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LEGAL AID IN CONNECTICUT

THOMAS HEWES*

Legal aid is a term now generally used to define organized or semi-organized assistance to poor persons in a community to enable them to enforce in a court of law or similar tribunal rights residing in them by virtue of the substantive law. It may take the form of enabling them to prosecute or defend in civil actions or to take full and proper advantage of their rights when accused of some crime or simplifying the processes of justice in order to eliminate or expedite litigation. By thus defining legal aid, one is enabled to discuss the matter without referring to such assistance as the members of the bar in general from time to time give to such poor persons as casually come to their attention. Not that this form of legal aid is negligible by any means, but rather because by its very nature data cannot be collected with respect to it. Legal aid, as it is known today, is administered or achieved through private agencies specifically developed for that purpose, or through the intervention of the state or a combination of these two means.

Neither the necessity nor desirability of legal aid is of recent origin. For centuries in England and in this country, a poor man has been at a distinct disadvantage when it became necessary for him to enforce in court the rights granted to him by law. This disadvantage has not arisen out of any legal inequality but because of certain seemingly immutable features of the administration of justice as we know it. These features have been three. The most difficult to overcome has been the expense of counsel. While the state has undertaken to provide the law, the courthouse, the judge, jury and clerk, the rights and duties and the machinery for enforcing them, it has compelled the citizen to hire his own lawyer to put the machinery in motion. While in theory a man could act as his own counsel and while in criminal matters lawyers have been assigned by the court, on the whole if he would have adequate and competent protection, he must pay for it. If he could not pay for it, he could not have it.

Again, there is a system of legal costs attached to all litigation which makes recourse to the courts almost prohibitive to a poor man.

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If he can overcome these two barriers, there is a third, delay, which operates as a final discouragement. Without attempting in this short article to enumerate possible exceptions or modifications, it may be categorically stated that these three incidents to legal procedure have for a long, long time worked a glaring injustice.

Nevertheless, with detached complacency, the leaders of the community, themselves not victims of this system, have tolerated it with unconcern. While with increasingly greater interest the public have been encouraging and helping hospitals, recreation and general charity, there does not seem to be much interest in a subject which is thought by some to be of the utmost importance, namely, the realization of equality before the law. Disregarding ameliorating movements in England and Europe, it is only within the last fifty years in this country that organized legal aid has been attempted. From a small beginning in New York, the work has gradually grown until in 1924, there were in the United States some ninety to a hundred communities in which a definite work in behalf of poor litigants was being carried on. This is insignificant compared to similar work abroad, although this country came into being in order that its citizens might actually enjoy certain great and inalienable rights. These rights and the amplifications thereof are created by our constitutions, statutes and common law. They exist alike for all citizens with the reciprocal duties involved and yet if the courts, because of the conditions mentioned, are essentially closed to the poor, what do the latter profit by them except to the extent of their voluntary observance. It has been estimated that in the United States, 35,000,000 people are too poor to employ counsel. Even supposing there were only 1,000,000, this is quite a substantial number of human beings and, where lawyers cannot be hired and there is no form of legal aid, what does it avail these poor persons to be told that the rights of life, liberty and property are their most precious possessions and that if they would enjoy them, they must respect them in others. Self-interest alone, not to mention the whole theory of our government, certainly requires that the state take adequate steps, supplemented by private agencies such as bar associations and others if necessary, to perfect its administration of the law so as to place all citizens on an equal footing in the matter of protecting their legal rights.

Now what has Connecticut done or is doing to put her own house in order? Much progress has been made here, but much remains to be done. Attempts to help poor litigants naturally proceed along two lines, i. e., eliminating one or more of the aforesaid three obstacles or overcoming them.

Of the first class, the most sweeping and effective has been the Workmen's Compensation Act. This law has to a large extent done away with the expense of counsel, costs and delay in cases where poor persons have sustained injuries arising out of and in the course of the employment. If a claim is contested, however, a lawyer is still necessary and should be supplied rather than force an injured workman to enter into some form of contingent agreement.

Since 1921, a special committee of the State Bar Association has been attempting to secure the passage by the General Assembly of a law creating a statewide system of Small Claims Courts. The object of this court, which is rather a misleading term, inasmuch as the plan contemplates merely creating a division for handling small claims in an existing court, is to eliminate counsel fees, costs and delay in that field of contracts with which the poor are most concerned, as the Compensation Act has to a large extent in the corresponding field of torts. The Legislatures of 1921, 1923 and 1925 have rejected this bill but it is possible that some good has been accomplished in bringing the subject up repeatedly for discussion.

This same committee likewise drafted a law creating the position of Legal Aid Director in some of the populous counties of the state. While such a measure falls into the second of the two classes, it is appropriate to mention it here. It would be the duty of a Director, under rules and regulations prescribed from time to time by the judges of the Superior Court, to consult with litigants who are poor and unable to employ counsel and take all necessary steps to enforce their rights. This bill was also introduced in the same sessions of the General Assembly and also rejected.

It was the thought of the committee, as is perhaps obvious, that with the Compensation Act taking care of the great majority of cases of personal injury and the Small Claims Court doing the same thing in wage claims and other breaches of contract, and with the Legal Aid Director available for all forms of civil wrong, the position of the poor litigant, outside of criminal offenses, would be as nearly satisfactory as possible. It is hoped that the matter will continue to be agitated until this result is accomplished. Nothing was attempted as to domestic relations as conditions in this branch of the law are fairly satisfactory.

In the second class of activities, and so far as the criminal field is concerned, Connecticut probably is ahead of all the states. In 1917, a law was enacted authorizing a judge of the Superior Court before the opening of a criminal term to appoint an attorney-at-law of at least five years' practice, to act as counsel for all persons charged with

crime in said court when such persons are without sufficient funds to employ counsel. The same committee of the Bar Association, in 1921, redrafted this law so as to provide for the appointment of a regular Public Defender each year in June, for each of the counties of the state, in substantially the same manner as the State's Attorney is appointed. Wider powers were given the Defender under this law, including authorizing him to go into the inferior courts. Upon the passage of this new law in 1921, a regular permanent system was created for the benefit of poor persons in criminal matters and it is believed that Connecticut is the only state thus far to have done this. If the Legal Aid Director law should ever be enacted, probably the positions of the Public Defender and Director would be filled by the same person.

In 1915, the Legislature amended the so-called home-rule law so as to permit cities to establish and maintain free legal aid bureaus. Hartford did so in 1916 and has ever since continued this department of the local government, and its service to the poor is gradually increasing in volume. Prior to this time, the Charity Organization Society of Hartford had a legal aid committee, the funds for which were furnished by members of the Hartford County Bar, and for the period from 1914 to 1916, it handled a number of cases. Outside of Hartford, so far as is known, Bridgeport is the only city in the state where there is organized legal aid. Under the present arrangement, the work is carried on by the Department of Public Charities, co-operating with the Central Council of Social Agencies and the local bar association. It is understood that this plan has not worked out with entire satisfaction and some other scheme will possibly be adopted. Of course if a Legal Aid Director should be created by law in each county, the local legal aid bureau or private society would be no longer needed.

The state department of the Commissioner of Labor handles a number of wage claims each year, but not in a definitely arranged manner. In the Probate Courts of the state, which have jurisdiction of the estates of decedents, minors and incapable persons, a poor person has little or no difficulty in having his affairs handled and his rights adequately protected. This is not by virtue of any law but rather is a custom.

This, in brief, is the extent of legal aid to the poor in Connecticut. In criminal matters, the condition is quite satisfactory although the relief might well be extended to local police courts. In civil matters it is not satisfactory. There seems to be somewhat complete indifference on the part of the public and the law making body of the state to the entire subject. The only encouraging sign seems to be the interest of

the State Bar Association. If this committee continues to function, some further progress will probably be made. Certainly its plans as herein outlined are comprehensive. With Small Claims Courts, with Legal Aid Directors, with Public Defenders, added to the field covered by the Compensation Act, speedy and effective justice would be available to poor litigants with a reduced amount of delay. It is not urged that this plan is perfect or final, or that other adjuncts like domestic courts are not advisable, but the goal would certainly be in sight.