1950, edition).

On March 24, 1949, this Bill was returned to committee in Parliament prior to its third reading because of difficulty with Clause 7 on administration and financing the scheme. In 171 Fortnightly (ns 165) 49, 52 (January 1949), the eminent writer, E. J. Cohn, commented on prior delays: "The Rushcliffe Committees report was published in 1945. The Committee had reported unanimously. Its report had been adopted by all political parties and acclaimed by leading members of the legal profession, including two chairmen of the Bar and
the need for a new approach to the whole question of legal assistance.” The object of the statute, passed by Parliament on July 7, 1949, as the Legal Aid and Advice Act, 1949 [effective July 1, 1950 but suspended for the most part until October 2, 1950,] was to two Presidents of the Law Society. Nevertheless it has taken the Government more than 3 years before the present Bill could be laid before the House. This strange delay finds its explanation in the impossibility of estimating at present the costs of operating this scheme.”

On July 7, 1949 the Bill was finally passed in both Houses of Parliament without a challenge except on a few matters of detail. Although the major part of the Act was not to be effective until July 1, 1950, four Sections dealing with the machinery of administration came into force on September 1, 1949. In November 1949, owing to England’s financial difficulties, the operation of the plan was suspended until October 2, 1950. In particular, legal aid in criminal courts, in the county courts, and by way of appeal to the Privy Council and the House of Lords was deferred as were legal advice provisions generally.

The Rushcliffe Committee, appointed on May 25, 1944, comprised twenty-one of England’s distinguished citizens, “to enquire what facilities at present exist in England and Wales for giving legal advice and assistance to Poor Persons, and to make such recommendations as appear to be desirable for the purpose of securing that Poor Persons in need of legal advice may have such facilities at their disposal, and for modifying and improving, so far as seems expedient, the existing system whereby legal aid is available to Poor Persons in the conduct of litigation in which they are concerned, whether in civil or criminal courts.”

The Committee held 48 sittings of which 26 were for the purpose of hearing evidence, both oral and written. In May 1945 a forty-eight page report of the committee’s findings was published, described in Modern Law Review 58 (April 1946) as “a well-nigh exhaustive study of legal aid to the poor. It contains a most elaborate and, in some cases, profound, discussion of the various suggestions for improvement made by recent writers and by the numerous experts heard by the Committee. Moreover, it embodies in its scheme a number of new ideas, the result of the Committee’s own creative work. The Rushcliffe Committee may indeed have succeeded in giving a satisfactory answer to some of the most baffling problems of legal aid to the poor.”

After two weeks operation the London Times (October 18, 1950), reported that there were over 5,000 callers to local committee officers from October 2-16, and over 15,000 callers for forms and general information. Since the voluntary panels contained the names of 8,500 solicitors and 1,500 barristers, the London Times concluded that “substantially the whole of both branches of the (legal) profession was supporting the scheme.” With respect to the nature of early applications for legal assistance: “About 80% related to matrimonial causes. More than half the applicants would not have been eligible for assistance under the Poor Persons Procedure.”

The intolerance and unfair treatment of the British plan on the part of certain American newspapers was nicely illustrated by the headline “Divorce Mills to Grind for Free in Britain” appearing in the New York World Telegram and Sun, September 15, 1950, p. 17.

“As of Oct. 2, the British Government will foot the bill for divorces, murder trial defense and most other legal aids—providing the person in need of an attorney has an income of less than $40 a week. That is when the socialized law program goes into effect. Authorities expect a stampede toward the divorce courts by those who never have been able to afford to squabble in public. Under the scheme, both a man and his wife could engage separate attorneys and battle out a divorce action without paying one red penny. The average divorce now costs about $196. Britain’s divorce rate already has risen more than 500 per cent since the war, and it is expected to make a still sharper rise.”
provide assistance in a more effective form, both in the conduct of civil proceedings and in legal advice for those of "slender means and resources," so that no one will be financially unable to prosecute a just and reasonable claim or defend a legal right. The scheme also allows counsel and solicitors to be adequately remunerated for their services. The principle of the plan is that legal aid should be available to "assisted persons" whose income, computed in accord with

4 See generally "Summary of the Proposed New Service, Legal Aid and Advice Bill, 1948," (CMD, 7563). Despite the decided effort in the Bill to provide legal assistance for everyone, Mr. A. M. Kraft, writing in 13 Socialist Commentary 12 (January 1949) saw only "odious discrimination" as the Bill perpetuates the odious discrimination between paying and poor litigants. Whereas everybody is entitled to the benefits of the National Health Service, there is to be one legal service for the rich and one for the poor. Whereas a solicitor acting for a rich client is entitled to the full amount of his fees, a solicitor acting for a poor client is to receive only 95% of the profit costs.

On the other hand, Mr. E. J. Cohn, in 9 Modern Law Review 58, 64 (April 1949), saw a salutary retention of private controls: "It is the merit of the Rushcliffe Committee not to have adopted a course which other laws have adopted. It would have been cheaper for the public chest to transfer all poor persons cases to a public solicitor or to an organization such as is the present Services Divorce Department. But that saving would have been made at the expense of depriving the independent profession of practically all connection with legal aid. It would have introduced into the organization of professional representation an official and bureaucratic element, which is fortunately utterly alien to the traditions of the English legal profession."

Note two American Statutes as typical of the desire to compensate counsel in legal aid matters: Mass. Ann. Laws, c. 277, Sections 55, 56 (1932) — "reasonable compensation" and N. Y. Code Crim. Proc., Section 308 — permits attorney to receive personal and incidental expenses and compensation not to exceed $1,000.

One of the express recommendations of the Rushcliffe Committee was that the term "poor person" should be discarded and the term "assisted person" adopted. Evidently the great bulk of the British population consists of persons of moderate means who would be ineligible to receive legal assistance under a "poor person" classification. The term "assisted person" tends to demonstrate the scope of the Legal Advice Bill, 1949.

In New York (and other States) the classification of "poor person" is part of the statutory language for according special treatment to such persons. In New York a "poor person" may sue without liability for disbursements or costs by presenting a petition to the court showing that he is worth less than $300 in cash or available property, outside of his cause of action, necessary wearing apparel and household furniture for himself and family, Civil Practice Act. No. 199. See, generally Berkman, Outline of New York Practice (8th Rev. ed. 1948), pp. 104-5:

"Upon acceptance of the petition the poor person in New York may be permitted to sue on his own behalf or as executor or administrator, or other representative of a deceased person. The petition must be supported by a certificate of counsel showing a meritorious cause of action. R. C. P. 95. The order permitting suit as a poor person designates an attorney for that purpose. The attorney must act without compensation (costs, if any, go to the attorney) except that if a recovery is had, the court may allow such attorney a reasonable sum for his services. C. P. A. No. 196. A poor person is not barred from prosecuting his action by reason of his being liable for the costs of a former action or proceeding brought by him against the same defendant. C. P. A. No. 197. Such leave to prosecute or defend as a poor person may be granted at any stage of the proceedings, including appeal, although no previous application was made prior to or at the commencement of the action. C. P. A.
the rules applied by the National Assistance Board, does not exceed £420 a year and whose capital does not exceed £500. But where the assisted person can afford to make a contribution to the costs of his case, he will be liable to pay an amount computed with due regard to his financial resources. Assisted persons are able to choose their

No. 198a, added in 1937. A poor person prosecuting or defending as such does NOT have to pay any fees to any officer, including clerks, stenographers, or sheriffs. Upon order of the court stenographic minutes furnished to the poor person may be charged to the county. C. P. A. 1493. Moreover, on appeal, a poor person may submit typewritten, instead of printed records and briefs, and may not be required to furnish an undertaking to perfect his appeal, C. P. A. 558, as amended Sept. 1, 1938. Siegelbaum v. Dowling, 279 N. Y. 22 as Defendants: The same requisites apply where a person asks leave to defend as a poor person, with this addition: that the action must involve his interest in or to real or personal property. C. P. A. 198; R. C. P 37.”

The National Assistance Board is a public agency previously set up under the National Assistance Act, 1948 (11 and 12 GEo. 6, c. 29). The Local Committees under the Bill are required to refer any application for legal assistance to the Board who will certify the financial means of the applicant. In 9 Modern Law Review, supra note 4, at p. 62:

"it may be said that the cooperation of the Assistance Board is perhaps the least attractive feature of the scheme. The large amount of discretion which, notwithstanding all the details provided for by the Committee, must be left to the Assistance Board increases these doubts the Assistance Board hardly offers those guarantees of judicial independence which one might wish to find in the authority which is entitled to open or to close the gates of justice to needy persons believed to be entitled to claim the assistance of the law."

“2.—Subject to this Part of this Act, legal aid shall be available for any person whose disposable income does not exceed four hundred and twenty pounds a year: Provided that a person may be refused legal aid if he has a disposable capital of more than five hundred pounds and it appears that he can afford to proceed without legal aid.”

In American dollars today, income less than $1180, per year and capital not exceeding $1400 per year would come under the scheme. The pound sterling is worth approximately $2.80.

Unlike many American State statutes which arbitrarily restrict legal aid benefits to residents or plaintiffs, the Act aids all whether plaintiff or defendant, citizen, or alien, who qualify financially. See La. Gen. Stat. Ann., Sec. 1400 (1939).

8 “3.—(1) A person's contribution to the legal aid fund in respect of any proceedings may include—

(a) a contribution in respect of income not greater than half the amount (if any) by which his disposable income exceeds one hundred and fifty-six pounds a year; and

(b) a contribution in respect of capital not greater than the amount (if any) by which his disposable capital exceeds seventy-five pounds.

(2) A person may be required to make any contribution to the legal aid fund in one sum or by installments.

(3) If the total contribution to the legal aid fund made by a person in respect of any proceedings is more than the net liability of that fund on his account, the excess shall be repaid to him.

(4) Except so far as regulations otherwise provide, any sums remaining unpaid on account of a person's contribution to the legal fund in respect of any proceedings and, if the total contribution is less than the net liability of that fund on his account, a sum equal to the deficiency shall be a first charge for the benefit of the legal aid fund on any property (wherever situate) which is recovered or preserved for him in the proceedings.

(5) The reference in the last foregoing subsection to property recovered or
own solicitor or barrister from the list of those lawyers who have volunteered and placed their names on the appropriate panels. Whether this scheme is a "socialization of the practice of law" or not appears

preserved for any person shall include his rights under any compromise arrived at to avoid or bring to an end the proceedings and any sums recovered by virtue of an order for costs made in his favor in the proceedings (not being sums payable into the legal aid fund under the last foregoing section).

(6) The charge created by subsection (4) of this section on any damage or costs shall not prevent a court allowing them to be set off against other damages or costs in any case where a solicitor’s lien for costs would not prevent it.

(7) References in this section to the net liability of the legal aid fund on any person’s account in relation to any proceedings refer to the aggregate amount of the sums paid or payable out of that fund on his account in respect of those proceedings to any solicitor or counsel and not recouped to that fund by sums which are recovered by virtue of an order for costs made in his favor with respect to those proceedings.”

5.—(1) Panels of solicitors and barristers willing to act for persons receiving legal aid shall be prepared and maintained, and there may be separate panels for different purposes, for different courts and for different districts.

(2) Any practising solicitor or barrister shall be entitled to have his name on the appropriate panels or any of them, unless there is good reason for excluding him arising out of his conduct when acting or selected to act for persons receiving legal aid or his professional conduct generally, or, in the case of a member of a firm of solicitors, out of that of any person who is for the time being a member of the firm.

(3) Where a person is entitled to receive legal aid, the solicitor to act for him, and, if the case requires counsel, his counsel shall be selected from the appropriate panel, and he shall be entitled to make the selection

In 207 The Law Times 95 (February 18, 1949) the enthusiastic response of lawyers to these panels was summed up:

"The attitude of the legal profession seems to be one of welcome to the general principles of the Bill, combined with the sober realization of the fact that success in working the Bill may prove to be touchstone by which the general public judges the legal profession.

Professor John Hazard of Columbia Law School, in an address before the New York County Lawyers Association on December 17, 1948, pointed out the similarities between the proposed British statute and the Soviet schemes:

"The contrast between the Soviet and British schemes is marked at some points. In the USSR, the bar has become a creature of an administrative agency, the Ministry of Justice of the USSR, while in the United Kingdom it is to remain the agency of the court. The British barristers and solicitors will continue to practice in their present chambers and alone or in partnership, as they wish or as custom decrees. The Soviet lawyers practice at the consultation points to which they are assigned. Fees in the USSR are set more rigidly than in England for the Soviet regulations provide a formal tariff while the British solicitor or barrister will tax the same fee and costs as he would have received outside the scheme, receiving 85% of this in the higher courts, but all of it in the county courts. The Soviet scheme is for all regardless of property qualifications, while the British scheme is conceived in terms of needy persons."


In 119 New Republic 110 (December 27, 1948), an editorial writer warned:

"American newspapers have recently suggested that the new plan for legal aid, under consideration in Britain, amounts to socializing the practice of law. But the facts do not bear out this assumption. The new plan is simply a scheme for giving legal assistance to the poor in a better and more systematic way than is now done."

On January 28, 1949, the New York Times (p. 19, col. 4) reported that Mr. Eustace Seligman, treasurer of the Legal Aid Society and member of the New York law firm of Sullivan & Cromwell, advocated ‘a program of socialized law by which
mmaterial today since the British government enjoys the wholehearted support of its people in providing necessary legal assistance to the needy.

"The Legal Aid and Advice Bill has never sailed into the troubled waters into which other social services sailed. Almost from the start there has been unanimity between all those who took any interest in the matter."\footnote{11}

The act itself is a relatively brief document containing twenty-one clauses or sections. In addition, there are three Schedules which cite the civil proceedings for which legal aid may be given,\footnote{11a} the resources to be disregarded on application in civil proceedings, and the remuneration of persons giving legal aid in civil proceedings. At the outset a distinction is made between "legal aid" and "legal advice." The former means assistance in conducting or defending proceedings in the courts,\footnote{12} while "legal advice" refers to advice on legal matters, drafting of simple documents, and negotiations apart from the conduct of litigation, except conveyancing or probate matters such as the drafting of wills.\footnote{12a} The primary importance of the distinction lies in

government funds for the legal aid of the needy would be administered by private agencies." Mr. Seligman's address was delivered before the Banking Law section of the New York State Bar Association.

In 1946 the House of Delegates to the American Bar Association adopted the following resolution marking the beginning of a new epoch:

"Whereas, the American Bar Association believes that it is a fundamental duty of the Bar to see to it that all persons requiring legal advice, be able to obtain it, irrespective of their economic status, has recently approved and made an appropriation to increase the extent and efficiency of legal aid service in various parts of the country;" Be It Resolved, that the Association approves and sponsors the setting up by state and local Bar Associations of lawyer reference plans at low cost service methods for the purpose of dealing with cases of persons who otherwise might not have the benefit of legal advice." (Italics added)\footnote{171 FORTNIGHTLY 49 (Jan. 1949). In 9 MODERN LAW REVIEW, supra note 4 at page 58:}

"The Conservative Party scheme had treated legal aid in litigation with a considerable amount of understanding and sympathy, but failed to submit any suggestions for legal aid outside litigation. The Labour Party's scheme had avoided this error and devoted an equal amount of attention to both sides of the problem." See generally, E. J. Cohn, The Political Parties and Legal Aid, 8 MODERN LAW REVIEW 97 (1945).

\footnote{11a} The Legal Aid and Advice Act 1949 (Commencement) Order 1950 (S.I. 1950, No. 1357) applied Sections or clauses 1 to 6, excepting Section 5 which deals with legal aid in matters not involving litigation, as well as the three Schedules for the purpose of making legal aid available in connection with proceedings in the Supreme Court of Judicature; in any county court or the Mayor's and City of London court in connection with any action sent down by the Supreme Court of Judicature; and before any person to whom a case is referred by the Supreme Court of Judicature.

\footnote{12} "1.-(5) Legal aid shall consist of representation, on the terms provided for by this Part of this Act, by a solicitor and so far as necessary by counsel (including all such assistance as is usually given by solicitor or counsel in the steps preliminary or incidental to any proceedings or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings)."

\footnote{12a} "6.-(2) Legal advice shall consist of oral advice on legal questions given
the fact, that clause 6(7), dealing with "legal advice," contains no qualification by reference to income or capital:

"6 (7) A person seeking legal advice may be required—
(a) to satisfy the person employed to give it that he cannot afford to obtain it in the ordinary way.
(b) to pay a fee of half a crown or such other fee as may be prescribed for each interview."

A standard fixed fee for each interview is assessed for obtaining legal advice, which is in contrast to the sliding scale of contributions exacted for legal aid. The existent Legal Advice Centres staffed by solicitors will be expanded under the Act. These Centres were a wartime development of the Poor Man's Lawyer Centres, voluntary organizations conducted in London and other large towns.14

by a solicitor employed whole time or part time for the purpose and shall include help in preparing an application for legal aid and in supplying information required in connection therewith for determining disposable income and capital, but (subject to the following provisions of this section) shall not include advice on any law other than English law."

"The Poor Man's Lawyer is the oldest organization offering legal advice for the poor. It began about fifty years ago in university and other settlements. The first was started at Townbee Hall in 1893. Lord Finlay's Committee reported that in 1928 there were 27 non-political Poor Man's Lawyer centres in London and also 27 run by the three main political parties. Poor Man's Lawyers were also to be found in ten provincial towns. Immediately before the outbreak of the present war the number of non-political centres in London had increased to 55 and the number of centres in the provinces was about 70, though many of these were very small, being offshoots from the local Council of Social Service, and not comparable with the usual type of Poor Man's Lawyer centre. Less than a dozen provincial towns with a population of over 100,000 have a Poor Man's Lawyer organization such as is described in these paragraphs. In many places, however, political parties have founded legal advice centres and have done most useful work on a non-political basis.

Poor Man's Lawyer centres are held in a variety of buildings, chiefly settlements, church halls, missions and social service centres, and are ordinarily open one evening a week. One or more barristers or solicitors attend to give legal advice and usually their names are not disclosed to the applicants. The advisers give their services without receiving payment, although at many centres there is a box where those who wish may put contributions. This money is used to meet expenses but not to pay the advisers or helpers. If there is a clerical helper the applicants are first interviewed by him and details of their names and addresses and the nature of the enquiry are entered on a form. The applicant then sees the legal adviser. It is not usually possible for this interview to take place in a separate room owing to the limited accommodation available. The adviser (or the clerical helper) satisfies himself by enquiry from the applicant that his means entitle him to seek free legal advice. The income scales which are followed vary, but in general advice is not given to those whose means exceed the 4 pounds per week of the Poor Persons Rules. Allowance is made in some centres for the number of children and amount of rent. The adviser hears the applicant's statement of the facts and advises him. Frequently the advice shows that what has been felt to be a grievance is not really a grievance at all. Many, but not all, centres have a few standard text books, but if a question raises unusual points the adviser asks the applicant to return at a later session and refers to the authorities in his office in the meantime.

The facilities for letter-writing vary. At some centres the adviser drafts a
In addition to affording assistance in civil proceedings and with legal advice, the Legal Aid and Advice Act, 1949, also provides for free legal aid in criminal cases. Existing facilities for granting free legal aid to persons charged with criminal offenses and unable to afford the cost of legal assistance are enhanced and carried to their greatest extent.\textsuperscript{15}

The Act does not pretend to be more than a skeleton Act, for it places much reliance upon the regulations and orders\textsuperscript{16a} of the Lord Chancellor generally made with the approval of The Law Society, which is an organization similar to but having more power than the American Bar Association. Almost every sub-clause of the Act refers to "regulations", and clause 11 wholly applies to them.\textsuperscript{16} In effect, The Law Society will prepare all the regulations, though clause 11(4) provides that the power of the Lord Chancellor to make regulations shall be exercisable by statutory instrument, and clause 11(5) de-

letter for the applicant to send in his own name, and at others the adviser signs the letter himself as "honorary legal adviser, or as "Poor Man's Lawyer."

[Other examples of Poor Man's Lawyer centers in England and Wales include the Bentham Committee, the Society of Our Lady of Good Counsel, Cambridge House Free Legal Advice Centre, Mary Ward Settlement Free Legal Advice Centre, the Birmingham Poor Man's Lawyers Association, and the Manchester and Salford Poor Man's Lawyer Association.] See generally "Report of the Committee on Legal Aid and Advice in England and Wales," supra note 1.

\textsuperscript{15}-(1) If, on a question of granting a person legal aid under—
(a) section ten of the Criminal Appeal Act, 1907; or
(b) section one or two of the Poor Prisoners Defence Act, 1930; or
(c) section two of the Summary Jurisdiction (Appeals) Act, 1938;
there is a doubt whether his means are sufficient to enable him to obtain legal aid or whether it is desirable in the interests of justice that he should have free legal aid, the doubt shall be resolved in favour of granting him free legal aid."

\textsuperscript{16a}Note, in particular, the three following recent orders or statutory instruments bringing into force certain sections of the Act, effective Oct. 2, 1950: The Legal Aid and Advice Act, 1949 (Commencement) (No. 1) Order, 1949 (S.I. 1949, No. 1503, L. 14), dealing with Sections 8 to 11 and 13; The Legal Aid (Assessment of Resources) Regulations, 1950 (S.I. 1950, No. 1358), dealing with computations of an applicants resources; and The Legal Aid (General) Regulations, 1950 (S.I. 1950, No. 1359), dealing with proceedings in the Supreme Court of Judicature.

\textsuperscript{16}"11. (1) The Lord Chancellor may make such regulations as appear to him necessary or desirable for giving effect to this Part of this Act or for preventing abuses thereof.

(2) Without prejudice to the foregoing subsection or any other provision of this Act authorising the making of regulations, regulations may—
(a) make provision as to the proceedings which are or are not to be treated as distinct proceedings for the purposes of legal aid, and as to the apportionment of sums recoverable or recovered by virtue of any order for costs made generally with respect to proceedings treated as distinct;
(b) regulate the procedure of any court or tribunal in relation to legal aid, and in particular make provision—
(i) as to the taxation of costs incurred in connection with proceedings not actually begun; and
(ii) as to the cases in which and extent to which a person receiving legal aid may be required to give security for costs, and the manner in which it may be given "
scribed such a statutory instrument as subject to annulment in pursuance of a resolution of either House of Parliament, except a statutory instrument making regulations under clause 1(3) of the Act. On the other hand, no such prior approval of each House is necessary under clause 7, which deals with regulations on administration and finance; here the scheme is prepared by The Law Society with the approval of the Lord Chancellor and with the concurrence of the Treasury.

The discussion follows in order of three principal features of the legislation its "legal aid" provisions, the "legal advice" provisions, and "aid in criminal" cases; and finally the writer's conclusions as to the desirability and feasibility of similar legislation in the United States.

Legal Aid

Eligibility for Legal Aid in civil proceedings under the Bill is based upon the applicant's financial circumstances. The determination as

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17 "11 (4) The power of the Lord Chancellor to make regulations shall be exercisable by statutory instrument.
11 (5) Any statutory instrument by which the power is exercised, except one making regulations for the purposes of subjection (3) of section one of this Act, shall be subject to annulment in pursuance of a resolution of either House or Parliament.
11 (6) Before making regulations as to the procedure of any court or tribunal, the Lord Chancellor shall so far as practicable consult any rule committee or similar body by whom or on whose advice rules of procedure for the court or tribunal may be made apart from this Act or whose consent or concurrence is required to any such rules so made."

18 "1 (3) Subject to the provisions of this section, the proceedings in connection with which legal aid may be given may be varied by regulations and the regulations may describe the proceedings to be included or excluded by reference to the court or tribunal, to the issues involved, to the capacity in which the person requiring legal aid is concerned or otherwise."

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19 "As intimated in footnote 2, the financial problems of Clause 7, held up passage of the Bill for some time. It is not known whether the free hand given to the Law Society under Clause 7 as to finances was at the center of the dispute. The New York Times (Nov. 20, 1948, p. 3, col. 5) reported that the entire scheme was expected to cost about 4,370,000 pounds or $17,480,000 a year. Viscount Jowitt, the Lord Chancellor of Great Britain, estimates the overall cost (after receiving contributions and costs) to be 2,000,000 pounds annually. The Lord Chancellor estimated that 400,000 people would receive legal advice, and 100,000 people would receive legal aid within the first year. He concludes that 4 pounds a head for fair dealing cannot be thought excessive, "Jowitt, Legal Aid in England, 24 N. Y. U. L. Q. Rev. 757, 769 (October 1949)."

20 Supra note 7. Expressly the Rushcliffe Committee report (supra note 1) had recommended the following:

"Legal Assistance should be available to all persons with net incomes of not more than 420 pounds per annum. The assisted person will be required to pay a contribution towards the cost of his case except in the following circumstances where assistance will be granted free of charge:
(a) In the case of a single man or woman whose income does not exceed 3 pounds a week.
(b) In the case of a married man whose income does not exceed 4 pounds a week.

Subject to certain exceptions, an applicant should contribute the following
to whether he should receive legal aid free of cost or should himself make a contribution towards the cost is made by reference to "disposable income" and "disposable capital" which are calculated by the local officers of the National Assistance Board. Legal aid is therefore available to any person whose disposable income does not exceed £420 (approximately $1,180) a year; however, where he has a disposable capital of more than £500 (approximately $1,400), the local committee has discretion as to the grant of legal aid. Such persons may be asked to contribute up to one half the excess of their disposable income for a year above £156, together with the excess of their disposable capital above £75. Clause 4(1) of the Act defines "disposable income" or his capital after making (a) such deductions as may be prescribed in respect of the maintenance of dependents, interest on loans, income tax, rates, rent, and other matters for which the person in question must or reasonably may provide; and (b) such further

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sums in addition to any contribution he may make under the recommendations with regard to contribution based on income:
(a) If a single man, all capital above 25 pounds;
(b) If a married man, all capital above 50 pounds.

Special provisions should apply to cases before the Divorce Courts."

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"The Rushcliffe Committee had recommended the following: (See "Summary of the Proposed New Service," supra note 1.) "If an applicant's disposable income were £150 and his disposable capital £50 he would receive legal aid free of cost: if his disposable income were £200 and his disposable capital £100 he would be liable to contribute half the excess of his disposable income for a year over £156, i.e., £22, plus the excess of his disposable capital over £75, i.e., £25, making a total contribution of £47. But he would only pay the full amount if the actual cost of his case was equal to or exceeded that sum. capital in excess of £25 in the case of a single man, and £50 in the case of a married man, should be treated as available for meeting the costs of legal proceedings." The labor Government has thought it right to increase these figures, and therefore, clause 3(1) of the act provides for £75 being disregarded after the disposable capital has been calculated. In making this calculation, however, the National Assistance Board will allow £75 for dependents so that a married man or other applicant who has dependents will in effect be entitled to keep £150 of his capital.

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"The following examples may serve to illustrate the effect of these proposals. A man with a wife and two children aged eight and three has a total income from all sources, after payment of income tax, of £380 a year; he has no disposable capital; and he pays 25s. a week rent for the house in which he lives. In calculating his disposable income, £52
allowances as may be prescribed to take account of the nature of his resources." The resources of the applicant and of his spouse will normally be aggregated, but the subject matter of the dispute will not be treated as part of the resources of the applicant. The Second Schedule of the Act supplements clause 4, and provides that no account in determining income is to be taken of any money the applicant might be able to raise by selling or mortgaging his house. A varying degree of protection is given to such sources of income as sick-pay from a friendly society or trade union, superannuation payments, attendance, and maternity allowances under the National Insurance Acts, wound and disability pensions, etc. Allowances are made in respect of both spouse and dependents varying with the age of the person concerned. From an applicant's net income there would be deducted £27, 6s, 0d, for a child between eleven and sixteen; £23, 8s, 0d for a child between five and eleven; and £19, 10s, 0d, for a child under five. If the applicant's rent exceeds 15s a week, a deduction will be normally given for the excess. In addition, the officers of the National Assistance Board have general discretionary powers to enable them to deduct from income any sums which they normally disregard in dealing with an application for assistance under the National Assistance Act, 1948.

Certain allowances will also be made in calculating disposable capital, which does not include the value of the house in which the applicant resides, or his furniture, or other household possessions.

will be allowed in respect of his wife, £42, 18s. in respect of his children and £26 in respect of his weekly rent over 15. Thus his disposable income is £229, 2s., and he may accordingly be called upon to contribute up to half the excess of this over £156, i.e., £36, 11s. If the same man has capital in the form of investments worth £250 and also £50 on deposit in the bank, it will be necessary for the Board to assess his disposable capital. The dependent's allowance of £75 will be deducted from the total value of the capital (£300) making the disposable capital £225. After allowing for the further £75 capital which every applicant is entitled to retain, his contribution in respect of capital will be up to £150, and the maximum total contribution in respect of income and capital which he might be called upon to pay would accordingly be £186, 11s."

See generally, Clause 4, and Regulation 2, of The Legal Aid (assessment of Resources) Regulations, 1950 (S.I. 1950, No. 1358), supra note 15a. "A person's resources under a discretionary trust or the like may be taken into account (reg. 3) and artificial transactions designed to get rid of assessable resources are to be ignored (reg. 6)," Note 94, The Solicitor's Journal 541 (Aug. 26, 1950).

Supra note 23. See also Clause 2(4): "For the purpose of any inquiry under this section as to the means of a person against whom an order for costs has been made, his dwelling house and household furniture and the tools and implements of his trade shall be left out of account, and except in such cases and to such extent as may be prescribed they shall in all parts of the United Kingdom, be protected from seizure in execution to enforce the order."
The Rushcliffe Committee Report suggested proportionate allowances where the applicant had a valuable asset such as an unencumbered house or insurance policy. An amount up to £75 will be deducted from gross capital in respect of dependents, thus giving the married man with or without children, or a widow with children, protection to £150 of capital.

Though the above amounts may seem arbitrary in individual cases, they do represent the reasoned belief of the Rushcliffe Committee and Labor Government in their efforts at definiteness of amount and widest extension of the benefits of legal assistance consistent with the difficult problem of financing the scheme. A "test of reasonableness" was therefore incorporated into the Act to offset too great an emphasis upon the "means" test:

"1(6) A person shall not be given legal aid in connection with any proceedings unless he shows that he has reasonable grounds for taking, defending or being a party thereto, and may also be refused legal aid if it appears unreasonable that he should receive it in the particular circumstances of the case."

But in clause 2(2) the need for realizing some contribution from those who can afford to pay for legal assistance is reiterated.

This second test of eligibility contemplates judicious exercise of discretion by local officers as to what is "reasonable", and therefore seeks to protect the scheme from needless proceedings and useless expenditures. The applicant must justify his request for assistance by establishing a prima facie case.

In keeping with this economy theme, Part II of the First Schedule

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27a The value of the house in which the applicant lives is to be ignored only if its unencumbered value is less than £2,000. One half of the amount by which that sum exceeds £2,000 is, however, to be taken into account.
28 See Clause 3(1), and note examples in note 23.
29 The financial conditions of granting legal aid in civil proceedings are set forth in classes 2, 3 and 4, explained in part by details contained in the Second Schedule.
29a "Where a person receives legal aid in connection with any proceedings—
(c) he may be required to make a contribution to the legal aid fund in respect of the sums payable thereout on his account;
(d) any sums recovered by virtue of an order for costs made in his favor with respect to the proceedings shall be paid to the legal aid fund;
(e) his liability by virtue of an order for costs made against him with respect to the proceedings shall not exceed the amount (if any) which is a reasonable one for him to pay."
30 "Expected Proceedings
1. Proceedings wholly or partly in respect of—
(a) defamation;
(b) breach of promise of marriage;
(c) the loss of the services of a woman or girl in consequence of her rape or seduction;
of the Act curiously excludes from the legal aid scheme such actions as libel and slander, breach of promise of marriage, actions by common informers, and certain others. In respect of the exclusion of the defamation action, a prominent British writer queries:

"Why should the fact that the plaintiff has chosen to base his action wholly or partly on slander refuse legal aid to the defendant? Surely, the fact that a man is sued in respect of defamation does not make him less worthy of legal aid than he would be if he were sued for breach of trust. The protection of a man's honour in particular, which the law of defamation provides, should not be denied to the poorer classes of the population. Honour is more precious than money."\(^{31}\)

Of course, under existent regulations, the Lord Chancellor has power to vary the list of excluded proceedings in accord with the needs of the public and the available facilities of the Legal Profession.\(^{32}\)

The plan of organization contemplated under Section 7 of the Act divides England and Wales into twelve areas. For each area there is an Area Committee\(^{33}\) consisting of some fifteen practicing barristers and solicitors appointed by the Bar Council (barrister) or by The Law

(d) the inducement of one spouse to leave or remain apart from the other.

2. Relator actions.

3. Proceedings for the recovery of a penalty where the proceedings may be taken by any person and the whole or part of the penalty is payable to the person taking the proceedings.


5. In the county court, proceedings for or consequent on the issue of a judgment summons and, in the case of a defendant, proceedings where the only question to be brought before the court is as to the time and mode of payment by him of a debt (including liquidated damages) and costs.

6. Proceedings incidental to any proceedings mentioned in this Part of this Schedule."

\(^{31}\) Mr. E. J. Cohn in 171 FORTHNIGHTLY (ns 165) at p. 51 (January 1949).

\(^{32}\) Supra note 16 and 17. See also: "6 (6) Provision may be made by regulations for further defining or restricting the questions (whether of English or any other law) on which legal advice may be given." The Lord Chancellor, Viscount Jowitt, also excluded legal proceedings other than in the ordinary courts of justice, i.e., proceedings in quasi-judicial civil tribunals dealing with administrative law. See Jowitt, Legal Aid in England, 24 N. U. U. L. Q. Rev. 7570769 (1949).

[The Lord Chancellor is a political appointee of the Prime Minster generally and handles the administrative functions in civil matters; the Home Secretary handles criminal matters.]

\(^{33}\) "The Area Committees will be responsible for the initial organization and subsequent administration of the legal aid scheme in their areas. They will be responsible for the preparation of panels of barristers and solicitors willing to participate in the scheme; the provision of adequate facilities for legal advice in their areas; the grant of permission to employ more than one counsel in the High Court and to call expert witnesses; the appointment and supervision of local committees and the determining of appeals against their decisions; the handling of contributions; the collection and payment of costs; and the rendering of estimates, reports and accounts to The Law Society."

Society (solicitors). Members of the Area Committee hold office for 5 years, retiring in rotation, but are eligible for reappointment at the end of the term. No salaries are paid but members of the Area Committee are entitled to traveling expenses and a small attendance allowance. The primary task of administering the provisions of the act rests with the 110 local committees already appointed by the twelve Area Committees. The local committee members, who similarly hold office for 3 years, subject to reappointment, consider and determine the applications for legal aid through subcommittees of 3 and 5 members known as "certifying committees." A Civil Aid Certificate may be refused an applicant unless the Certifying Committee is satisfied that the applicant "has reasonable grounds for taking, defending, or being a party" to the proceedings in question. The committee may also refuse legal aid "if it appears unreasonable that he should receive it in the particular circumstances of the case." By this discretion in the local committees, vexatious, frivolous or other discreditable proceedings in which the costs are likely to be out of all proportion to the amount or importance of the claim can be discouraged and not brought at public expense.

The Area Committees are responsible for preparing and maintaining panels of barristers and solicitors willing to act for persons requiring legal aid. Separate panels deal with different types of litigation to insure that the volunteer lawyers are not called upon to undertake work outside their normal experience or practice. The applicant holding a Civil Aid Certificate is entitled to choose his solicitor or

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34 It should be noted that the recommendation of the Rushcliffe Committee was for ten, not twelve, Area Committees.
35 See Clause 1(6).
36 Supra note 35 for the "positive" grounds in the test of reasonableness. Regulation 6 of The Legal Aid (General) Regulations, 1950. (S.I. 1950, No. 1359) deals with refusals of applications. The local committee must notify the applicant of the grounds for rejection, and of his right to appeal to the Area Committee under Regulation 9. This appeal may be conducted personally, by counsel, solicitor or any other person.
37 Perhaps it is this difficulty of ferreting out the "deserving cases" which supplies an answer to the charge of Mr. A. M. Kraft in 13 Socialisr Commentary at p. 13 (Jan. 1949).
38 To sum up, the new National Legal Service, though a step forward, is inadequate because it fails to ensure equal legal representation to all citizens alike. A contribution from all income-earning citizens toward a Legal Insurance Fund should enable everybody, as of right, to obtain free legal aid in all deserving cases in the same way as in the event of any other contingency covered by social insurance such as sickness, unemployment, or accident.
38a The five panels presently existing are as follows: Advice; High Court and Appeals for divorce business; High Court and Appeals for all other civil litigation; County Courts, Coroners Courts, and Special Tribunals; and London Agency Business panels.
barrister from the appropriate panel; and it is the duty of the lawyer to accept the case unless he has good cause for refusing to do so.

Once a case has been accepted, the relationship between the person to whom legal aid has been granted and his lawyer will be the same as if the litigant were not an assisted person but were proceeding in the normal manner. Any practicing barrister or solicitor is entitled to place his name on the panels unless his professional conduct or ethics

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See Clause 5(3), supra note 9. There is one exception to the general right of an assisted person to choose the solicitor or barrister of his own choice from the panel, i.e.—

"5(6) Notwithstanding anything in subsection (3) of this section, where the maximum contribution payable to the legal aid fund by a person receiving legal aid in connection with a matrimonial cause is not more than ten pounds, then unless regulations otherwise provide, the solicitor to act for him shall not be a solicitor selected from the panel but a solicitor employed whole-time for a salary to deal with cases to which this subsection applies; and where the solicitor who acts for a person receiving legal aid is one employed as aforesaid—

(a) he shall not be entitled to any further payment under subsection (4) of this section except for his disbursements; and

(b) no sum paid or payable to him otherwise than under the said subsection (4) shall be treated for the purposes of subsection (7) of section three of this Act as paid or payable on account of the person for whom he acts."

Thus, in divorce proceedings where the amount contributed by the applicant is less than £10, the local committee will nominate as conducting solicitor not one on a panel but solicitor in charge of one of the Divorce Units. These Divorce Units consist of a solicitor employed by the Law Society with his staff of managing clerks and other clerks, i.e., a self-contained solicitor's practice.

Any complaints about the conduct of any solicitor or barrister on a panel are reported by the appropriate Area Committee to The Law Society for further investigation. Upon a hearing, the name of the lawyer may be removed from the panel after the complaint has been substantiated.

Timely mention of the relationship of lawyer and client is found throughout the Bill. In particular, Clause 1(7)—

"Save as expressly provided by the Part of this Act or by regulations made thereunder—

(a) the fact that the services of counsel of a solicitor are given by way of legal aid shall not affect the relationship between or rights of counsel, solicitor and client; and

(b) the rights conferred by this Part of this Act on a person receiving legal aid shall not affect the rights or liabilities of other parties to the proceedings or the principles on which the discretion of any court or tribunal is normally exercised."

Note also Regulation 14 of The Legal Aid (General) Regulations, 1950 (S.I. 1950, No. 1359) relative to the conduct of the selected solicitor. "In general, he will have the same freedom of action as he possesses normally, but certain things can be done with the consent of the area committee. He may, for example, brief any counsel on the panel but may not instruct more than one without such consent nor may he add parties, bespeak shorthand notes, (P) bring a cross action, or lodge any interlocutory appeals. Such consent is also required for the engagement of expert witnesses, but The Law Society may give general directions authorizing one expert witness for specified types of actions and the laying down of maximum fees."


The Act also explicitly provides for Appeals which are often denied to assisted litigants in the U.S. See 4 So. CALIF. L. REV. 285 (1935); cf. Rule 75 (o), F R. C. P. permitting appeals to be heard on the original trial papers.
would exclude him.\textsuperscript{42} No payments from applicants for legal aid can be made to the solicitor or barrister,\textsuperscript{43} for all moneys or contributions from assisted persons must go into the Legal Aid Fund.\textsuperscript{44} When a case is finished the solicitor’s bill and counsel’s fees are taxed on the ordinary basis by statute or court order.\textsuperscript{44a} If the case is one in the House of Lords, Court of Appeal, or High Court, the solicitor and counsel are entitled to receive 85\% of the amount allowed on taxation of their fees and profit costs,\textsuperscript{45} while in cases in the county courts the full amount of costs and fees are allowed.\textsuperscript{46} Where an assisted litigant wins his case and the other party is unassisted, costs including attorney’s fees are recoverable in the ordinary way, but must be paid into the Legal

Note that when a Civil Aid Certificate is issued to an assisted litigant, it is in the name of the solicitor’s firm so that the firm may transact the business just as if they were dealing with an ordinary client.

\textsuperscript{43} Clause 5(2).

\textsuperscript{44} Clause 2(2b). “Where a person receives legal aid in connection with any proceedings—his solicitor and counsel shall not take any payment in respect to the legal aid except from the legal aid fund as provided by this Part of this Act;”

\textsuperscript{44a} “5 (4) Subject to this Part of this Act, a solicitor who has acted for a person receiving legal aid shall be paid for so acting out of the legal aid fund, and any fees paid to counsel for so acting shall also be paid out of that fund. (5) The sums payable under the last foregoing subsection to a solicitor or counsel shall not exceed those allowed under the Third Schedule to this Act.”


\textsuperscript{46} As the Rushcliffe Committee pointed out, the 15 per cent deducted from the solicitor’s bill in fact represents 50 per cent of the profit normally remaining to the solicitor after meeting his overhead expenses. cf. Kraft’s views in supra note 4.


“As regards cases in the county court, the Rushcliffe Committee recommended that a new county court scale of costs should be prescribed which would provide reasonable remuneration for work undertaken and be applicable to all court actions in which a civil aid certificate was granted, irrespective of the amount involved. The Committee, however, thought that where the claim was for a named amount the solicitor should not be paid costs exceeding, in the case of a defendant, half the amount claimed or, in the case of a successful plaintiff, half the amount recovered, though the Judge or Registrar should have power to certify in any particular case that, by reason of special circumstances, this limit ought not to apply. This proposal has not been adopted. It is thought that it would be unreasonable that a solicitor should be expected to finance his client in cases where the amount claimed or recovered, as the case may be, is insufficient on the suggested basis of remuneration to permit of reasonable costs being paid; that it would introduce an element of speculation by requiring a solicitor to be paid by results in certain cases; and that it would lead to anomalies as between the solicitors for the plaintiff and the solicitors for the defendant.

The Bill accordingly provides (Third Schedule) that in the county court, solicitors and counsel will be entitled to the full amount of their costs and fees as allowed on taxation at the conclusion of the case. Professional remuneration on the lower scales of costs in the County Court is very moderate and it would be unreasonable to require solicitors and counsel to accept a further reduction of 15 per cent. The question of County Court costs is at present under review by a Committee presided over by Mr. Justice Austin Jones, and the matter will be reconsidered by the Government when the Committee’s report is received.” The Act has not yet been extended to legal assistance in the county courts, supra note 2.
Aid Fund\textsuperscript{46a} by the successful party's solicitor. Of course, the fact that one litigant has a Civil Aid Certificate must be brought to the attention of all other parties in the proceedings. The assisted party is entitled to repayment, however, of any balance of his contribution remaining in the Fund after all costs of his action have been met.\textsuperscript{47} When the assisted litigant is unsuccessful, his liability for his own costs of fighting the case are limited to the amount of his contribution, if any. However, he is liable for the costs of the other side to such an extent as the Court deems reasonable under his financial circumstances.\textsuperscript{48}

For a general treatment of the entire problem of remuneration of persons giving legal aid in civil proceedings, the Third Schedule\textsuperscript{49} should be consulted.

\textsuperscript{46a} Note The Legal Aid and Advice Act. 1949 (Commencement) (No. 1) Order, 1949 (S.I. 1949, No. 1503, L. 14) which describes the administration of the Legal Aid Fund, in particular. This Order was effective September 1, 1949.

\textsuperscript{47} Clause 3(3). But if his account with the Fund shows a deficit, clause 3(4) provides that this will be a first charge on any damages or property recovered or preserved in the action.

\textsuperscript{48} Clause 2(2).

\textsuperscript{49} '1.—(1) the sums allowed to counsel in connection with proceedings in the House of Lords or the Supreme Court shall be eighty-five per cent of the amount allowed on taxation of the costs:

Provided that this sub-paragraph shall not apply in relation to proceedings in the High Court in a matrimonial cause, where the solicitor is one employed for a salary to act in connection with matrimonial causes.

(2) The sums allowed to counsel in connection with proceedings in the county court shall be the full amount allowed on taxation of the costs.

(3) The sums allowed to counsel in any other case shall be such as may be determined in the prescribed manner.

2.—(1) The sums allowed to a solicitor in connection with proceedings in the House of Lords or the Supreme Court shall be the full amount allowed on taxation of the costs on account of disbursements and eighty-five per cent of the amount so allowed on account of profit costs:

Provided that so much of this sub-paragraph as relates to profit costs shall not apply to a solicitor employed for a salary to act in connection with matrimonial causes.

(2) The sums allowed to a solicitor in connection with proceedings in the county court shall be the full amount allowed on taxation of the costs whether on account of disbursements or of profit costs.

(3) Where a solicitor has acted as agent for another, the sums allowed under the foregoing provisions of this paragraph shall be the aggregate amount allowed them, but may be divided between them as they may agree.

(4) The sums allowed to a solicitor in any other case shall be such as may be determined in the prescribed manner.

3. For the purpose of sub-paragraph (1) or (2) of paragraph 1 of this Schedule, counsel's fees shall be taxed as if they had been paid by the solicitor, but shall not by reason thereof be treated as disbursements for the purpose of the last foregoing paragraph.

4. (1) Subject to the last foregoing paragraph costs shall be taxed for the purposes of this Schedule according to the ordinary rules and shall be taxed as between solicitor and client:

Provided that no question shall be raised as to the propriety of any act for which prior approval was obtained as required by regulations.

(2) The reference in the foregoing sub-paragraph to taxation as between solicitor and client shall not, in relation to a taxation in the county court, be taken as affecting the operation of paragraph (e) of section one hundred and eighty-four.
Legal Advice

Under Clause 6(1), Legal Advice is made available to all persons without reference to the elaborate provisions of a "means" test required for Legal Aid. But an applicant for Legal Advice may be required to show that he cannot afford to obtain it in the ordinary way, in accord with clause 6(7). The Rushcliffe Committee expressly stated that "one cannot subject to a means test the person who needs advice on a small point" and therefore the Committee refused to recommend any general upper means limit. An applicant for legal advice may be called upon to pay a fee of half a crown, but there is no qualification by reference to income or capital for imparting legal advice. An applicant may be refused advice if the individual solicitor is satisfied that he can afford to obtain it in the ordinary way by engaging the services of a lawyer. In effect, this places most of the responsibility for Legal Advice upon each solicitor—a task that should not be borne by those responsible for justice. It is hoped that this shortcoming will be remedied with experience. Members of the Armed Forces serving overseas obtain such advice free of charge. Advice is generally limited to advice on English law, though members of the Armed Forces can obtain advice on the law of any part of the United Kingdom, or in suitable cases, of any country in which they are serving or in which they have been resident. The relationship of lawyer and client in the giving of legal advice is protected under clause 5(9), which provides for remedies against the solicitor for negligence, and at the same time insures retention of the lawyer-client privileged communication. Under clause 13, a fine or imprison-
ment is imposed upon a party seeking or receiving legal aid or advice for wilfully failing to comply with regulations, or for making, knowingly, a false statement or misrepresentation.54

The connection between legal advice outside litigation and legal aid in litigation is made “even more intimate by the proviso that, where the help that is required consists of assistance in correspondence or in negotiations requiring an amount of time and labour that cannot be considered as fairly covered by payment of 7s, 6d, to the advising solicitor, the applicant must apply for a legal aid certificate to the local committee. The Committee will treat such an application in the same way as an application for legal aid in litigation.”55 The legal adviser at the Legal Advice Centre may give the applicant a written note of the advice tendered.55a Such an official record of the solicitor’s advice presented to a prospective opposing litigant may well preclude resort to the courts. Under clause 5 the solicitor may take steps to assert a claim even where the question of legal proceedings has not yet arisen; but this assistance is limited to those applicants whose means would not make them liable to contribute anything toward costs.

A rather interesting innovation which pertains to the scheme in general is the provision for a pension system for all whole-time employees of The Law Society.56 Such a pension system may be extended even to part-time workers by subsequent regulations. The arrangements may include a pension scheme with or without a pension fund, leaving details to be worked out by The Law Society.

**Criminal Aid**

The Legal Aid and Advice Act, 1949, does not bring forth many reforms in free legal aid in criminal cases,57 except with respect to

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54 “13. If any person seeking or receiving legal aid or advice—
(a) wilfully fails to comply with any regulations as to the information to be furnished by him; or
(b) in furnishing any information required by the regulations knowingly makes any false statement or false representation; he shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months or to both.”

55a See clause or section 7 (ii).
56 “10.—(1) Arrangements shall be made, in accordance with regulations, for providing pensions to or in respect of persons employed by the Law Society whole-time for the purpose of their functions under this Part of this Act.
(2) The regulations may require the arrangements to extend, with any necessary adjustments, to persons employed by the Law Society part-time for that purpose or (whether whole-time or part-time) for that and other purposes.
(3) The arrangements may include the establishment and administration, by the Law Society or otherwise, of a pension scheme with or without a pension fund.” See also supra note 46a.
57 Free legal aid had been made available under § 10 of the Criminal Appeal
certain procedural improvements recommended by the Rushcliffe Committee. Under clauses 15, 16, and 17 free legal aid is encouraged in all cases heard in criminal courts where it appears desirable in the interests of justice; and any doubt as to whether or not a certificate should be granted is to be resolved in favor of the applicant. Provision is also made to expedite the granting of a certificate of legal aid by application to the clerk of the Court, either by letter or in person. Under clause 16(4) the refusal of a legal aid certificate upon an application made by letter does not prevent the granting of a certificate at the subsequent hearing. Formerly, under the Poor Prisoners' Defence Act, 1930, free legal representation could only be provided by the magistrate granting a Legal Aid Certificate or a Defence Certificate, the former granted in respect of proceedings before courts of summary jurisdiction, and the latter to persons committed for trial for indictable offenses. Such legislation had its origin in the immemorial practice in England of granting "dock briefs," which entitled a prisoner on indictment to the services in his defence of any barrister who happened to be in court at the time when the prisoner was in the dock, merely upon tendering to counsel the sum of one guinea without the intervention of a solicitor. A barrister so selected was under an obligation to accept the brief. Customarily, judges, about to try cases which

Act, 1907; § 1 or 2 of the Poor Prisoners Defence Act, 1930; and § 2 of the Summary Jurisdiction Act, 1938.

The Rushcliffe Committee also recommended that legal aid should be available for both sides in civil cases coming within the magistrates' jurisdiction—particularly, bastardy, matrimonial cases, proceedings under the Guardianship of Infants Acts, and such cases as application for the recovery of possession under the Small Tenements Recovery Act, 1838. This recommendation has been accepted, but as already stated, legal aid in these cases, which are of a civil character, will be provided under the arrangements for legal aid in civil cases under future regulations.

The Act promises to relax conditions under which free legal aid had been granted, and to carry out to the fullest extent the suggestions of the Rushcliffe Committee by amendment of existing regulations by paragraph 36 of CMD 7563. See also Clause 15, supra note 15.

Section 2 (which is reprinted below in note 62).

The Poor Prisoners' Defence Act, 1930, did not affect this practice of granting dock briefs, except that defenses undertaken at the request of the Court were
presented features of difficulty, would ask some member of the Bar to undertake the defense gratuitously. In 1903 the first Poor Prisoners Defence Act had provided for substantial legal aid for prisoners tried on indictment, empowering judges to certify that the prisoner ought to have such aid. Where a certificate was given, the expenses of the defence including fees of counsel and witnesses were paid out of public money. In 1925 a committee under the chairmanship of Mr. Justice Finlay, appointed to inquire into the facilities for giving legal aid to the poor, reported the need for numerous important amendments to the existing system. The Poor Prisoners Defence Act, 1930, gave effect to these modifications in Section 2:

"If it appears to a court of summary jurisdiction or examining justices that the means of any person charged before them with any offence are insufficient to enable him to obtain legal aid and that by reason of the gravity of the charge or of exceptional circumstances it is desirable in the interests of justice that he should have free legal aid in the preparation and conduct of his defence before them, the court or justices may grant in respect of him a certificate, and thereupon he shall be entitled to such aid and to have a solicitor."

This provision applied to cases dealt with by magistrates and his examining justices who commit for trial. The clerks of the Court kept a list of solicitors and counsel willing to undertake the defense of poor prisoners. On granting a legal aid certificate the justices were required to assign counsel from this list. Very moderate fees plus traveling exp-

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61a The right of an accused to counsel has also been firmly engrained in our jurisprudence. See Sixth Amendment to the Constitution of the U.S., Rule 44 of the Federal Rules of Criminal Procedure; and note Johnson v. Zerbst, 304 U.S. 458 (1938). In England the Magna Carta had established the right to counsel since 1215: "To none will we sell, to none will we deny or delay, right or justice."

62 "(a) That while there should not be any general increase in the fees allowed to counsel employed under the Act of 1903, there should be power in exceptional cases to allow up to ten guineas.

(b) That certain alterations should be made in the method of computing the out-of-pocket expenses incurred by solicitors acting under the Act.

(c) That where legal aid is granted, it should be done at the earliest moment, and that the committing Justices on committing a case where, in their opinion, legal aid is necessary, should ask the person to be committed whether he desires to apply for legal aid, and, if so, should deal with the matter then and there, without prejudice to the power of the Judge, where the Justices refuse legal aid, himself to grant it, if he thinks it desirable.

(d) That the committing Justices should have power to grant legal aid in the Magistrates Court in indictable cases, where the charge is one of murder, or where the Chairman certifies that legal aid is necessary by reason of the great gravity of the charge.

(e) That in summary cases, there should be a power to grant legal aid, but only where the presiding magistrate gives a certificate that it is necessary in the interests of justice by reason of exceptional circumstances in the case.

(f) In bastardy and maintenance cases they thought that the Justices should have power to certify for legal aid whether for the complainant or the respondent."
penses and out-of-pocket expenses were allowed counsel, and paid from the county fund, or in a county borough, from the general rate fund. Under the act payment to counsel comes direct from the Exchequer and not from local funds, and the amount is not to be limited by a prescribed maximum fee, but will be taxed by the clerk of the court so as to give solicitors and counsel a fair remuneration for the work done.

Section 1 of the Poor Prisoners Defence Act, 1930, provided for a defence certificate where it appears to the committing justices that a person charged with an indictable offense does not have sufficient means to obtain legal aid. If the charge were murder, a defence certificate must be granted, and the prisoner might even have two counsel assigned him. The fee allowed a solicitor under a Defence Certificate is slightly higher than that received under a Legal Aid certificate, and a presiding judge certifying the case to be one of considerable length or difficulty might increase the fee up to £11 or £16, 5s, 0d. for leading counsel. Payment here too was out of local funds, now changed by the Legal Aid and Advice act, 1949.

Appeal Aid Certificates could be obtained by a prisoner from the

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63 The recommendation of the Rushcliffe Committee that the cost of working the system of legal aid in criminal cases should be borne by the taxpayer and not by the local ratepayer was embodied in Clause 18:

18.—(1) Where, after the commencement of this Part of this Act—
(a) A person is granted free legal aid under section ten of the Criminal Appeal Act, 1907, section one or two of the Poor Prisoners Defence Act, 1930, or section two of the Summary Jurisdiction (Appeals) Act, 1933; or
(b) on the trial before a court of assize or quarter sessions of a person who has not been granted free legal aid under section one of the said Act of 1930, his defence is undertaken by counsel at the request of the judge or chairman of the court;
the costs paid out of local funds by virtue thereof shall, subject to the next following subsection, be repaid to the council of the county or county borough concerned by the Secretary of State in accordance with arrangements to be made by him with the approval of the Treasury.

(2) A council shall not be entitled to any payment under this section on account of sums included in an order for payment of costs which is enforceable by the council, except in so far as the Secretary of State is satisfied that those sums cannot be recovered by virtue of that order.

(3) Where after the commencement of this Part of the Act free legal aid is granted under the Poor Prisoners Defence Act, 1930, in respect of proceedings for an indictable offense within the meaning of the Costs in Criminal Cases Act, 1908, the costs directed to be paid out of local funds by virtue of the said Act of 1930 shall not include allowances to witnesses, but this provision shall not be taken as prejudicing the power to make an order for the payment of such allowances under the said Act of 1908 apart from the said Act of 1930.

(4) The expenses of the Secretary of State under this section shall be defrayed out of moneys provided by Parliament." (Italics added.)

64 See, Third Schedule, supra note 49, with reference to civil proceedings.


66 Supra note 68.
If the application was refused, there was a right of appeal to Quarter Sessions under the Summary Jurisdiction (Appeals) Act, 1933. Legal aid was rarely given in appeals against sentence only, but section 15(5) of the Criminal Appeal Act, 1907 imposed a duty on the Registrar of the Court of Criminal Appeal to report to a judge any case in which it appears to him that, although no application has been made, a solicitor or counsel ought to be assigned to an applicant on appeal. Such protection for a poor prisoner has been fundamental in English criminal law cases.

Transplantation to the United States

The question might be briefly raised here whether a similar scheme for legal assistance could be transplanted to the United States. On first impression, many features of the Legal Aid and Advice Act, 1949, have been successfully operating in this country for perhaps two decades. An authority on the economics of the American legal profession, however, recently declared that the Rushcliffe Report assumes certain factors not present in the United States, namely: “(1) a completely integrated bar in which all members of the solicitor’s profession belong to a single association and all barristers to another; (2) that persons, which in England are sometimes termed ‘the working class’, cannot be served at a profit by private lawyers; (3) that private legal aid provided by either the bar or welfare organizations is insufficient to assist those who cannot afford to pay for counsel.” The existence of these distinguishing factors, persuasive or non-persuasive as they may be, has not been realized by certain members of the American legal profession who feel that any scheme for legal assistance to the needy reeks with “socialism.” What is evident is that neither the bar nor the community in the United States has been willing to assume complete responsibility for a program of providing legal assistance to the needy.

Instead of a well-integrated bar as in England, membership in organized bar associations here is generally voluntary and exclusive, resplendent with honor and privilege rather than performance of responsibilities toward the public. In general, it is only recently that American lawyers through their bar associations have taken a

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67a “I do not think that even the most die-hard Tory can suggest that we are nationalising the Law or interfering with the course of Justice.” Viscount Jowitt, supra, note 32.
favorable attitude toward the subject of legal assistance. Indeed, the keen competition for the legal business of less than 10% of our population, who are in a position to afford legal services, has kept most lawyers out of touch with the masses of people and their pulsating need for legal assistance.

The second differentiating factor, that lawyers in the United States are able to realize a profit for their services, merely serves to contrast relative standards of living and does not resolve our query whether the British scheme for legal assistance would work in this country. It has been sincerely said in England that "conditions were so bad that Gurney Champion in his Justice and the Poor in England ironically proposed that Parliament should, msofar as the poor were concerned, repeal the fortieth paragraph of the Magna Carta — 'To no man will we deny, sell, or delay right or justice.' In the United States less than 2% of people in the group with income under $2500 consult lawyers, and this group includes the bulk of the population. But legal assistance facilities in the United States are clearly far more adequate than those in England. Reginald Heber Smith, one of the pioneers in legal aid work in the United States recently opined:

"What enabled us to do something better in America was that our legal aid pioneers in New York and Chicago had the wisdom at the start to establish legal aid offices with paid staffs." (Italics added).

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60 An accurate indictment of the legal profession in 1909 for its failure to advocate necessary reforms unwelcome to some particular client's interest was drawn by Professor Albert M. Kales in A Comparative Study of the English and the Cook County Judicial Establishments, 4 ILL. L. REV. 303, 319, 320 (1909).

61 See 13 UNIV. OF CHI. L. REV. 131, 142, op. cit. 68: "The majority of lawyers still practice on an individual basis and are not organized to give low cost service." In the U.S. there are probably 200,000 lawyers serving a population of 150,000,000 people, a ratio of 1 to 750; in England, 16,000 solicitors and 1,200 barristers serve a population of 40,000,000, a ratio of 1 to 2,325. In contrast to the highly organized and powerful Law Society of solicitors, the General Council of the Bar supervises the interests of barristers in general, all of whom belong to one of the Four Inns of Court, but hardly directs the legal aid and advice program with some authority as the solicitors representative body.


63 Supra note 70, at p. 141. See also Report of the Committee on Legal Services, 66 A.B.A. REP. 321 (1941).


the facilities for Legal Aid in England are inadequate and while we cannot say the same here because certainly we have gone much further in this country than in England in the development of legal services, yet I think, all of us will have to agree that the services in this country are still quite inadequate."

Legal reference plans in the U.S. have hardly taken care of the problems of the middle income group. Lawyers on the referral lists just cannot afford to handle cases referred to them without an overcharge or at a distinct loss to themselves. See 31 JOUR. AMER. JUD. SOC. 1 (August 1947).
England's unofficial facilities for legal aid in civil matters included the Poor Man's Lawyer organizations, free legal aid for members of H. M. Forces, trade unions and approved societies, and charitable funds. But the staffs of solicitors and barristers seem to have been primarily volunteer, and if paid, were still grossly underpaid under any arrangement. Exorbitant court costs militated against adequate legal aid services: "They really are staggering by comparison [with court costs in the United States] and very often people are afraid to bring lawsuits for fear of the large cost which would be assessed against them if they lost." Curiously the Rushcliffe Report assumes that court costs should still be required of a litigant, and therefore the Government pays such costs under the Act. One writer raises the fundamental question as to "why court costs should be charged to any litigant in any case, anymore than the cost of fire prevention service, police protection, or the maintenance of public schools is charged against the individual who needs the service rather than against the community in general?" The answer does not lie within the realm

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71 Supra note 14.
72 In Free Legal Aid, ARMY COUNCIL INSTRUCTION 1398 (4th of July 1942). it is provided that if "the applicant's case appears likely to result in litigation in some court in England other than the High Court, the adviser (for members of H.M. Forces) will advise the applicant to seek a practicing solicitor and so far as he can will put him in the way of finding one."
73 Nearly all the trade unions in Britain appear to provide legal aid for their members in matters connected with their employment but not otherwise. The mode of providing legal aid varies with each trade union; some have their own Solicitor's Department, others have a Legal Department staffed by laymen with a knowledge of the particular branches of law with which they have to deal, while still other unions refer their members to a firm of solicitors, the union bearing the cost.
74 Legal assistance is provided by various charitable funds in England such as the Metropolitan Magistrates Court Poor Box Funds, the Women and Children's Protection Society, the Moral Welfare Associations, and the Soldiers' Sailors and Airmen's Families Associations; the latter group is prepared to advance the railway fare to secure the attendance of members of His Majesty's Forces as defendants or witnesses in matrimonial cases, affiliation cases, or cases under the Guardianship of Infants Acts.
75 One important criticism leveled at the present Act and regulations pursuant thereto is the failure to provide administrative assistance by non-lawyers to aid applicants in filling out application forms. Cost is the prohibitive factor; the result of this economy is to place the burden on secretaries of local committees and thereby hamper their other duties. "There is even a danger of the growth of unqualified legal consultants who will cash in on a public need by establishing offices adjoining those of the committees and there undertake to help applicants to complete the forms." Note, 94 THE SOLICITORS JOURNAL 541, 542 (Aug. 26, 1950).
76 Elson, The Rushcliffe Report on Legal Aid, etc. supra note 73, at p. 77.
77 Supra note 67.
of "political action" since the legal profession is unwilling to make legal assistance a public utility (duty-bound to serve all), and therefore fall prey to governmental, bureaucratic interference.

The third differentiating factor, the sufficiency of private legal aid in the United States as compared with England, again is true only in a relative sense: one has only to witness the difficulties of raising a modest budget in the U.S. for legal aid work to exemplify the problem.80 But private philanthropies here have been more able to support existing legal aid facilities than in England. Another factor of importance is the tremendous job being done in the United States by lay agencies81 which have operated successfully in certain fields basically requiring the skill of an attorney, such as collections; preparation of trusts, leases, and wills; tax problems; title examinations; traffic violations, etc.

Naturally there are a great many similarities which perhaps tend to overshadow what divergencies have appeared. Both England and the United States have independently tried similar methods to solve the very same problem: "These methods have included private legal aid societies, volunteer defenders, assignment of counsel, in forma pauperis provisions, legal assistance officers for the members of the armed forces, gratuitous advice by members of the legal profession on an unorganized basis, information centers, reformed procedural rules, small claims and other specialized courts, and the development of special administrative agencies to deal with specific problems."82 There is

80 Supra note 78 at pp. A-79-80.
81 See generally 13 Univ. of Chi. L. Rev. 131 et seq. (Feb. 1946); on the unlawful practice of law aspect, see 11 So. Calif. L. Rev. 476 (1938).
82 Supra note 81 at p. 193. footnote 2. all these efforts are dwarfed by the Legal Aid and Advice Act, 1949. Legal aid societies serving that element of the population that cannot pay as a charity have been bogged down by finances. [See Egerton, Legal Aid (1945)] Public defender systems in Los Angeles and certain towns in Connecticut have not proved successful. Lawyers reference plans built around a central office equipped with reference lists of qualified lawyers willing to undertake cases at moderate fees have not received public acclamation. [See 22 Temp. L. Q. 195 (1949) and 65 A.B.A. Rep. 255 (1949)] Even neighborhood 1-w offices established in residential areas by existing law firms have not answered the public need for legal assistance. [See 26 A.B.A. Journal 215 (1940)] Similarly, legal service bureaus staffed by salaried lawyers specializing in work at cost for lower income groups. [See 17 N.C. L. Rev. 101 (1938) and 19 Chi Bar Record 95 (1938)].

Mr. Alex Elson in 8 Lawyers Guild Review 295, 298 (Jan. 1948) has asserted:

"Legal reference plans are now in existence in Chicago, Los Angeles, Baltimore, Milwaukee, Cincinnati, and New York City. With relatively little publicity, the Chicago plan has had over 15,000 applicants in the past year, of whom over 2,000 were referred to lawyers. If consistent publicity were given to the Chicago Reference Plan, in my opinion, the number of Applicants would be increased fivefold within a short time.

The neighborhood 1-w office plan of Philadelphia still represents the only concrete effort to establish low cost legal service offices. It is doubtful that this
also similarity of legal institutions, of common beliefs in due process and equality before the law, and of conviction in the democratic form of government. England's legal aid facilities too have been traditionally supported from private funds, but these have proved profoundly inadequate for the needs of the English people. The Runciman Report had given implicit recognition to a new and basic concept, i.e., legal assistance is not a charity stemming out of private philanthropy, but a right which the State has almost a duty to foster and protect. This concept is not entirely a novel one in the United States where the American Bar Association Committee on Legal Aid in the National Association of Legal Aid Organizations have for many years similarly stated that legal assistance is not a charity. Adoption of this principle of the Runciman Report in the United States does not, in reality, depend upon similarities or the minute differences in the two countries, but upon the willingness to accept in this country the challenge of providing adequate legal assistance for the needy under any concrete plan or scheme administered by the legal profession with public funds.

Numerous proposals for rendering legal assistance have received favorable recognition in select circles. The necessity for federal legislation and organized activity by national legal or social groups has not been favorably received by members at large of the legal profession. Federal grants-in-aid to States co-operating with a federally-

plan has actually succeeded in bringing down costs of legal services. It does not contemplate any new methods or procedures of law practice. It still contemplates use of one or more lawyers without any attempt at specialization and without the necessary personnel or machinery to bring about the routinization of a good deal of law work, without which costs cannot be reduced."

The expected flood of cases, particularly in the High Court, prompted a fear by one British writer that the burden on the court might be too severe: "The small group of men who serve it—fewer than 50 High Court judges and under 1,000 barristers—have long been chiefly responsible for giving our justice its peculiar distinction. If this small group has now to be expanded and diluted to meet the new demands, can our justice hope to retain its unique character and reputation?" "Justice Tomorrow," in The Observer, Sunday, Feb. 27, 1949. See also The Poor Man's Right to Legal Aid, 61 SCOT. L. REV. 55 (1945).

"In the past ten years social agencies, particularly family agencies, have taken on work on a fee basis for persons of moderate income. They have had on the whole remarkable success. The Committee on Current and Future Planning of the Family Service Association of America has endorsed the idea of setting up fee services by the social agencies," supra note 73 at p. A-84.

Federal grants-in-aid to encourage state action have been effective in education, maternity benefits, public housing, relief, old-age assistance, etc. But Mr. Elson in 13 Univ. or Chi. L. Rev. 131, 137, (1946) supra note 68, warns: "The very nature of the federal-state relationship tends toward fragmentary consideration of the problem of legal assistance. The need for assistance in the state courts and for legal advice outside the courts is not a function which up to this time has been considered possibly a federal function."

For a general approach to the subject of federal grants-in-aid, see Beard, American Government and Politics (8th Ed., 1939) pp. 459, 460, 463: "The sec-
administered legal assistance plan, similar to the national health plan of the Wagner-Murray-Dingell Bill, have been advocated. Another scheme, along the lines of the Legal Aid and Advice Act, 1949, administered with federal funds by some nationwide private organization such as the American Bar Association, has been suggested. But probably the scheme that would be most welcome to a majority of members of the legal profession is a highly organized legal assistance program administered on a county basis by the American Bar Association in conjunction with independent bar and social groups throughout the country without federal or state funds. Such a plan without a sound financial structure would fail to meet this urgent public need.

The first step under any proposal for legal assistance would demand an exhaustive and imaginative study of the inadequacies of legal representation throughout the country. A few years ago the American Bar Association by joint action with the Carnegie Corporation of New York

A similar suggestion for federal grants-in-aid in the field of Taxation is discussed by the writer in 24 Notre Dame Lawyer 41, 57 (1948).

The Rushcliffe Report compels an examination of existing facilities in this country for giving legal assistance. How far do we fall short of the mark and would recommendations such as those contained in the report have validity in this country consisting of legal aid societies, bar association committees, public bureaus, departments of social agencies, and law school clinics which serve a little more than 36,000,000 of the population. Twenty-five cities of over 100,000 population have no organized legal aid service. Even where there are legal aid bureaus there is serious doubt of the extent to which they serve the population. In addition to legal aid in civil cases in this country, there are plans for assignment of counsel in criminal cases in practically every State in the country and for voluntary and public defenders in criminal cases. The voluntary and public defenders existing for the most part in cities which have legal aid bureaus giving assistance in civil cases, serve a population of a little more than 17,000,000. So far as the assignment system goes, the assistance it provides is inadequate and for the most part inadequate. In only a handful of States is assignment of counsel mandatory,
York established the Council for the Survey of the Legal Profession, consisting of fifteen prominent lawyers under the able chairmanship of Reginald Heber Smith. The Council will “report from time to time, facts essential on which to found conclusions with regard to the legal profession and its various relationships to the public, social, and economic life of the United States of America.” The chart of the basic structure of the Survey is broken down into six divisions: professional services by lawyers; public services by lawyers; judicial service and its adequacy; professional competence and integrity; economics of the legal profession; and the organized bar. A distinguished writer in the field, however, prefers to have an official body or committee appointed by the Attorney General or the Supreme Court make this intensive and imaginative study.

Whichever group makes the study, the primary question of the responsibility for legal aid work must be answered. Is legal aid the responsibility of the Bar, community, State or federal government? An important report delivered before the New York State Bar Association in 1948 was prefaced by this declaration:

“For many years this Association has officially recognized that the organized Bar has the responsibility of seeing that there be no denial of justice through poverty. It has sought to stir its members and members of the Bar generally to their responsibility.”

The Report then continued by asserting that legal aid was essentially a local problem and a local challenge:

“What is primarily needed is that in every county there be someone charged with the responsibility to whom people in need of legal aid may be sent with assurance that immediately principals or alternates will be available to help with the promptness and ability and eagerness that are desirable in the attainment of justice. To the end that substantial progress may be made in improving the statewide legal aid set-up in New York, the Legal Assistance Committee presents two resolutions, the first being aimed at establishing someone in the community charged with the responsibility of handling or referring legal aid cases as they may arise and investigating the need, and the second based upon the high desirability of bringing about a better understanding of the principles and workings of the legal aid and the lawyer’s opportunity and obligation in that field.”

Implicit in this responsibility for legal aid are the difficulties of

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90 Mr. Alex Elson in 13 UNIV. OF CHI. L. REV. 131 et seq. (Feb. 1946).
91 Address by Mr. George S. VanSchaick, Chairman of the Committee on Legal Aid, REPORT OF NEW YORK STATE BAR ASSOCIATION 192-3 (1948).
financing such a program. Yet no one has contended that the Bar should raise the money or undertake the obligation itself to finance legal aid. Solicitation of funds in a community where legal assistance for the needy is desirable has rarely been an adequate solution. A failure of justice or in the administration of justice can occur in every community, in every society. The administration of justice in the courts is an essential function of constitutional government which cannot be left unaided to one, isolated community. The Rushcliffe Report recognized this conclusion, and recommended that the national government should provide the financing of the scheme. Reginald Heber Smith, speaking in 1947 before the American Bar Association, declared that "there is only one true solution. Although the whole cost of legal aid is not the responsibility of lawyers, the conduct and supervision of the work is the professional obligation of the organized Bar." He concluded that opposition to government allocation of funds under a national legal assistance program might wane if the organized Bar is determined to solve the problem by "devising, constructing, and operating the necessary machinery." John S. Bradway, another pioneer in legal aid, urges that "socialized law" be "anticipated," and that organized legal aid work be undertaken immediately, in every county in the United States as a professional activity of the organized Bar.

Thus, the challenge is squarely before the American bar to accept and undertake full responsibility for government financing of the scheme under private administration and control, to head the findings of the Rushcliffe Report, particularly as far as conditions over here...
are concerned, is mandatory. Immediate acceptance of the challenge would emphasize the "lawyers professional obligation to serve needy clients freely as he can;" and the same time recognize that "it is impossible for a lawyer to serve many clients without being paid; that is simply a short-cut to bankruptcy. The Bar cannot handle thousands of cases gratis, but it can solve the problem." Mr. Alex Elson in an address before the twenty-fifth annual conference of Legal Aid Organizations in 1947 boldly stated:

"The time has come I think when we can no longer overlook the fact that we are not able to do the total job on an individual basis. We should frankly and unashamedly advocate and go after public funds to finance Legal Aid work. I know that is a thought which repels many of you. What I am saying may sound like heresy, but I think we shy away from it because we immediately think this is the first step toward the socialistic Bar."

Even though funds for carrying out a legal assistance program would come from the federal government, it seems that there are still sufficient safeguards to protect the independence of the Bar and the attorney-client relationship in the total administration and control of the scheme by the organized Bar. The freedom and independence of the bar in England seems to be assured:

"The (Rushcliffe) Report is a document of first-rate significance for the entire development of English law. Its acceptance will result in a considerable proportion of all court business being financed by the State. The Committee has seen to it that this will not mean the end of the freedom and independence of the bar. But it will be clear that where State subvention has to keep a considerable part of the machinery of justice in operation, a new phase in the relation between the State and the law will begin. The rule-making functions of the Lord Chancellor and his control of the complex organization of legal aid will probably soon result in the renewal of the demand for a Ministry of Justice."

A belief in our constitutional provisions for equal protection of our laws for all persons has been echoed by notable statesmen in great rhetoric. Equal protection of the law should assume "an equal opportunity to receive the advice and guidance of the expert in the law, the lawyer, and an equal opportunity to enter the halls of justice with-

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96 Supra note 93 at pp. 446.
97 Supra note 78 at pp. A-80-1.
out danger of eviction for want of cash to pay court costs, out-of-pocket expenses, and living expenses while the judicial process unfolds.”

Reginald Heber Smith has eloquently written:

“The problem of equal and exact justice according to law, for all persons in a democracy is our root problem. It lies at the heart of everything else. I still believe firmly in the truth of the following words which I ventured to address our Association a decade ago: “There can be an honest difference of opinion as to whether the state owes an affirmative duty to its citizens to keep them in good health. There can be no argument against the proposition that the state is bound to see that its citizens receive justice. That, and defense against foreign aggression are the two primary reasons why government exists.”

Equal protection of law, especially with reference to a national legal assistance program like that embodied in the Legal Aid and Advice Act, 1949, therefore subsumes that the cost of the scheme would be borne by the national government, and that the obligation to provide legal assistance undertaken in behalf of the total population would be deemed not a charity or dole, but would be recognized as the right which the government has a duty to foster and protect. The paramount relationship of attorney and client would be maintained since the administration would be by the organized Bar. In an address before the New York State Bar Association three years ago, Judge Albert Conway of the New York Court of Appeals described the “hundred million or more” people who do not have good access to lawyer’s services, and then he commented upon the Rushcliffe Report:

“Sometimes we see things more clearly by lifting our eyes from our surroundings and viewing what is occurring elsewhere. In England a committee consisting of leaders of the bar and in social reform headed by Lord Rushcliffe was appointed in London on May 25, 1944, curiously enough when the war was at its height. In May of 1945, one year later, there was made the so-called Rushcliffe Report. I recommend most earnestly a reading of it, and of the recommendations contained therein. Believing as we do in our democracy and its constitutional provisions for the equal protection of our laws for all, what answer as a profession can we offer if we do not make those provisions work. That is the test always. ‘Does it work?’ We must make our democracy work in this respect too. That is our responsibility.”

The English legal profession apparently intends to make their democracy work too in respect of the Legal Aid and Advice Act, 1949, envisioning many salutary changes:

100 Supra note 68 at p. 131.
101 Supra note 71 at p. 447. See also Smith, Economics of the Legal Profession at p. 119-20 (A.B.A. 1938).
"The fact that large sections of the community can conduct their lawsuits free of charge or at very small expense, will lead to demands for a revision of the system of costs and of the entire system of civil procedure which is so very largely responsible for the exorbitant costs of proceedings. Yet even more important than all this is the fact that the opening of the Courts to whole classes of the population, so far excluded from them, cannot be without influence on the future development of substantive law. Legal questions that could never before be brought before the courts will claim judicial attention. Questions that were lurking in the background will assume a new significance. Questions that appeared as minor topics of purely legal interest will be presented in their true social and economic setting. Bench and bar alike will be brought into contact with problems that have so far succeeded in escaping their attention."

Which way America will turn in legal assistance for the needy perhaps depends to a considerable extent upon the success and experience of the British people under the Legal Aid and Advice Act, 1949.

\[^{102}\text{Supra note 98 at p. 66.}\]

(italics added).
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