

ADDRESS

BRIEFLESS BARRISTERS AND LAWYERLESS CLIENTS

Prepared

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by

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No greater misfortune can befall us than to have our leading lawyers become so preoccupied with individual practice that they fail to recognize difficulties gathering for the whole profession. Something like this has happened to the medical profession and may well be happening to lawyers.

The full impact of the changes of today will not be felt by the seniors of the bar. They will be felt by the junior bar and by prospective lawyers.

Social forces are able to operate on our profession pretty directly. Even more than most callings, our own is created and privileged by government itself. We are given by law a monopoly of access to courts of justice, and this, quite as much as our learning or character, accounts for our prestige and prosperity. We are not creators of wealth; we are not a self-sufficient or self-sustaining craft. While no modern society has yet succeeded in living without some lawyers, no lawyer has ever mastered the technique of living without some clients.

But we as a whole are under the necessity of living without many clients per lawyer. The 1930 census revealed 160,000 lawyers to serve less than 130,000,000 people, or one lawyer to serve and be supported by about each 760 of population. Only about a third of the population is classed as gainfully employed, which means that one lawyer exists for approximately each 300 gainfully employed potential clients.

Of course these are averages. No lawyer is sure of his proportion of clients -- some acquire vastly more than their average. But what I want you to consider today is not individual lawyers -- some very prosperous

and some on W.P.A. -- but the position of our whole profession as related to our whole society.

We have and continue to produce more lawyers than society, at its present levels of income and activity, can support. A large number are holding on and existing by a perilous margin. Others are seeking to extract a living by methods that bring us no credit. Others are on W.P.A. The obvious fact is that society in one way or another supports us all and may properly ask what we are doing to make it worth while.

One might expect that the competition resulting from an overcrowded bar would mean a constantly lowering cost of legal services to the workmen and farmers and shopkeepers who need them. Instead of that we have seen a constantly rising cost of legal service extending to nearly every item. Overheads account for it in part -- but that does not change the fact that the cost of legal service is prohibitive to those of moderate incomes. This affects different groups of people in different ways.

The well-to-do get from the groups of specialists who comprise our modern law firms excellent legal service. We do not need to worry about them.

The very poor and destitute also get legal service of a kind. They have assigned counsel in criminal cases, and in some jurisdictions they have the benefit of a public defender. Many public officers, such as prosecuting attorneys, give much free advice. Few are the members of the bar who do not give free aid to needy acquaintances. Then, in many of the larger cities there are free legal aid societies, sustained by private charity and served largely by volunteer lawyers. The quality and availability of such

services is highly variable. Today the very poor and the well-to-do are likely to get pretty good legal service.

But there are many millions of people who belong to neither the well-to-do nor the very poor. They neither need nor ask charity. But their scale of earnings will not let them pay so much for legal service as the modern lawyer charges. A Carnegie Foundation study reported that in 1927 a total of 27,300,000 wage earners with an average annual wage of \$1200. could not employ lawyers because of their inability to pay. To them we must add farmers, small business men and shopkeepers similarly situated. Such people have tried to pool their resources to cheapen special kinds of legal service through labor unions and fraternal societies just as better-paid people try to do the same through automobile clubs and trade associations.

Of course if one of these gets injured he may, for a share in the recovery, usually interest a lawyer on a contingent fee basis. But it is in the matters of every-day life that he suffers. The legal relations of these small income groups are almost as complicated as those of the great business executive. But no one of the problems involves enough to be worthwhile to many of our lawyers. But such humble homes are affected by mystifying provisions of leases for living quarters. They may be evicted. They buy goods on the instalment plan and may be subject to unjust repossession. Their little affairs have all the problems of debtor and creditor, lessor and lessee, and their domestic relations, though less publicized, may be quite as complicated as those of the rich. And they have always the public authorities to get along with.

Most of these people can pay some equivalent for the service. Most of them prefer to pay because they feel greater reliance upon paid service. Their need is not a charity agency but a low cost legal service. They need a professional agency which can handle small matters in a large volume which would bring down the cost per item. But the problems of bringing low cost legal service to those who are willing and able to pay something, and the lawyer's prejudice against effective means to that end are, strangely enough, greater than the difficulties of rendering free legal aid to those who can pay not at all.

The bar today is leaving this part of the public largely unserved. They can not even get guidance as to what the law is that they are expected to obey. They suffer an accumulation of small grievances that they have no means to redress. They become distrustful of the law. And they become very impatient with lawyers as a class.

Sharp critics have called us "quasi-supernatural medicine men" and "political theologians". Ultra-respectable magazines are carrying articles describing lawyers as a privileged, parasitic class. One magazine of impeccable standing announces forthcoming articles entitled "Should the Profession be Socialized?" A more temperate critic has well said:

"The principal conclusion, . . . . . is that a very large part of what is called social injustice exists because the legal profession has not shouldered the responsibilities that go with the privilege it enjoys. In theory it is charged with the task of seeing that all men obtain justice, and not only those men who have the price to pay for it. This theory has been largely observed in the breach, . . . . . Were existing legal-aid societies to be multiplied a hundred fold they would not come near to meeting the existing need of one-half, more or less, of the citizenry for the means to obtain their legal rights."

Or, as Professor Robinson of Yale described it:

"Actually, of course, the courts are available in proportion to one's ability to pay for their use, but legal theory has little to say about this stark reality. The lawmen know that the courts are accessible only to those able to bear the expense of litigation, but legal theory treats this fact as an unfortunate accident rather than a fundamental characteristic of the legal institution."

Our danger lies, not so much in the fact that there is stormy weather ahead, as in the fact that the largest and most influential part of our crew refuses to heed the storm signals.

It has for centuries been thought the duty of government to take affirmative steps to see that its citizens received justice. The government is already, through relief rolls and W.P.A. projects, providing support for a very substantial number of lawyers. At the same time it sees a large number of citizens who produce help pay taxes deprived of legal service because they can not pay the professional scale of prices. I have grave doubts that society will continue to support idle lawyers and at the same time go without their service once it wakes up to what it is doing. Our bar can not claim to be discharging its full duty to society by rendering service that is out of reach of an increasing proportion of our people. Availability of legal service is just as much a problem for the bar as the quality of legal service. We must recognize a social responsibility to those who can not hire us, as well as a professional responsibility to those who do hire us.

The bar could, if its professional organization were strong enough and so willed, organize within the profession itself privately managed but self-sustaining low cost, high volume legal services. Such possibilities deserve careful and unprejudiced examination.

In default of our attention this problem will be likely to be forced upon government. Long ago government took over from individuals the prosecution of crime. Fears about political manipulation of public legal service will not be very persuasive in view of the fact that those who could not afford to go to the court with a lawyer have long found their champion in a political boss or leader who looked after their troubles in return for support.

There is a third possibility. Law services are overhead for society. Like other overheads, what could easily be carried by a high volume becomes oppressive at low volume output. If we can step up the national income it would increase the ability to pay for legal service. If we can increase the turnover, multiply the number of transactions, and increase the activity of the people, they will have more need for legal services. Hence, the increasing concentration of industrial and financial control, the centralization of business with its reduction of the number of independent clients is a concern of young lawyers. Every economic measure designed to strengthen our economic structure or to bring greater equality and justice in our social structure is a concern of young lawyers. You can not prosper if the mass of your fellow men do not. We can not become a mere servicing profession for wealth. We must not drift to where the great body of citizens will feel us to be hostile or indifferent to their well-being. Yet the most unrelenting and clever opposition to measures of economic and social reform comes from within the bar.

Young men at the bar need have no misgiving about the continued need of men in all walks of life for intelligent and faithful legal service. The

growing complication of life will see to that. But he should be gravely concerned as to how his whole profession shall be organized to furnish that service along the whole social front. We can not afford to become defendants in the case of Society v. The Bar.

One who, like Cassandra, makes a prophecy of trouble, gets paid for the warnings with the displeasure of those who are warned. But these are my convictions and fears. They will affect your lives more than mine. These are your problems. In their solution may you have diligence, wisdom and courage.