National Institute of Justice–A Proposal

Bert H. Early
American Bar Association

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Part of the Courts Commons, and the Jurisprudence Commons

Recommended Citation
Available at: https://researchrepository.wvu.edu/wvlr/vol74/iss3/3

This Article is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.
NATIONAL INSTITUTE OF JUSTICE—
A PROPOSAL

BERT H. EARLY*

FOREWORD

WARREN E. BURGER†

From his long experience and the vantage point of his unique position in the organized bar, Mr. Early has given voice to a great need — a great void — in our system. He correctly and carefully disclaims any thought of "homogenizing" the systems of justice, but rather presses for some central means to energize the valuable programs for improved justice now in being and to probe for new solutions. We spend more than two billion dollars annually through the National Institutes of Health and the country is better for it. But the social, economic and political health of the country must be fostered by a comparable facility to revitalize the faltering machinery of justice — and happily that can be done for a mere fraction of the NIH budget. Whether it is financed by private as well as public funds is not central to the proposal — the key is the function of such an institute.

Mr. Early's provocative article is advanced by him to stimulate debate. It deserves a wide audience and I sincerely hope it will be challenged and debated — vigorously — by the bar and the public.

* Executive Director, American Bar Association, Chicago, Illinois; A.B., Duke University, 1944 ('46); J.D., Harvard University, 1949. Mr. Early wishes to thank his associates, John W. Atwood and David C. Long, for their invaluable assistance in the preparation of this article. Mr. Early practiced law in Huntington, West Virginia from 1949 to 1962.

† The Chief Justice of the United States.
I. The Proposal

The intent of this article is to advance a proposal for the creation of a new type of organization, national in scope and purpose, to marshal our resources and energies for an accelerated program of modernization of our system of law and justice to serve better the needs of over 200 million Americans.

Such an organization might be called The National Institute of Justice. At the outset, it should be clearly understood that the Institute would not conflict with or duplicate the Federal Judicial Center, the National Center for State Courts or other existing organizations. It would, rather, complement their activities and encourage a broader base of support. In broad perspective the concept may be stated simply: the establishment of a national public agency, governed by the most eminently qualified individuals available, and dedicated to the mission of giving national cohesion and increased public and private support to the now inadequate and piecemeal efforts directed toward improving the justice system at all levels. The National Institute must deal with the system of justice as a whole. That system consists of interlocking and interdependent components — substantive laws; procedures; legislative bodies; institutions for dispute settlement, such as courts and administrative agencies; law enforcement offices and agencies and corrections and rehabilitation facilities and services; and a host of individuals who work within the legal profession. The ultimate aim is to achieve a structure of civil and criminal justice that is more effective, expeditious and accessible to the present day needs of all our people.

The goal is unassailable. It was the dream of our founding fathers and it has been the aspiration of our nation's foremost leaders for nearly two centuries. And yet it has eluded us.

No less a figure in American jurisprudence than Roscoe Pound spoke prophetically of its elusiveness as early as 1906. In his historic paper, entitled The Causes of Popular Dissatisfaction with the Administration of Justice,\(^1\) Dean Pound addressed the Annual Meeting of the American Bar Association with these words:

\(^1\)Pound, The Causes of Popular Dissatisfaction with the Administration of Justice, 40 Am. L. Rev. 729 (1906).
I venture to say that our system of courts is archaic and our procedure behind the times.

Uncertainty, delay and expense, and above all the injustice of deciding cases upon points of practice, which are the mere etiquette of justice, direct results of the organization of our courts and the backwardness of our procedure, have created a deep-seated desire to keep out of court, right or wrong, on the part of every sensible business man in the community.

But too much of the current dissatisfaction has a just origin in our judicial organization and procedure. The causes that lie here must be heeded. Our administration of justice is not decadent. It is simply behind the times.

Again in 1937, more than thirty years later, in *Law: A Century of Progress*, Dean Pound tolled the same ominous bell:

"Looked at superficially, many features of the legal order of today may well give us pause. . . . The multitude of regulations required by an urban, industrial society encountering the pioneer habits of self-reliance and private judgment which have come down from the past make the time seem one of disrespect for law. . . . The inadequacy of the judicial organization and legal procedure of the past century to deal with the mass of litigation arising in our great urban centers leads to widespread complaint and popular dissatisfaction with the administration of justice.

Questions of law have ceased to be local. We are so unified economically that no question is limited by jurisdiction and venue as questions used to be. Questions of law today are likely to be questions of business as well. Creative work cannot be done under limitations of party and jurisdiction and venue."

---

2 *Id.* at 742, 749.

Even less may the work of reshaping the law be left to occasional legislative commissions or to the intermittent and hurried action of judiciary committees. In such matters as procedure the judicial councils which have been set up so generally in the past decade will do much. But the ministry of justice, which will take the functioning of the legal order as a whole for its province and give to the problems of peace the continuous study which is so generally given by governments to preparations for war, seems to be a long way off in the English-speaking world.¹

Progress in the administration of justice has been painfully slow. It has failed to keep pace with a burgeoning, automated, electronic society that is increasingly urban, impatient and demanding. Indeed, the situation has taken on crisis dimensions.

This is not to say or to imply that there has been no progress. Indeed, there has been much. However, its hallmarks too frequently have been a patchwork of effort lacking focus, continuity and adequate funding. Notwithstanding accelerating efforts to improve the administration of justice, Chief Justice Burger, in his address on the State of the Judiciary in July, 1971, was compelled to observe that:

Essentially the problems of the federal courts, in common with state courts and indeed much of the entire fabric of our national life, are suffering from an accumulated neglect. This disrepair became an acute problem as the load increased, and we cannot ignore it any longer.

It is not the purpose of this article to dwell on the obvious and profound inadequacies of our present system of justice. It is rather to suggest that the evolution of our legal system makes it clear that vital elements still are missing. Those elements are focus, continuity, innovation, experimentation, and research, all melded under capable direction and with adequate funding. The catalytic agency to synthesize these elements can, in this writer’s judgment, be a National Institute of Justice.

¹ Id. at 20, 23, 24.
This article is then a document of advocacy. The historical details of our failure to attain the noblest purposes of our founding fathers are left to the legal philosophers and historians. It is sufficient to accept the fact of that failure as a point of reference and to move on to more promising methods that offer brighter hope for future progress.

II. A NATIONAL INSTITUTE OF JUSTICE

It is proposed that the National Institute of Justice take the form of an independent, not-for-profit, federally chartered corporation designed to coordinate and support the machinery of justice. It would be governed by a board composed of the most eminently qualified and widely representative individuals available. Its mission would be to make the administration of justice more fully responsive to the needs of our contemporary society.

Purposes of the Institute

The primary purposes of the Institute would be as follows:

First, to provide direction and leadership that would be both responsible and responsive. The Institute would serve as consultant and advisor to all components of the machinery of justice at both federal and state levels.

Second, the Institute would provide a permanent body charged with the development of an overview of the law, with the establishment of priorities, with responsibility for the coordination of educational resources, research activities and projects of the organized bar.

Third, the Institute would serve as a fiscal agent to receive and disburse public and private funds for research, evaluation and action.

There is today no single body or individual in the federal or state governments charged with these ongoing overall responsibilities. Cooperation has improved between states and the federal government, but cooperation is not enough. Although each government has certain officers in each branch responsible for specific areas of the administration of justice, each is limited by constitution or statute
to only a part of the law's sweep. It seems clear that the three branches of government should have the benefit of the research, counsel, advice and recommendations of an agency that has the primary mission for and a continuing commitment to the improvement of the quality of the legal system as a whole.

Functions of the Institute

It is envisioned that the proposed institute would perform the following functions:

1. Survey, Appraisal and Information Collection and Dissemination Function

It would be essential that the Institute undertake and maintain an ongoing survey and appraisal of the functioning of the legal system and of the principal efforts to modernize, reform and reconstitute legal processes and the administration of justice. The task of determining what has been and is being done by the federal, state and local governments, private foundations, law schools, interest groups, professional organizations and other educational institutions is a task of great magnitude, but is essential to any coordinated effort directed toward modernization and reform.

The collection and dissemination of information about the operation of our society — a law society — is presently conducted by a variety of federal, state and local government agencies, private foundations, the organized bar and private institutions. The present efforts are uncoordinated, frequently incomplete, redundant and permeated with frustrating, circular reference systems. The creation of a National Institute of Justice would, for the first time, provide a single source from which comprehensive and complete information might flow. The Institute could provide an invaluable national link among governmental, private and professional interest groups directly or tangentially concerned with the same or closely related problem areas. The use of modern computer technology makes the goal achievable within a reasonable time and within our economic means.

2. Diagnostic Function

The diagnostic function would have as its goal the discovery and evaluation of the principal bottlenecks in the flow of civil and criminal justice and the recognition of new problem areas as they arise. This function has never been assumed by any agency or organization in
the country on a continuing and permanent basis. So little attention and money have been devoted historically to this function that the legal profession is constantly in the posture of reacting to certain issues only after they have developed to crisis proportions. With an effective diagnostic function, problem areas can be dealt with more expeditiously and effectively.

3. Coordination Function

Coordination would be one of the Institute's foremost roles. This necessarily includes the establishment of priorities, the development of long range goals and a continuing evaluation of the results of action and research programs of the various components of the law society, both public and private.

4. Research Catalyst Function

The disorganized and proportionately insignificant allocation of resources for legal research is evidence of the crucial need for a catalytic function of the Institute in this area. Although lack of sufficient funding is certainly one of the most crippling aspects of the anemic state of legal research in the nation today, a solution does not involve solely the infusion of more dollars. Continual inquiry must be made as to the value and relevance of research undertakings. The Institute could perform a highly valuable service as a catalyst in the development of areas in which research has been long neglected.

Most legal research of the past has been doctrinal research in law. However, studies have begun to appear which shed new light on the operation of the processes of law in society — research about law.5

5. Advisory Function

The Institute could play a significant and effective role as an advisor to all branches of government and to the profession. Its recommendation, based upon research and analysis, would certainly tend to carry great weight.

6. Continuity Function

Perhaps one of the critical roles which the Institute would assume is to provide functional continuity for the modernization

---

effort. History demonstrates clearly that continuity of direction and operation has been a principal weakness in the functioning of law and in the quest for more effective administration of justice.

7. Neutrality Function

A seventh function of the Institute would be its mandate to insure neutrality. It should remain, as much as possible, free from political control of its decision making. While the rule of law in theory knows no party, the nature of our representative government inevitably brings political influences into the operation of the system of justice. An Institute governed impartially is both possible and essential.

Funding

It is contemplated that the Institute would be funded from both public and private sources. It would be both a grantor and a grantee of funds.

In its role as grantee, the Institute would be authorized to receive funds for its general administration, under contract for specific projects and programs and under grants for either specified or unspecified uses. As grantor, the Institute might serve as a funding agency for investment of public or private funds in research or action programs.

It is this writer's view that the creation by Congress of this Institute would not eliminate the continuing need for funding from numerous other sources including individuals, organizations, foundations and state and local governments. On the other hand, it is perfectly apparent to all who have examined the problem that the costs involved in modernizing the justice system — after generations of neglect — will be so large that additional responsibility for making funds available must necessarily rest with the federal government. As the Institute progresses in its survey function, it will only then be able to project accurately financial needs in a realistic way.

It should also be understood clearly that the Institute is not intended to supplant or put out of business existing agencies performing valuable work in the various areas of law and justice. Its aim will be to do more, not less. The Institute will be in a posture to provide a common rallying point for concerned individuals
and organizational efforts to obtain congressional and executive response for projected needs.

Staff

It is contemplated that the Institute would have an interdisciplinary, broadly experienced professional staff of modest size. The staff, as directed by the governing authority, would not assume the functions presently performed by other organizations; rather, it would undertake functions not now being performed or being performed on a very limited basis.

It is not anticipated, for example, that the Institute would itself be a large research organization. It would contract with universities, law schools, bar associations, legal associations, bar foundations, other professional organizations, private corporations and governments to carry out evaluation and research projects.

The staff would be responsible to and serve under the direction of a governing body which might be constituted as a Board of Directors.

Governing Authority

It does not seem desirable at this juncture to suggest the specific type, size, or constituency of a governing board. Suffice it to say that the governing body should be appointed for a term of years by the President with the advice and consent of the Senate. Ex-officio members might include the Chief Justice of the United States and other high government officers. In all events, members of the governing body should be selected with due regard to their experience, knowledge and proven dedication to the mission of justice.

What the Institute Should Not Be

In any attempt to define what the National Institute of Justice should be, it is critical to inquire as to what it should not be.

The Institute should not usurp functions of existing entities. On the scene today are a number of public and private organizations dedicated to the modernization and efficient functioning of the law society. These include the Federal Judicial Center, the National Center for State Courts, the Law Enforcement Assistance
Administration, the American Judicature Society, the American Bar Foundation and other private foundations of research and action in the field of justice, bar-related organizations and research centers. In its coordination role, the Institute would utilize existing organizations, and indeed nurture their further development and usefulness.

The role of the Institute would most certainly not include any attempt to federalize the state courts. Such a statement hardly seems necessary except for the extreme fear of some that action at a national level that involves funding by the federal government may be so motivated. It is contemplated that the Institute would be as much the servant of the states as it would of the federal government. If the Institute were to be successful, its reputation would depend upon its even-handed administration, its thoroughness and its understanding of the broad spectrum of problems in the administration of justice on the local, state and national levels.

It was said long ago and repeated many times since that the law is too important to be left to lawyers. The work of the Institute would be much too pervasive and too important to be other than interdisciplinary in its governing body, its staff and its concept.

The Institute is envisioned as a cooperating, coordinating, and consulting organization that would make its resources available for the investigation, analysis and solution of legal and law-related problems. Thus, its staff would primarily perform consulting services, as opposed to having direct responsibility for the implementation of reform movements. In short, the staff would provide insight into ways that modernization resources might be utilized most efficiently.

Because the Institute would not be possessed with coercive power, its effectiveness could only develop as a result of its creativity and its applied expertise in fulfilling its functions. Only if the Institute proves capable of performing that function would its services be in demand or its recommendations be heeded.

### III. Structures of Response in Other Disciplines

The concept proposed in this article is not entirely new. Almost precisely fifty years ago Mr. Justice Benjamin Cardozo urged the
creation of a ministry of justice. He envisioned that a ministry consisting of five members might observe the law in action, develop recommendations for reform in the civil law and report to Congress and the state legislatures where change was needed. In making his recommendations, Mr. Justice Cardozo observed that his thought was not novel, pointing to the prior proposals of Roscoe Pound, Lord Westbury, Lord Haldane and others.

Other proposals have been made in Congress in more recent years. The late Senator Dirksen and Congressman Emanuel Celler proposed the creation of a national foundation of law in bills submitted in 1967. These bills were offered in full cooperation with the American Bar Association, the Association of American Law Schools and the American Association of Law Libraries. In both the 90th and 91st Congresses Senator Fred Harris submitted proposals for the creation of a National Foundation for the Social Sciences. Senator Harris' proposal envisioned a foundation designed to support academic research, education and training in the fields of political science, economics, psychology, sociology, anthropology, history, law, social statistics, demography, geography, linguistics, communications, international relations, education and other social sciences. In presenting his bill, Senator Harris called particular attention to the fact that his proposed foundation would perform no in-house research, but would, in keeping with the precedents set by the National Science Foundation and the National Foundation for the Arts and Humanities, underwrite, fund and support academic research, education and training in the social science field.

Appropriate inquiry might be made as to whether a National Foundation for the Social Sciences could adequately perform the functions of the proposed National Institute of Justice. The argument can be made quite forcefully that the interdisciplinary atmosphere of an organization devoted to the social sciences might indeed have a salutary effect.

This proposition has been thoughtfully analyzed by Robert B.

---

6 Cardozo, A Ministry of Justice, 35 Harv. L. Rev. 113 (1921).
7 Id. at 114.
McKay, Dean of New York University Law School, when he made the following observation:10

[S]ocial scientists do not regard law as a kindred discipline. Accordingly, it seems likely that in a social sciences foundation the law would always be the poor relation and that the important tasks we believe should be undertaken would not be supported except where there was an interdisciplinary study to be made in which law could play a complementary, but secondary, role.

With respect to the Dirksen-Celler proposals of 1967, it should be made clear that the leadership of the American Bar Association played a very significant role. Indeed, the leadership of the ABA, the Association of American Law Schools and the American Association of Law Libraries actively solicited the support of Senator Dirksen, Congressman Celler and their colleagues in both the House and Senate in support of that proposal. Why then, it may be asked, after four years has the proposal not been more actively pursued by the associations to the point that it might even today already be a reality. Such legislation commonly requires a germination period. At the time the Dirksen-Celler proposals were introduced it was assumed that it would take a number of years to bring about the adoption of them or similar legislation. Indeed, the history of the several models described above indicates that this has been the pattern in each case.

The present proposal is thus not reflective of any abandonment of the broad principles contained in the original Dirksen and Celler bills, but is rather reflective of the refinements in thought that have evolved during the past four years. Indeed, it is recognized that there may be other refinements of the concept suggested from many sources before any proposal becomes a reality.

Both the Dirksen and Celler bills and the Harris bills envisioned the creation of their proposed foundations as independent administrative agencies of the federal government — one of four general types of independent government or government funded entities. These are the independent administrative agency, the government owned corporation, the federally chartered not-for-profit corporation, and federally chartered profit making corporation. The National Institute

of Justice is envisioned as a federally chartered not-for-profit corporation.

Existing models of independent administrative agencies are the National Science Foundation and the National Foundation of the Arts and Humanities. An example of a federally chartered not-for-profit corporation is the Corporation for Public Broadcasting.

The National Science Foundation was created to strengthen both research and education in the natural sciences. It was brought into existence as the result of a report prepared at the request of the President describing how best to develop a national science policy and to support basic research and education in the natural sciences. The report was submitted in 1945 by Dr. Vannevar Bush, Director of the Office of Scientific Research and Development. It recommended the establishment of an independent federal agency composed of members to be selected by the President. The establishment of the National Science Foundation took some five years after submission of the Bush report. The Foundation is authorized to make grants to institutions and provide fellowship programs for individuals; it now receives about a half-billion dollars annually for its work.

The National Foundation of the Arts and Humanities was created to encourage and support the humanities and the arts through studies and grants. It was many years aborning. In 1951 President Truman requested a report on the status of the arts with respect to government. Two years later a report was submitted to President Eisenhower and in 1962 President Kennedy urged approval of a measure establishing a federal advisory council on the arts. Proposals were made in the next two years for a national council on the arts and a national arts foundation. In 1964 the National Council on the Arts was created and in the following year the National Commission on the Humanities joined forces with the Council to bring about the creation of the National Foundation of the Arts and Humanities. The Foundation has certain unique qualities of organization that are not here relevant. Its importance lies in the fact that responsible individuals in the field envisioned an independent agency modeled along the lines of the National Science Foundation, which would provide general support for research and education in the humanities. There appeared to be no other logical place within the federal establishment to provide a home for the arts and humanities.
The Corporation for Public Broadcasting was created in 1967 following a study by the Carnegie Commission on Educational Television. While acknowledging the free speech dangers implicit in government participation in the communications media, the Commission recommended extensive federal funding for television program production. In terms of structure, it is significant that the Commission proposed the establishment of a federally chartered not-for-profit corporation which would be neither an agency nor an establishment of the United States Government. Under the enabling legislation the President of the United States, operating under certain guidelines, appoints the fifteen members of the Corporation’s Board of Directors. The Corporation may receive funding from federal and other sources.

It was thought that the federally chartered not-for-profit corporate structure would most effectively provide the independence, continuity, funding and political insulation vitally needed for operation in this controversial and sensitive area.

Each of the foundations and corporations described above bears some similarities of purpose and function to the proposed National Institute of Justice. Each is designed to provide a home for a discipline or a profession with great public service commitment that will make possible a continuity of direction and leadership, will encourage development, research and education, will provide responsible funding grants and will insure competent, independent and neutral direction. Each of these provides an analogy and insight for considering the creation of a National Institute of Justice.

IV. THE MANY PRESSURES OF MULTIPLE CHANGE

An overview of developments within the profession emphasizes the need for the creation of a National Institute of Justice.

In addition, inquiry is justified as to whether any existing institution, or a combination of institutions, including the organized bar, are presently capable of performing along the functions deemed necessary for effective and comprehensive modernization.

Accordingly, some of the major areas of evolution in the modernization process are considered, followed by an analysis of the role of the organized bar in this process.

During the Twentieth Century the components of our machinery of justice — the courts, the practicing profession, legal education,
the methods of practice, law related research — have too frequently
lagged in their response to the problems and challenges of our
rapidly changing society. Indeed, the practice of law in this country
has been described as the last cottage industry. It should be
observed that this has not been for want of concern on the part
of dedicated lawyers, judges and numerous organizations of the
profession. Rather, problems concerning the administration of justice
and the practice of law have for too long been considered primarily
the provincial concern of judges, lawyers and their constituent
organizations. As has been described, in areas such as medicine,
the natural sciences, and the arts and humanities, it was deemed in
the national interest to create national organizations to foster
development, research and innovation.

In contrast, the failure of this nation, until recently, to view
problems concerning the effective administration of justice with
sufficient seriousness to warrant a commitment of substantial
resources from the federal government, has meant that those
struggling to modernize the legal profession, legal education, and our
justice machinery, have had to work with minimal funding wholly
inadequate to meet the magnitude of the problems. We have too
often gone in separate ways without carefully evaluating the merits
and effectiveness of our efforts and without resources to interrelate
results with the over-all problems of judicial administration. The
inescapable conclusion one draws from most of these past efforts
is that the approach has been comparable to trying to construct a
space vehicle by assigning a thousand engineers, each left in isolation,
to design one specific component with little comprehension as to
how the components would function together when assembled. It
may, therefore, be helpful to look briefly at certain components of
the justice system in terms of the recognized needs of an urban
society.

How Law is Practiced

In comparison with other vital aspects of society, the practice
of law today and the basic methodology of the courts have changed
relatively little from the days of Thomas Jefferson and John

For many early nineteenth century lawyers the primary and
often sole source of legal research and knowledge was Blackstone's
Commentaries. And between 1790 and 1840 our courts produced
only about 50,000 reported decisions. The next fifty years produced about nine times as many — 450,000. From 1890 to the present the courts have added almost two million published decisions to our legal storehouses of knowledge. And this does not include the hundreds of thousands of new regulations which have been issued by administrative agencies or the approximately 10,000 new statutes adopted by legislatures each year.

New tasks and new demands have been placed on today's lawyer. The call for equal access to the machinery of justice and to professional legal counselling for the poor and for members of minority groups has created new demands to which the bar has responded. Increasingly, questions are being raised as to the adequacy of available legal services to middle income American families.

Inherent in the increased recognition and utilization of the courts as effective vehicles for social and political change has been the mounting pressure on the lawyers and his profession to promote and protect equality, due process, and the "public interest" for those who could not individually afford a lawyer's services. New opportunities for public service by younger attorneys have developed. Law firms and bar associations have been challenged to attain an ever higher level of public service activity.

Unlike industry and government, lawyers have not been able to reduce appreciably the number of expensive man-hours they devote to routine legal tasks. With certain exceptions, which will be discussed later, the ideal of the profession has long been to provide custom-tailored services to each client. The sources of essential legal research — court decisions, statutes, and administrative regulations — have skyrocketed quantitatively. Lawyers' research has become increasingly costly, and it is the client who must pay for the straining shelves of law books and the expensive manpower necessary to extract needed materials in them.

Yet young associates and solo practitioners still pore through indices, digests, cases, commentaries and looseleaf services in the same manner as their great-grandfathers. These laborious methods remain the primary information retrieval system of the profession.

To this day routine legal research remains largely untouched by computer technology. The reasons are probably less the limitations of the computer than the high capital cost of better legal indices for
computer use and for programming millions of bits of information. This high initial cost has certainly been a major deterrent to extensive utilization of automated information retrieval.

Another characteristic of the legal profession today is its increasing specialization. The lawyer's image of himself as a generalist, fully proficient in the law as a whole, bears little relation to reality. New areas of legal practice and inquiry have been added steadily during this century, e.g., labor relations law, federal tax law, civil rights law, antitrust law, and securities regulation law. Numerous other examples could be cited. The practicing lawyer today is constantly confronted with the problem of how little of the "seamless web of the law" he can hope to practice with proficiency.

The growing national uniformity of laws harbors profound implications for the profession and its admissions procedures. This century has been particular witness to the growing influence of federal laws and agencies regulating both man and his industry, labor and finance. The portion of a lawyer's time spent on matters regulated solely by state law has declined steadily. Suffice it to say that many practitioners today devote most of their practice to federal matters which were unknown 75 years ago.

The Move Toward Modernization: An Unfinished Saga

The American Bar Association and the legal profession as a whole have in recent years devoted increased time and resources to consideration of methods for modernization. There exists a growing awareness in the Bar that the profession as traditionally structured has not met many of the legal needs of individual citizens. Changes in society as a whole have exerted certain but incalculable pressure on the profession to change. They have been affected by the emphasis upon research and innovation and by the increasing demands first of the poor and now of the middle class to share in the benefits of an affluent society, including quality professional services of the doctor and lawyer.

Issues with respect to the modernization of the profession have arisen in two broadly defined areas. First, issues concerned with the internal organization of the legal profession, including specialization, use of paraprofessionals and computer technology are increasingly being considered. Second, issues related to the delivery of legal
services to individuals are undergoing intensive scrutiny. These include, *inter alia*, prepaid legal cost programs, group legal practice, legal aid and judicare, and lawyer referral services.

Specialization

Specialization in the legal profession is a fact of life. A proportionately smaller number of lawyers today practice alone or with one partner — the standard form in rural small town America — the America of the Nineteenth Century. Industrialization and urbanization brought the growth of large industrial, financial and governmental organizations. As these institutions grew, so did the law firms which provided them with legal services. As large law firms developed, the lawyers within them often began to specialize and to organize into departments in order to provide better services to the client. Large corporations promoted specialization in the legal profession by employing lawyers as corporate counsel to serve the highly specialized legal needs of the corporation. The growth of widely diversified and specialized government agencies resulted in the need for large numbers of attorneys to work in the agency's specialized area. Government has become a vast training ground for specialized legal practice. As a result of these changes in the structure of the profession, over twenty percent of the lawyers who practice in the United States today are "one client" — government or corporation — lawyers. The move toward specialization also has affected the single practitioner and small firm. Specialties such as personal injury litigation, criminal law, domestic relations, and labor law are increasingly areas of specialization for the single practitioner or small firm lawyer.

While the de facto growth of specialization has been recognized both within the profession and by its clients, the bar has only begun to cope with the implications, opportunities, and problems of the formal recognition of specialization. Much experimentation will be necessary concerning certification requirements, *e.g.*, the roles of law school curriculum, "internship" or apprenticeship, continuing legal education and graduate law study in training for a specialty. The area of examinations in specialty certification is still largely unexplored. No state as yet has developed a comprehensive specialist certification procedure, although California presently is experimenting with a certification system for specialists in workmen's compensation, tax law and criminal law.
The implications of specialization also remain largely unexplored. Careful study and thought must be given to the role of the general practitioner in an era of increasing specialization. A determination must be made as to the appropriate mix of formal education and practice for training in various fields of specialization. For example, it may be reasonable to require a litigation specialist to have more courtroom experience than classroom experience. The mix of the practical and the formal education for a tax expert may be quite different. Heretofore, the resources for exploring these questions have been woefully lacking.

Paraprofessionals

The case for greater utilization of paraprofessional legal assistants was well stated by the ABA Special Committee on Availability of Legal Services, which observed that: "freeing a lawyer from tedious and routine detail, thus conserving his time and energy for truly legal problems, will enable him to render his professional service to more people, thereby making legal services more fully available to the public."

Traditionally lawyers have used clerks and secretaries as assistants for handling administrative aspects of the practice of law such as filing papers, searching court records, preparing forms, and other routine tasks. As the profession strives to extend legal services to more and more individuals in lower and middle income groups, the occasions in which routine operations may be performed by trained lay assistants will be multiplied.

The ABA Special Committee on Lay Assistants for Lawyers recently conducted a pilot training program for legal assistants and is developing model curricula for training law office personnel. The future for the development of educational programs for such training in colleges and law schools and of certification standards and procedures for this new vocation are virtually unlimited.

New Systems for Delivering Legal Services to Individuals

The profession is in a state of ferment with respect to the development of new systems for the delivery of legal services to persons of moderate means and to the disadvantaged. There are genuine considerations of professional standards concerned with independence of the attorney and with conflicts of interest. Serious questions have been raised as to whether the present pattern of
providing legal services to individuals is adequate to enable the average person to know when a problem confronting him is one in which a lawyer can help; to know whether the lawyer’s service is worth its cost; and to locate a lawyer he is confident can and will provide the expert legal assistance he needs, at a cost he can afford. The conclusion is unavoidable that the profession, as presently structured, does not adequately meet these criteria, to serve low and middle income people.

Pressures of change have come from several sources. In the 1960s the Legal Services Program of the Office of Economic Opportunity was created, as a result of the widespread recognition of the inadequacy of the then existing legal services delivery system for low income Americans. Today about 2,000 legal services attorneys are handling approximately two million cases each year for the poor. The same questions are being raised now of the adequacy of legal services available to individuals above the poverty line — those in the middle and lower-middle income groups.

Probably the greatest force today behind the development of new systems to make legal services more readily available to middle income groups is the trade union movement. Labor organizations have obtained, through collective bargaining, substantial medical coverage benefits for their members in the form of insurance and group practice programs. It was predictable that they would also turn their attention to legal services available to their members.

Group Legal Services

The term “group legal services” as discussed here connotes a plan in which a group or organization designates one or more lawyers to represent individual members of a group. Numerous group legal service plans are operating today, frequently under the sponsorship of unions.

These plans have created continuing controversy within the legal profession. However, the issue no longer primarily revolves around whether such plans may be allowed to exist. The United States Supreme Court, in a series of decisions, the most far-reaching of which was United Mine Workers v. Illinois State Bar Association,¹¹ has shielded such arrangements against charges of unauthorized practice. One commentator has stated that the holding in the

Mine Workers case makes it "difficult to conceive a practical and attractive group legal arrangement that would not be protected by the rule it announces."  

Group legal services have been around for some time. Certain forms of group practice have been accepted by the profession. Probably the most common group legal service arrangement is in the automobile insurance industry. Individuals protected by automobile casualty insurers must, in the event of a claim, accept counsel of the company's choice. In addition, the legal needs of the poor served through the OEO-funded Legal Services Program are primarily met by a group legal services structure. A substantial amount of additional study and analysis must be performed to determine the effectiveness of group legal services plans. But the need for new methods to better meet the legal services requirements of large numbers of people can be said to constitute one of the most pressing problems facing the profession today. The Bar can ill-afford to ignore the reality of group legal service programs; a brochure published by the ABA Standing Committee on Lawyer Referral Service has observed that "the time may well come when a majority of the general public will receive all needed legal services from lawyers provided by lay organizations. . . ."

Prepaid Legal Cost Insurance

Another change in the structure, primarily in the funding of legal services for the middle class, has been the embryonic development of prepaid legal cost programs. Examples of the growth and success of hospital and medical insurance plans have raised the question of the feasibility of financing legal services generally through pre-payment plans. The funding of "routine" legal services under this concept is, strictly speaking, a pre-payment or financing mechanism rather than a spreading of the risk. The automobile insurance industry has long had experience in calculating the cost of legal services as part of the insurance premium; but this has been primarily coverage for legal catastrophe. As yet we have had little experience with pre-payment mechanisms for routine legal services.

The American Bar Association Special Committee on Prepaid Legal Services is sponsoring a pilot program in Shreveport, Louisiana,

in cooperation with the Shreveport and Louisiana State Bar Associations, which has been in operation since January, 1971, with Ford Foundation funding. The Committee is undertaking sponsorship of a pilot program in Los Angeles, California, which has not yet begun operation. Prepaid legal service programs are attractive to trade unions, and other consumer groups, including teachers and municipal, state and federal employee associations. However, problems concerning such sponsorship are myriad. For example, employer contributions to such plans are presently not authorized under the Taft Hartley Act. Unlike health and medical service benefits, contributions to these plans are not tax deductible. Whether state insurance departments will consider prepayment plans as insurance for the purpose of state regulation is not presently known. These and other questions require further exploration.

Many members of the organized bar see prepaid legal cost programs as a vehicle for providing more effective legal services for individuals without placing a lay intermediary between the attorney and his client. Indeed, due in large part to efforts of the Association, twenty-three state bar committees have been established to explore the establishment of prepaid plans.

Lawyer Referral Services

Although lawyer referral systems have been in operation in the United States since 1937, there are today only 267 lawyer referral offices in operation, dealing with approximately 250,000 clients each year.

The present system bears some similarities to the legal aid system as it was constituted prior to the introduction of the OEO Legal Services Program. It is typically under-financed, inadequately advertised, and under-utilized. To be sure, the present system is making a substantial day-to-day contribution to the availability of legal services to the public, but those who have given the most penetrating consideration and study to the problem are generally dissatisfied with the capacity of the present system to meet the much wider unfilled needs of middle-income families. The ABA Standing Committee on Lawyer Referral Service has indicated that a major problem is to provide some assurance to the public that the quality of service which an individual will receive would be significantly better than could be accomplished by selecting a lawyer at random from the yellow pages of the telephone book.
The OEO Legal Services Program has almost exclusively utilized the approach of funding offices staffed by attorneys employed to perform legal services for the poor. Only a few OEO-funded programs permit the client to select a private practitioner who is then reimbursed by the funded agency. This system is known in the profession as "Judicare," and its supporters argue with considerable logic that it is the only practical method of providing legal services in rural and sparsely settled areas.

The Need for Evaluation of Methods

Thus, there is a pressing need to intensify the study of the effectiveness and relative cost of new and old systems for the delivery of legal services. The basic obligation of the profession is to provide legal services to the public, to make such services available to all members of society, and, in so doing, to insure that they are performed by qualified persons who have been adequately educated.

Legal Education—Law Schools in Lockstep

Law schools are today in a period of profound soul searching and re-evaluation. With striking uniformity they have followed curriculum and teaching methods developed in the late Nineteenth Century. Most are now revising their curricula to introduce more effective methods of educating and training lawyers to deal with the problems of the late Twentieth Century.

Traditionally, the source of most law school teaching materials has been appellate court opinions. Of course, any practicing lawyer knows that the world of the appellate court opinion is often a considerable distance from the real world of most legal practice. Until recently there was little innovation in law school teaching methods and content. The case method of teaching long reigned supreme.

It has been suggested that the complete lawyer should receive three types of education which may or may not be subject to combination. He should be taught to analyze the legal significance of issues. He should be taught techniques of practice. He should learn the social, political and economic dynamics of our society inasmuch as the law is the basic regulator of these dynamics. Traditionally too, law schools have seen themselves as educating prospective lawyers
to think like lawyers, leaving to others education in the technique of practice. Clinical teaching was relatively rare, with legal writing reserved, in the main, for the law review editor.

Until recently little concern was evidenced over the failure of legal education to familiarize prospective lawyers with how society works. But today, law schools are profoundly involved in a re-evaluation of their role and responsibility to themselves and to society as a whole. Law schools are increasingly concerned with the relevance of their curricula. This concern has produced new courses and orientation. There has been increasing concern with interdisciplinary aspects of legal education. Clinical training is increasingly supplementing the traditional classroom curriculum.

In the past a major limitation of experimentation with curricula and teaching methods was the view, perhaps accurate, that most law students were headed in the same direction, i.e., toward traditional private practice. Law schools today are faced with a far greater diversity of student interest. This is due in part to expanded opportunities for legal practice in government, legal aid, and other full-time public service activities, and to the increasing specialization of private practice. Teaching has been oriented to training legal generalists on the theory that even a specialist needs to know something about other areas of the law. However, the reality of specialization has raised questions about whether there is a role for law schools in the training of specialists. Moreover, continuing controversy revolves around the relevance and use of the third year of law school. Clinical training, interdisciplinary studies and specialization are all increasingly vying for that last year of the law student's education.

Increasingly, law schools are asking whether they should break the uniformity of past patterns and begin to develop specialties and particular emphasis, i.e., should urban law schools emphasize urban legal studies with perhaps a greater research and behavioral orientation.

Three major barriers have served to retard experimentation with new curricula: the conservatism inspired by the success of the case method in its time; bar examinations; and funding. The so-called "national" law schools are perhaps most affected by the first factor, because they have been most successful by traditional standards of legal education. On the other hand, although the national law schools
have not oriented their courses primarily toward bar examinations, the majority of schools have been sensitive to that practicality. Undoubtedly, tradition-bound bar examinations have discouraged innovation in law schools. Some experimentation with a national bar examination is now going forward under the auspices of the Association of American Law Schools and the National Conference of Bar Examiners. This effort is being widely applauded and carefully observed.

Formal education in the law is still a remarkably young idea in this country. In fact, it has only been in the last half century that the majority of practicing lawyers have been trained by law schools. Historically, young aspirants to a legal career “read law” in the office of a licensed practitioner, and the requirement of formal legal education as a prerequisite to taking a bar examination is a comparatively recent development.

Many law schools had their beginning in the basement of a YMCA and as night schools catering to the part-time student. A large number of schools were started as proprietary institutions and there remain a surprising number of such institutions, especially in the State of California. Among the low-budget proprietary operations large classes are the normal mode of operation. It is also true that even the law schools forming a part of universities are expected to produce a profit. The notion of a university law school receiving research and educational grants from its parent organization generally has been a foreign thought. As an inevitable result, curricular innovation, including greater clinical and research programs, which would require significant increases in law faculties, facilities and funding, have been slow to develop.

Research by law school faculties and students has, over the years, been minimal, especially as compared with other disciplines. That which has been undertaken has largely been of a doctrinal nature.

The history of the funding of legal education and research from private sources suggests that significant change in the foreseeable future is unlikely, unless new and substantial sources of income are made available.

Continuing Legal Education

Continuing legal education has in recent years become a significantly more important component of the lawyer’s training.
This, too, reflects a recognition of the incompleteness of law school education as preparation for legal practice.

The early efforts of the Practising Law Institute and the Joint Committee on Continuing Legal Education of the American Law Institute and the American Bar Association paved the way for rapid growth of programs of continuing legal education. Such programs are now widespread. Today most state and some local bar associations, as well as many law schools, sponsor continuing legal education programs.

Increasingly, the profession sees continuing legal education as at least a partial answer to a number of its problems. It is seen as a way of minimizing the learning which a new attorney might otherwise experience at a client’s expense. It is looked upon as a method by which specialists can increase their proficiency and general practitioners develop specialties. It is an avenue for bridging the knowledge gap created every time major new legislation is enacted.

Funding is and will continue to be a major problem in continuing legal education. It restricts the types of programs which can be offered; programs must appeal to significant numbers of attorneys in order to pay for themselves. To a limited extent profitable programs can support the unprofitable ones, but this places serious limitations on developing programs for less profitable specialties or in areas of public service. The result is that these areas are likely to be neglected.

Two illustrations of education in the area of court administration are worthy of note. Until 1964 there did not exist in this country a school for state trial court judges. It was only with the inspired leadership of Tom C. Clark, then Associate Justice of the U. S. Supreme Court, and the infusion of substantial funding by the Kellogg and Fleischmann Foundations that the American Bar Association’s National College of the State Judiciary became a reality. More than 30 percent of the state trial judges of courts of general jurisdiction have since attended the college.

Until last year there was no institution in the United States for the education of court administrators and executives. Under the leadership of the Chief Justice, Warren Burger, and with a large grant from The Ford Foundation, the Institute for Court Management was created. It already has graduated two classes and has inspired some law schools to undertake the development of programs leading
to a master's degree in Court Administration. It was a large factor in persuading Congress to enact the Court Executives Act creating "business managers" for each of the Federal Circuits.

Regulating Professional Qualifications

The state has conferred on the lawyer the exclusive right to provide legal services. Yet neither the profession nor the state has developed a procedure for admitting attorneys to the bar which assures the public that those who are licensed to practice have achieved a reasonable level of competency or possess the necessary moral qualifications. It is fair to say that there is near consensus within the legal profession that state bar examinations do not truly test whether an applicant is competent to practice law. Indeed, no law firm would base its decision to employ an admittee on the strength of his passage of such a written examination. The plain fact is that no written test can measure the ability of an applicant to perform many of the facets of practice. Furthermore, while specialization is a growing reality in the legal profession, bar examinations do not reflect this fact, and at the present time there is no later certification procedure regulating such specialization.

Many are of the view that the regulation of professional qualifications is not the concern of the law school. Some suggest that it is the responsibility of the organized bar. Others lay the responsibility on the judicial branch of the state government. In any event, it is certainly the responsibility of some group within the profession, and the plain fact is that professional competency is not now receiving sufficient constructive attention.

Research In and About Law

One of the hallmarks of today's society is its reliance upon research as an instrument of development and progress and for the solution of problems. One need look no further than his television set to observe the constant emphasis on research in the advertisements of program sponsors. Typically, one hears such slogans as "progress through research;" "Ford has a better idea;" "progress is our business;" etc.

Insofar as research in the law is concerned, it may be divided into two types: doctrinal and empirical. They have been described by Professor David Cavers of the Harvard Law School as research in law and research about law. In the field of doctrinal research, or
research in law, the legal profession has historically made important contributions. This kind of research required little money and could be traditionally performed in the library. This was pointed out by Dean Robert B. McKay of New York University Law School in his testimony before the Senate Subcommittee on Government Research in which he observed that lawyers have made great progress in systematizing and unifying the law through their doctrinal research. This has been true despite the obstacles presented by a diverse federal system comprising more than fifty separate jurisdictions. By way of illustration, Dean McKay pointed to the substantial contributions of the American Law Institute and the Commissioners on Uniform State Laws as examples of what lawyers could do with modest sums of money.

However, it has been only in very recent years that the profession has come to realize the importance of empirical research and the responsibility of the profession for its conduct. This awakening concern for research about the law led to the establishment of the American Bar Foundation, the research arm of the American Bar Association. The work of the Foundation has been primarily limited by the funds available to it. Law schools evidence a growing commitment to research about the law, but here, too, financial resources are limited.

As Chairman of a Special Committee on Financial Resources of the Association of American Law Schools, Dean McKay conducted a study financed by the Walter E. Meyer Research Institute of Law, the purpose of which was to ascertain the level of private philanthropic contribution to legal education and legal research. The results of that study indicated that private foundation support has not been large. During the twelve-year period of the study most of the funds were granted for construction, fellowships and individual research. Only a modest amount was made available for empirical research.

Of the funds granted to law schools, more than 60 percent was concentrated among five schools and nearly 80 percent was concentrated among ten. The Ford Foundation was the principal grantor, accounting for more than two-thirds of all foundation support. Grant money went primarily to international legal studies, graduate fellowships for law teachers and the administration of justice, particularly in the criminal field. In the final year of the

---

period studied, only a little over one percent of all foundation grants allocated to the sciences and social sciences was directed to law.

In the same period, the government was providing only negligible support for legal research. At the time of Dean McKay's study, the National Science Foundation had made no grants for legal education or legal research. Likewise the National Endowment for the Humanities made no research grants to lawyers. Proposals introduced in Congress for a National Foundation for Social Sciences and a National Foundation of Law and Justice have not yet received wide support.

In contrast, research in support of the physical sciences has fared very well at the hands of both private and public agencies. Admittedly, the legal profession has been slow to awaken to its responsibilities and opportunities to improve the function of our law society through research about the law. But it has been demonstrated that lawyers working together and working in conjunction with other disciplines are quite capable of making the system work better. The obvious need today is to provide adequate funding, continuity and direction.

The Crisis in the Administration of Justice

The inadequacy of our nation's judicial machinery, which was designed to meet the needs of an agrarian society in the late Eighteenth Century, has produced a crisis in our judicial system. This crisis is the result of a multitude of long-neglected problems which, because of increasing demands being placed upon our court system, now threaten much of the system with virtual collapse. There is hardly an urban court which is not touched by the crisis. Interminable delays threaten to destroy the usefulness of our civil courts for the peaceful and orderly resolution of conflicts. Delays in the criminal courts too often mock both the concept of deterrence or the rights of accused. Many judges now must devote an inordinate amount of time to administrative details which could be better handled by others. At the same time, assembly line justice often prevails. Appellate courts are equally affected. In many state systems the average time required to process an appeal can consume in excess of eighteen months.

The task of resolving the problems which contribute to this crisis is not easy, for resort to simplistic solutions usually creates a high risk of destroying the very system which such solutions are
intended to save. What is needed is reform within the context of our legal traditions.

The focal point of the machinery of justice in our country is, of course, the judge himself. Too frequently judges, especially in the minor courts that process the bulk of the civil and criminal litigation, receive little or no judicial training or orientation. There remain substantial problems with respect to insuring that judicial officers are competent and have the requisite temperament to adjudicate disputes in a courtroom setting.

On the positive side of the ledger, this is an area which is receiving substantial direction and attention from Chief Justice Burger. He, for example, has been instrumental in the creation of the new National Center for State Courts. His predecessor, Chief Justice Warren, was the moving force in the establishment by Congress of the Federal Judicial Center. Under the broad mandate of Congress, one of the primary functions of the Federal Judicial Center is "to conduct research and study of the operation of the courts of the United States, and to stimulate and coordinate such research and study on the part of other public and private persons and agencies."

The new National Center for State Courts, together with the Federal Judicial Center, the National College of the State Judiciary under the sponsorship of the Section of Judicial Administration of the ABA, and the Institute for Court Management, all are recent examples of advances in strengthening judicial training and support.

V. TRANSLATING DESIRE INTO REALTY

Inherent in the efforts of most legal reformers, voluntary and professional, has been the assumption that if enough human energy were applied by enough dedicated groups existing machinery could be improved and the crisis in justice could be met. The piecemeal, uncoordinated nature of the various efforts seems not to have been regarded as a deterrent. At least they have been accepted as an inevitable fact of judicial life. But with it all, comprehensive, coordinated national planning is lacking and effective modernization of the system appears still to be an elusive and urgently needed element.

From the time of the creation of our constitutional government, the condition of justice has suffered almost directly in proportion to
the increasing population and the increasing complexity of our society. The responsibility, although often the subject of partisan political debate, has fallen on the lawyer and ultimately the organized bar. Lawyers are educated to understand and deal with the application of the rule of law. Moreover, they are virtually the only professional group having complete access to the machinery of the administration of justice: the enforcement of societal mandates through law. In short, they are intermediaries between the theory of the law and its application to society.

Yet the very nature of the practice of law can be contradictory in terms of the interests of society and the interests of particular individuals, or organizational and governmental entities. They are paid advocates, ethically bound to consider the client's interest as paramount to virtually all other considerations. This obligation is to be juxtaposed with a commensurate obligation — also a matter of ethics — to work for the public good.

Efforts to accommodate these co-equal obligations have been pursued, in the past, mainly through the organized bar or through government. One has only to consider the makeup of the executive, judicial and legislative branches of government to note the intricate and pervasive involvement of the lawyer in the administration of justice. Chief Justice Burger aptly articulated this in his State of the Judiciary address at the 1971 ABA Annual Meeting several months ago:

A strong, independent, competent legal profession is imperative to any free people. We live in a society that is diverse, mobile and dynamic, but its very pluralism and creativeness make it capable of both enormous progress or debilitating conflicts that can blunt all semblance of order. One role of the lawyer in a common law system is to be a balance wheel, a harmonizer, a reconciler. He must be more than simply a skilled legal mechanic. He must be that, but in a larger sense he must also be a legal architect, engineer, builder and, from time to time, an inventor as well. This is the history of the lawyer in America, and in this respect he is unique among the lawyers of all societies.

While it cannot be said that kinship among lawyers is so great that one may find them huddled together under one roof, they are
gregarious enough that the vast majority of them belong to state and local bar associations. More than half of them voluntarily belong to the American Bar Association, the national organization of the profession.

The movement to organize lawyers into bar associations on a national, state and local level is a little over a hundred years old. The organization started in metropolitan areas and the more populated states. The early associations were voluntary in nature and had modest budgets. Permanent staffs did not exist; association projects were carried on by volunteers. The Bar was not seen in those days as responsible for the discipline of members and certainly not as the harbinger of reform.

The passage of time brought many changes. As bar associations assumed larger roles in professional standards of conduct and practice, and a larger share of responsibility for the machinery of justice, the so-called integrated bar began to develop among the states. This concept, requiring every practicing lawyer to belong to the professional organization of lawyers in a state, took place largely during the middle third of this century. Today, half the states have integrated bars and the trend in that direction is continuing. Even with this movement, inadequate funding has in most states prevented the mounting of effective programs of discipline, education and improvement of judicial machinery.

It may surprise some to realize that the American Bar Association had no permanent staff for the first half of its nearly one hundred years. Indeed, not until the middle of the 1950's did it have sufficient funds to staff a limited number of projects and activities. Membership in the American Bar Association has trebled in the past fifteen years, while its income has grown by more than 600 percent. In the last decade an even more significant development has taken place — the funding of public service and educational projects through foundation and government funds. About half of the Association's annual income now comes from such sources. It is this writer's belief that that percentage will grow in the decade ahead to between 65 percent and 75 percent of the Association's entire income.

Indeed, the progress of the organized bar in the past decade has been so marked that some believe that the crisis in the administration of justice can be met by the organized bar under the
direction and leadership of the American Bar Association. While the forward strides of the last decade are a source of encouragement and even some pride, and while the leadership of the American Bar Association is dedicated to the proposition that this organization has the potential for even greater and more significant contributions to the cause of justice, it must be recognized that there are some inherent qualities of a voluntary organization that militate against its completely effective fulfillment of this lofty role.

On the one hand, the ABA House of Delegates includes the widest possible range of representation from all groups who constitute the legal profession today. The Association’s present day structure is its strength when called upon to pass upon the conclusions or proposals of others. Nevertheless, because it is a voluntary organization and represents so many diverse and often irreconcilable views, it should not surprise or discourage us to note that the contribution of the organized bar to the solution of today’s societal problems has been, of necessity, confined largely to the realm of ideas. Time freely contributed by volunteers, projects financed by volunteers, machinery tuned to decision by consensus, cannot produce the kind of massive, venturesome, sustained and coordinated attack which is required in the field of justice today. Volunteer bar associations, the American Bar in particular, perform at their maximum efficiency in unfolding and debating a wide range of views. By their very nature, however, voluntary bar associations cannot, at the same time, be fearless in research, forceful in exposition and confident in criticism.

Even if the organized bar could, through reorganization or otherwise, build a sufficient structure from which to conduct far-reaching research programs and substantial pilot programs in our quest for a better society, an argument can well be made against proceeding in that direction. As long as bar associations remain voluntary, their ability to represent all lawyers is impeded. Should the day come when all lawyers speak with one voice, the rest of society may nonetheless readily question both our method and our motive.

The very size of life and society today minimizes the effectiveness which any voluntary group can now offer. Individual contractors alone cannot produce coordinated space programs. Individual railroads cannot serve a sprawling nation. Society today requires a National Institute of Justice.
VI. CONCLUSION

The late Reginald Heber Smith once observed that men can learn, if they must, to put up with physical imparity and economic inadequacy; but that a brooding sense of injustice makes them want to tear things down. We who bear the primary responsibility for the machinery of justice in this nation, if we are to be faithful to our oath, must be vigilant in our search to find new and better ways to make equal justice under the law a living reality. It is incumbent upon us to move forward with common purpose and high aspiration that is worthy of our heritage. The National Institute of Justice is a concept whose time has come.