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Legal Aid in North Carolina

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Legal Aid Society of Forsyth County, North Carolina

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LEGAL AID

Legal Aid in North Carolina

JERRY DEE MOIZE

INTRODUCTION

The history of legal aid in North Carolina is one of mixed accomplishment, retrogression and general, if uneven, progress. That history has witnessed the utilization of many methods of providing legal services to the poor: unorganized charity work by individual practitioners, a law school legal aid clinic, state-wide legal aid, voluntary committees, individuals and panels in individual counties, part-time offices staffed by receptionists making referrals of indigents to participating attorneys, privately funded legal aid offices, foundation funded summer internship programs for law students and the culmination of the effort, OEO funded legal services programs with their concomitant neighborhood offices and circuit riders. These developments are treated historically in order to put each in proper context. Only civil legal aid is here considered.

THE UNORGANIZED APPROACH

Until 1931, legal aid in North Carolina consisted only of such charity work as was performed by attorneys on an individual, unorganized basis. The traditional approach,¹ long sanctioned by the bar, merits its laudation at an annual meeting of the North Carolina Bar Association:²

There is no brighter page in the splendid history of the American Bar than that which tells of services rendered by lawyers to clients without a fee.

[T]here is abundant evidence of gratuitous work in the civil field. . .which entitles us to feel proud of the high sense of professional obligation of the bar—a desire to serve stronger than a desire for financial gain.³

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¹ The views expressed herein are those of the writer and not, necessarily, those of the Board of Trustees of the Legal Aid Society of Forsyth County.
² A.B., LL.B., Director, the Legal Aid Society of Forsyth County, North Carolina.
Although from 1931 onward the unorganized approach to legal aid was increasingly recognized as inadequate, so strong is its grasp on the mind, or, more properly, the imagination, of attorneys, that the President of the North Carolina State Bar stated in 1966 that “the lawyers in North Carolina had always provided legal services to persons in need, regardless of race, color, creed or economic status. . ." As will be seen, infra, the unorganized approach has been supplanted in most of North Carolina's counties by a variety of formalized organizations operating with varying degrees of efficiency and effectiveness.5

THE DUKE LEGAL AID CLINIC: THE FIRST STEP

A legal aid clinic, an “office conducted by or closely affiliated with and supervised by a law school and giving direct services to [indigent] clients,”6 was activated at the Law School of Duke University in the autumn of 1931.7

Largely the result of the inspiration and efforts of Dr. John S. Bradway6 the clinic was immediately successful. Law students took the clinic course for credit. Indigent applicants were interviewed and screened by the students who were closely supervised by Dr. Bradway and his staff. If consultation or letter writing was all that was required, advice was given either by the staff or, depending on the stage of the development of the program, by a panel of attorneys in Durham, North Carolina, which at a latter stage numbered as many as fifteen. Any litigation was usually undertaken by a member of the panel, all of whom were volunteers. The students in addition to interviewing applicants provided opinions of law, drafted pleadings and prepared trial briefs.9

In its first year of operation, there were 243 applicants for legal services.10 By school-year 1938-39, the annual number of applicants had increased to 40211 with approximately 30 per cent of the

5 For a list of legal services available in North Carolina see J. Moize, (ed.), NORTH CAROLINA LEGAL AID DIRECTORY (preliminary print 1908).
7 Bradway, supra note 3 at 136.
8 A.B., A.M., LL.B., LL.D.; Professor Law Emeritus, Duke University; President, National Association of Legal Aid Organizations 1938-40.
9 See generally J. Bradway, CLINICAL PREPARATION FOR LAW PRACTICE (1946) and DUKE UNIVERSITY LEGAL AID CLINIC HANDBOOK (1954).
10 Legal Aid Clinic, 4 DUKE B. Ass'N. J. 74 (1936).
applicants rejected by reason of financial ineligibility. Although there were applicants from throughout the state, the majority were from Durham and Wake counties.

It is unnecessary here to review the subsequent history and development of the Duke Legal Aid Clinic, especially, as it did not materially depart from the paths laid out for it for Dr. Bradway in the 1930's, and because such an examination would not reveal new insights on the legal aid clinic approach to the problems of the poor.

Regretably, the Duke Legal Aid Clinic is no more. With Dr. Bradway's retirement in 1959, it was terminated. Although exact, verified information is difficult to obtain, it was beset in its later years with various troubles and criticisms: lack of space, overly exhaustive internal controls and record keeping which tended to consume a disproportionate amount of time of the students, a tendency to increasingly constrict the use of the students taking the course to ever more routine tasks, an increasing overhead involving the use of an ever larger portion of the faculty and resources of the law school, the latent (and sometimes not so latent) suspicion of the local bar associations and the inability to find a suitable replacement endowed with the enthusiasm and devotion of Dr. Bradway. The writer is informed that resurrection of the Duke Legal Aid Clinic is under consideration with the possible utilization of an office in downtown Durham. However, no details are available.

The other North Carolina law schools, the University of North Carolina, Wake Forest University and North Carolina College, have not established legal aid clinics. Consideration was given, however, to the activation of the Chapel Hill-Carrboro Legal Aid Clinic in 1966. The Council of the North Carolina State Bar referred consideration of this plan to its Unauthorized Practice Committee in April, 1965.

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12 Report of Legal Aid Committee, 40 N.C. BAR ASS'N. REP. 40,44 (1938).
13 Legal Aid Clinic, supra note 10.
14 Id.
16 These observations represent an uneven consensus of comments made to the writer by former students of the legal aid clinic course and others. Although the writer would attempt to assign no particular to various of the other reasons given for the termination of the program at Duke, certainly one of the most important was the departure of Dr. Bradway. Men of great vision, ability and dedication are as difficult to replace in legal aid work as elsewhere.
An advisory opinion from the Unauthorized Practice of Law Committee of the North Carolina State Bar was requested regarding the operation of the program. The Council of the North Carolina State Bar considered the matter at its meeting on 15 July 1966 and resolved to undertake further investigation and continue the matter until its next regular meeting in October, 1966. Apparently, the Committee never rendered an opinion. The question became moot when Professor Kenneth Penegar, the chief proponent of the clinic, took a temporary leave of absence from the University of North Carolina.

Although not a legal aid clinic per se, the Duke Summer Internship Program merits recognition. Funded under a grant from the National Defender Project, whose monies were supplied by the Ford Foundation through the National Legal Aid and Defender Association, the Internship Program involved the utilization of Duke law students, who had completed their second year of law school, assisting lawyers who had been appointed to represent indigent defendants in Superior Court, the students' labors being limited to investigation and research. The plan, as operated, was approved by the Unauthorized Practice of Law Committee of the Council of the North Carolina State Bar.

The Legal Aid Society of Forsyth County utilized the internship students during the summers of 1966 and 1967 and anticipates further utilization thereof, largely on a bail bond reform project, in 1968.

THE NORTH CAROLINA BAR ASSOCIATION AND LEGAL AID

Although it is possible that the North Carolina Bar Association considered legal aid work as early as 1930 or 1931, there existing a vague reference to an unnamed committee which had possibly been appointed but which never filed a report, the first definite interest of the Association was displayed at its annual meeting in

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22 Id.
1932, the first meeting following the establishment of the Legal Aid Clinic at Duke.

Thereat, two addresses were delivered which signaled the beginning of the interest of the organized bar in legal aid. In the first, Professor Bradway reviewed the work of the American Bar Association in regard to legal aid and developments in the area in other parts of the country. At a time when bar officials and other knowledgeable attorneys still decry organized legal aid, asserting that “we take care of our own” and “no man in the county, regardless of his means, is afraid to come to my office,” Professor Bradway’s 1932 comments remain relevant:

[W]herever there are poor people there is need for free legal aid. It had been recognized as the duty of the organized bar to meet this need, rather than to leave it exclusively to the charitable instincts of individual lawyers to whom in this day of professional competitions it may become burdensome. This is our program in North Carolina. Shall the matter be left solely to individual initiative or shall the bar associations in an organized approach assume a measure of responsibility for the conduct and supervision of the work?

A resolution was adopted by the Association that the President “… appoint a committee to make an investigation and report at the next session in regard to the establishing and inauguration of a legal aid society and take some steps along that line.”

Bradway’s address was followed by that of a specialist in social work who indicated that a review of the problems handled by social welfare agencies emphasized the need for legal aid organizations and enumerated various types of welfare-related cases wherein legal aid was needed.

At the 1933 annual meeting of the Association, the committee made its report. The report first considered a misconception extant regarding the term “legal aid.” Admittedly, a term not in general

24 J. Bradway, supra note 3 at 132-35.
25 Moize, supra note 5.
26 J. Bradway, supra note 3 at 135.
27 Debates, supra note 23.
use in the North Carolina legal profession at the time, the committee had noted that some members of the bar thought that if a lawyer found himself in financial difficulty he might appeal to the Legal Aid Committee for assistance. As meritorious as such a proposal might be, the committee delineated the proper ambit of the subject. It had apparently viewed the Duke Legal Aid Clinic with some suspicion. "Your committee gave some time to studying that clinic and to finding out whether, through some subtle way, that clinic was endeavoring to absorb fees for the service it renders. The Committee is very happy to report that the clinic is not doing that."

The committee then made two basic points: (1) that legal aid is essentially a function of the organized bar, and (2) you cannot have adequate legal aid work unless the bar sponsors it. It recommended that it be continued for the purpose of studying the development of legal aid in North Carolina and that it report to the Association what those developments were. It was continued as a standing committee of the Association, with Professor Bradway as chairman.

**THE PROPOSAL FOR STATE-WIDE LEGAL AID**

The 1934 report of the North Carolina Bar Association's Committee on Legal Aid began innocuously enough, noting the expected absence of statistical data on legal aid rendered by individual attorneys, although the committee believed such service to be "undoubtedly extensive." The report recommended that attorneys giving this form of legal aid keep records which would go far in indicating to laymen the social consciousness of the legal profession.

Then, dramatically, the committee proposed the creation of a state-wide legal aid service utilizing panels or committees of volun-

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29 An examination of vols. 1-33 of the North Carolina Bar Association Reports does not reveal the use of the term "legal aid" in any of the speeches or debates of the annual meeting of the Association nor does it appear in any of its committee reports. In fact, for the period covered by these volumes, there is no discussion of any type of legal services for the poor.
31 Id.
32 Id. at 77-78.
33 Id.
37 Id.
teer attorneys (and other persons) which would service the various areas of the state and which would work in conjunction with the Duke Legal Aid Clinic. The committee members would interview the applicants and forward a record thereof to the Duke Legal Aid Clinic. The staff and the students associated with the Clinic would undertake any necessary correspondence regarding the case. If litigation appeared necessary, pleadings, memoranda and briefs would be prepared by students at the Clinic and forwarded to the attorney who had interviewed the client who would proceed with the litigation. Not only did the report envision state-wide legal services to the poor on a scale undertaken nowhere in the United States in 1932, but its recommendations regarding the structuring of the program and the methods whereby its services were to be rendered foreshowed the current philosophy regarding employment of lay advocates, inter-disciplinary counseling, non-lawyers (and if interpreted liberally, even the poor) at policy-making levels on the program. As the committee put it:

The membership of such a legal aid society could include not only attorneys. . . but also public-spirited laymen in the state who could give tremendous assistance in any effort that is made to render legal aid service. Two very significant facts suggest the desirability of the formation of such an organization. First, legal aid service is of necessity not exclusively a legal activity. There are many cases in which laymen could be more effective in the adjustment of social problems which are involved in cases. . . than attorneys could be. Furthermore, any organization which desires to render a wide social service should of necessity have the approbation and support of a representative group of citizens in the area.

Having for an instant held the Golden Grail and, after admiring and probably being dazzled by its radiance, the Association decided to drink from more humble vessels. The report was filed without action. At the 1935 meeting of the Association, the Committee on Legal Aid apparently lost faith in its own plan and stated: (1) that it would be unwise for the Association to then attempt to develop it, even if the plan could be accomplished, and (2) that it would be

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36 Id. at 42-43.  
39 Id.  
40 Id. at 42.  
desirable to await the growth of local interest with the expectation that, after a number of local bar associations within the state have appointed legal aid committees, it might be desirable to come together for a consideration of their mutual problems.\textsuperscript{42} Thus, was the power to affect the development of legal aid in North Carolina transferred from the North Carolina Bar Association to the local bar associations wherein reposed, generally, little enthusiasm for and considerable opposition to organized legal aid.

As will be set forth, \textit{infra}, a state-wide legal services program was to be heard from again.

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\textbf{LEGAL AID DEVELOPMENTS FROM 1935-1942}
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In 1935, the North Carolina Bar Association recommended that each local bar association appoint a legal aid committee.\textsuperscript{43} By this time, the Barristers Club in Charlotte,\textsuperscript{44} and the Buncombe County Junior Bar Association\textsuperscript{45} had established legal aid study committees.

In its 1936 report, the Association's Committee on Legal Aid turned its attention to reform of the state's \textit{in forma pauperis} legislation. The Committee reviewed the history of \textit{in forma pauperis} proceedings and concluded the statute\textsuperscript{46} to be inadequate, noting among other things that there was "[N]o fund available from which incidental expenses involved in the bringing the action could be paid."\textsuperscript{47} The Committee submitted proposed legislation based on an American Bar Association Model Statute.\textsuperscript{48} The report was filed and submitted to the Legislative Committee of the Bar Association for consideration\textsuperscript{49} where it was to remain.\textsuperscript{50}

\begin{footnotesize}
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\item \textsuperscript{42} Report of Committee on Legal Aid, 37 N.C.B. Ass'N. Rep. 47 (1935).
\item \textsuperscript{43} Id. at 50.
\item \textsuperscript{44} Id. at 48.
\item \textsuperscript{45} 37 N.C.B. Ass'N. Rep. 139 (1935).
\item \textsuperscript{46} N.C. GEN. STATS. § 1-109.
\item \textsuperscript{47} Report of the Legal Aid Committee, 38 N.C.B. Ass'N. Rep. 113, 115 (1936).
\item \textsuperscript{48} For a complete text of the model "Poor Litigant's Statute" (2d draft) see 50 A.B.A. Rep. 456 (1925). The North Carolina \textit{in forma pauperis} statute had been criticized earlier in Report of Section of Legal Aid, 3 DUKE B. Ass'N. J. 20, 21-22 (1935). The report of the Section contains a perceptive view of the relation of legal aid to channeling the dissatisfaction of the poor. "These injustices have a particularly harsh effect because they fall largely on that part of the community that is least able to bear them. . . . The unscrupulous are given a powerful weapon with which to oppress the poor. . . . In addition, the poor themselves lose respect for the administration of justice and even become bitter toward all government. . . . Thus, for our own security, it is incumbent upon government to furnish free access to its courts. (emphasis added)
\item \textsuperscript{49} Report of the Legal Aid Committee, supra note 47 at 117.
\item \textsuperscript{50} Report of Committee on Legal Aid Work, 39 N.C.B. Ass'N. Rep. 89, 92 (1937).
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The Committee on Legal Aid, in its 1937 report to the Bar Association, anticipating the philosophy contained in the OEO Guidelines, warned that in the establishment of legal aid programs, considerable care should be taken to avoid the imposition of rigid income tests which could easily result in unfairness and that the simple, basic rule for qualification for a program’s services should be that the organization would render services to those who could not afford a fee. The apprehension of any local bar, that the organization was servicing a client who could afford a fee, would be largely eliminated by requiring the applicant to disclose his financial profile and by issuing a standing offer to turn over any case to a member of the bar for processing provided that he would afford the client the same attention he was given by legal aid.

The 1938 report of the Committee on Legal Aid began with a recital of glowing declarations submitted to an earlier meeting of the American Bar Association followed by the Committee’s statement that the time was not ripe for action by the North Carolina Bar Association. The Committee did adopt the views of an even earlier American Bar Association Committee and stated: (1) that the need for legal aid was more pressing in the larger cities, (2) but, that ample opportunities exist for bar associations to make themselves useful in less populated communities where, if no separate organization is required, legal aid work could be carried on by the

51 Guidelines for Legal Services Programs 19-20.
52 Report of Committee on Legal Aid Work, supra note 50.
53 Id. at 93-94.
54 No man, woman, or child in the United States shall be denied his day in court because of poverty nor shall he be unable to obtain competent legal advice and assistance, even if he is unable to pay for it.
bar associations themselves, and (3) that financial support of legal aid work is inadequate.  

Reaction to the report was mixed. The President of the North Carolina Bar Association, who the previous year had made speeches at local bar association meetings stressing legal aid as one of the important tasks of the state Association, felt that the Association was not “ready to adopt the suggestion of the American Bar Association that we make ourselves responsible for free legal advice and service to every person in North Carolina who needs it. I believe we are not quite ready for that yet. . . .” On the other hand, Governor Hoey described the Committee’s report as “inspiring.”

By 1940 the Committee satisfied itself with recommending that local bar associations consider the desirability of legal aid committees and to publicize their existence, if created.

THE GREENSBORO LEGAL AID SERVICE

Although various local bar associations and junior bar associations considered legal aid programs in the years immediately prior to World War II, the Greensboro Legal Aid Service appears to have been the only plan to come into existence. It was created as an agency of the Greensboro Bar in 1939 and was oriented toward “remedial measures intended to assist poor persons in the protection of their legal rights, said Service to handle only such cases as may further this purpose.”

Cases were received by referral from a representative of all social and welfare agencies in the city, the representative, who investigated the applicant, certifying that he was deserving of legal aid. The latter was required to sign an affidavit of indigency. The activity was supervised by a Legal Aid Counselor elected by the Greensboro Young Lawyers Club who received the clients referred and either

57 Report of Legal Aid Committee, supra note 55 at 44-45.
58 Id. at 42.
62 Legal aid programs were considered and rejected by the Junior Bar Associations of Buncombe and Forsyth Counties and considered, but not acted upon, by the Wake County Junior Bar Association. Report of Legal Aid Committee, supra note 55 at 43; Report of Winston-Salem Junior Bar Association, 42 N.C.B. Ass’N. Rep. 105-09 (1940); Report of Legal Aid Committee, 43 N.C.B. Ass’N. Rep. 22, 28-29 (1941).
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serviced the cases himself or further referred them to a member of the Young Lawyers Club. The majority of the cases handled were domestic and criminal.

REAPPEARANCE OF STATE-WIDE LEGAL AID

The state-wide legal organization visualized by Professor Bradway's committee came into existence during World War II. What interest in the rights of the poor had not obtained, patriotic fervor had. The activities of this loosely structured organization was absorbed almost entirely with legal problems created by the induction of vast numbers of servicemen from the state particularly problems arising under the Soldiers and Sailors Civil Relief Act and might, more accurately, be described as legal assistance to servicemen rather than legal aid inasmuch as individual attorneys who accepted cases were permitted the discretion to charge a fee for their services if they thought the serviceman or his family member could afford to pay. The development of the program was a three-step process. Beginning as an effort by the staff of the Duke Legal Aid Clinic to service the large number of military personnel newly stationed at the massive Fort Bragg Military Reservation, the Fort was visited by the staff once each month from November, 1941, through March, 1942. Thereafter, as a further development, bar associations in counties containing or adjacent to military installations were encouraged by the North Carolina Bar Association to undertake legal assistance work on those reservations, and bar associations and groups of individual attorneys from the cities of Fayetteville, Elizabeth City, Morehead City, New Bern, Jacksonville and Wilmington responded.

The third step, which had reached full development by the spring of 1942, was the securing of the consent of at least one attorney in each of the state's one hundred counties; a total of 182 finally associated themselves with the Association's Legal Aid Committee.

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64 Id. at 63-64.
65 Id.
69 Id.
70 Id. at 134, 146.
71 Id.
and handled some 670 cases the first year. No statistics were ever amassed for the entire life of the Committee's program, but the number of cases handled was estimated to be "several thousand."  

Although there was noted an interest by various persons and groups toward continuing the legal aid committees in post-war years for regular legal aid work and although the Committee recommended that the structure be maintained, it was allowed to lapse.

THE IMMEDIATE POST-WAR YEARS

During the war years, a report of the Bar Association's Committee on Legal Aid noted that voluntary service to the poor rendered by attorneys on an unorganized basis equaled inadequate legal aid on at least three counts: (1) the average prospective client had no way of knowing of the availability of the services or the proper person to contact for them, (2) the willing lawyer could afford only a certain limited amount of time for legal aid work and did not need to spend this limited time with applicants whose "cases" lacked legal merit or who did not qualify, and (3) the public had no way of knowing whether the problem was being met. The Committee suggested that the simplest and least expensive legal aid operation would consist of a committee of voluntary lawyers plus a receptionist who would screen applicants and maintain records and who might be a social service worker with other tasks. The committee of attorneys would handle cases and set policy. "The members of the legal aid client group soon came to know of this person and place and go there when they wanted legal aid."

Three legal aid offices were established in North Carolina in the two decades between the end of World War II and the arrival of OEO on the legal aid scene. All were located in the state's larger cities.

As early as 1948 an organization erroneously termed the Forsyth County Legal Aid Clinic was operated by the Forsyth County Junior Bar Association in co-operation with the United Fund. Applicants were interviewed by a member of the United Fund staff in the Fund.

72 Id. at 133-39.
74 Id. at 76.
76 Report of Legal Aid Committee, supra note 73 at 76.
77 Id.
offices. If the applicant appeared to qualify financially, a referral would be made from a list of young attorneys who would handle the case without charging a fee.\textsuperscript{79} The number of referrals was small and the operation was discontinued.\textsuperscript{80}

In 1961, the Forsyth County Junior Bar Association inaugurated another method of rendering legal aid. The Chairman of the Legal Aid Committee acted as the screening and interviewing agent for applicants for legal aid—the plan being to refer the applicants, on a rotating basis, to thirty-four members of the Junior Bar Association who had agreed to serve on a panel. The plan remained in effect some four months and service was rendered in approximately 20 cases.\textsuperscript{81}

In late 1961, the officers of the Junior Bar Association learned of the possible availability of funds from an anonymous charitable trust for the inauguration of full-time legal aid office to be staffed by one attorney and one secretary. The Junior Bar Association voted unanimously to approve such a program, and the first full-time legal aid office was opened in North Carolina on February 1, 1962.\textsuperscript{82} Interesting enough, in light of what was to follow later in the dispute regarding lay representation on the governing boards of OEO financed legal service programs, the Trust agreement required only that five of the ten-member Board of Trustees be attorneys.\textsuperscript{83} Some question as to the propriety of this was raised by the Council of the North Carolina State Bar, but apparently no opinion was ever forwarded either to the attorney employed or to its Board of Trustees.\textsuperscript{84}

In October, 1961, a legal aid office was opened in Charlotte, the state's most populous city,\textsuperscript{85} with an office in the Mecklenburg County Courthouse. It was staffed two hours a day, five days a week by a secretary who screened applicants and referred cases to a panel composed, initially, of seventeen attorneys.\textsuperscript{86} In its first month of operation, it had 23 applicants.

\textsuperscript{79} Randolph, History of Legal Aid in North County, 1965 (unpublished).
\textsuperscript{80} Id.
\textsuperscript{81} Id.
\textsuperscript{82} Id. at 2; see also 20 \textit{LEGAL AID BRIEFCASE} 136 (1962).
\textsuperscript{83} Articles of Association of the Legal Aid Society of Forsyth County, adopted 7 February 1962, Art. VII.
\textsuperscript{84} Randolph, \textit{supra} note 79 at 2.
\textsuperscript{85} Interim Report: Committee on Legal Aid Work of North Carolina Bar Association, October 26, 1961 (unpublished).
\textsuperscript{86} Interim Report of Committee on Legal Aid to Board of Governors of North Carolina Bar Association, April 6, 1962 (unpublished).
In 1963, the Greensboro Legal Aid Service opened a full-time legal aid and lawyer referral office\(^6\) currently operating with one attorney and one secretary, and funded entirely by the United Fund.

The North Carolina Bar Association's efforts to encourage the establishment of local legal aid committees in each county where practicable\(^6\) or to, at least, identify one attorney therein as a contact man for legal aid purposes has a measure of success, albeit, an uneven one.

The city of High Point once had a voluntary committee of lawyers utilizing a representative of the family service organization as a receptionist and screener of applicants.\(^9\) This program now appears to have lapsed.\(^9\)

Although by the late 1950's the North Carolina Bar Association was reporting that organized legal aid was available in almost ninety of the state's one hundred counties\(^9\) and that as many as 120 lawyers had serviced 1,779 cases within a calendar year,\(^2\) yet a study made in 1962 indicated that only 16 counties had formally constituted legal aid committees\(^9\) and that "the legal aid movement has not taken hold in a majority of counties. . ."\(^6\) One of the reasons assigned was the lack of interest and understanding on the part of the attorneys, particularly among the older generation thereof.\(^9\)

In a survey undertaken by the writer in 1968, the situation appears to have improved somewhat outside the three counties having full-time legal aid offices. At least half of the remaining counties appear to have more or less active legal aid committees operating with varying degrees of effectiveness. The writer has noted a truly astounding degree of ignorance among attorneys and even officials of bar associations and district bars regarding legal aid activities within

\(^6\) Local Bar Activities, 15 Bar Notes, No. 1, Rt. 16 (1963).
\(^9\) Report of Committee on Legal Aid Work, supra note 78 at 24.
\(^9\) Morze, supra note 5.
\(^9\) Legal Aid Committees Report to Board of Governors, 10 Bar Notes, No. 1, at 22 (1958); Committee Reports: Legal Aid, 10 Bar Notes, No. 4, at 30 (1959).
\(^2\) Committee Reports: Legal Aid, 9 Bar Notes, No. 4, at 41 (1958); Committee Reports: Legal Aid, 11 Bar Notes, No. 4, at 53 (1960).
\(^6\) Id. at 2.
\(^9\) Annual Report, supra note 88.
their jurisdictions. Several such officials were unaware that legal aid committees in their jurisdictions even existed, and perhaps, they do not, except in name.96

OEO LEGAL SERVICES PROGRAMS IN NORTH CAROLINA

The OEO funded legal services program was to make its first appearance in 1966. OEO funding of legal aid projects in North Carolina was not regarded as an unmixed blessing, even by one of the state's pioneers in the work. Dr. Bradway regarded federal funding as unnecessary.97 “Money is useful in legal aid work, but private money is more useful than government money. It has fewer strings.”98

Learning of the establishment of Legal Services Programs in other states, the Council of the North Carolina State Bar unanimously resolved at its October, 1965, meeting that:

It is the sense of the Council, and recommendation is made to the District Bars, that each District investigate the possibility of establishing, and the establishment of, an entity where none now exist, composed of members of the Bar to the end that funds emanating from the Federal Government for legal aid to indigents be administered by such entity.99

Against this background of encouragement and good will, proposals for a number of programs were to be put forward. Only two were to come into existence.

The aura of friendliness and encouragement of OEO funded programs was to last only three months. By January, 1966, the Council was referring to the “so-called legal assistance program of the Office of Economic Opportunity”100 and authorized the Secretary of the State Bar to go to Washington, D. C., to consult with officials of the program. Apparently, no record exists containing the results of that meeting, but from what followed in subsequent months, it was less than fruitful. The Executive Committee of the Council recommended at the January meeting of the Council that a committee be consulted to study the entire question of legal aid to the indigents

96 Moize, supra note 5.
98 Id.
99 12 N.C.B., No. 4, at 6, 67 (1965).
and report back to the Council the proper method of treating the subject.\textsuperscript{101}

The next issue (\textit{i.e.}, April) of the official organ of the North Carolina State Bar contained the following special announcement:

The Council of the North Carolina State Bar is seriously concerned with problems being created by proposals of various local so-called community action groups and the Legal Services Division of the Office of Economic Opportunity which seriously affect the courts and the legal profession. Contact the Councilor of your District promptly and he will advise you as to the "guidelines" which have been prepared in Washington.\textsuperscript{102}

At its July, 1966, meeting the Executive Committee made four recommendations to the Council: (1) the furnishing of legal services by laymen should be condemned, (2) legal aid should be performed only by authorized attorneys at law, (3) the governing board of any legal services program should have a majority of practicing attorneys from the Judicial District wherein the program was located, and (4) legal aid should be rendered in accordance with the canons of ethics.\textsuperscript{103} The Committee also noted that attorneys must recognize that the federal government was entering the field of legal aid and that it was incumbent upon attorneys and that the time-honored traditions of the bar demanded in each judicial district "\textit{to take affirmative action to organize such entities} or adopt such plans as may be required to furnish legal services to the poor."\textsuperscript{104} Although the Council had been cautious and somewhat suspicious, no one in legal aid work in North Carolina appeared terribly distraught by this action.

At a special meeting of the Council on October 7, 1966, the ax descended. The Council unanimously adopted a resolution which, in its preamble, alleged that the legal profession in North Carolina was imperiled by the OEO Legal Services Programs; that the plans were violative of the laws of North Carolina; that the attorney-client relationship was imperiled; that such programs would indulge in champerty, barratry and other unethical conduct; and, further, that the freedom of all citizens was at stake and resolved: (1) that

\textsuperscript{101} Id. at 4.
\textsuperscript{102} 13 N.C.B., No. 2, at 3 (1966) (emphasis added).
\textsuperscript{103} 13 N.C.B., No. 3, at 9 (1966) (emphasis added).
\textsuperscript{104} Id. (emphasis added).
injunctions be issued, if necessary, against such programs, (2) that the state's congressional delegation be urged to vote against any funds designated for legal services in North Carolina which were contrary to the laws of the state, and (3) requested that the Governor disapprove legal services plans in the state.\textsuperscript{105} Exactly two days later the Legal Aid Society of Forsyth County, fortunately unaware of the Council's action,\textsuperscript{106} began operations with OEO funding. It was authorized and soon was staffed with six attorneys and four investigators.

On October 20, 1966, the Legal Aid Society of Charlotte and Mecklenburg County, Inc., sought an opinion of the Attorney General of North Carolina regarding the legality of its proposed plan. In a letter dated October 9, 1966, to the Secretary of the North Carolina State Bar, the Attorney General stated that the primary duty of interpreting, administering and enforcing the chapter relating to the practice of law was vested in the Council\textsuperscript{107} and that questions arising in this field should be presented to the Council for interpretation.\textsuperscript{108}

The Council then appeared to shift its position. At its regular meeting in October, 1966, it resolved that the North Carolina State Bar stood "ready to co-operate with any agency, governmental or non-governmental in the establishment of any plan for legal services to the poor which does not violate the laws of North Carolina or the Canons of Ethics or the rules and regulations of the North Carolina State Bar."\textsuperscript{109} It also reported to the annual meeting of the North Carolina State Bar, the following day, after reviewing the objectionable features of the plans for Legal Services Programs which had been submitted to it—which review was chiefly a restatement of the Preamble of its condemnatory resolution\textsuperscript{110} and did not particularize as to which of the plans submitted to it was deficient in what aspects. It stated that it was undertaking an affirmative rather than a negative approach and was working on a model plan.\textsuperscript{111}

\textsuperscript{105} Id. at 2-4.
\textsuperscript{106} No communication of the Council's resolution was received at this time. The first notice was an article in the Winston-Salem Journal on October 18, 1968.
\textsuperscript{107} N. C. GEN. STATS. §84-17.
\textsuperscript{108} I3 N.C.B., No. 4 (addendum) 4 (1966).
\textsuperscript{109} I3 N.C.B., No. 4, at 3 (1966).
\textsuperscript{110} Id. at 25-26.
\textsuperscript{111} Id.
Equally important at the October, 1966, meeting of the Council was its consideration of certain "rules and regulations" relating to legal aid and lawyer referral which were offered to it for its consideration and which were approved and ordered certified to the Supreme Court of North Carolina.112

The "rules and regulations" in question were certified to the Supreme Court on November 2, 1966, and were ordered by the Supreme Court to be spread upon its minutes on November 14, 1966.113 By statute rules for the government of the bar become binding on its members when so certified and approved by the court.114

The rules and regulations 115 were obviously drawn without the advice of those experienced with legal aid work in large cities. They provided that any district bar could adopt a plan for the naming and designation of attorneys to serve as counsel for indigents in civil cases and in certain criminal cases wherein counsel for the indigent was not otherwise provided by statute.116 Prior to the appointment of counsel in any case on grounds of indigency the rules required a determination of indigency by a committee of the district bar appointed for such purposes by officers of the district bar117 with a proviso allowing the bypassing of the screening committee in emergency cases.118 The burden of the screening committee requirement is an obvious difficulty in any urban legal aid program with a large caseload. The rules which reflect the sparsely populated and rural county philosophy throughout, required that an applicant for legal services complete forms and send them to the district's legal aid committee (the screening committee) for its consideration. The committee would thereupon determine what if any legal aid would be afforded the indigent and appoint counsel to represent the indigent "in accordance with the plan so adopted by the district bar for this purpose."119 Plans so adopted were required to be certified to the Council of the State Bar before being instituted. The rules restricted the right of an indigent to select or specify the attorney to represent him120 and required that any funds "including

112 Id. at 3.
113 Id.
114 N.C. GEN. STATS. §84-21.
115 RULES AND REGULATIONS OF THE N.C. STATE BAR, Art. VI, §5 para. G.
116 Id. at sub-para. 2.
117 Id. at sub-para. 2(a).
118 Id.
119 Id. at sub-para. 2(d).
120 Id. at sub-para. 3.
but not limited to those emanating from the federal government or any agency thereof . . . for the purpose of funding the cost of rendering legal services to the poor" shall be remitted to the secretary or the treasurer of the district bar and dispersed as the legal aid committee may determine.\textsuperscript{121}

A "savings clause," contained in the rules provided that "nothing herein shall prevent any attorney at law duly licensed and authorized to practice law in North Carolina, or association of such attorneys, from conducting a legal aid clinic or legal aid program . . . for indigent persons separate and apart from the district bar, so long as such legal aid clinic or legal aid program is conducted in accordance with laws of North Carolina and the Rules and Regulations and Canons of Ethics of the North Carolina State Bar."\textsuperscript{122}

This "savings clause" provided the necessary encouragement to the Legal Aid Society of Forsyth County and plans were made to attempt to reach a compromise between the requirements of the OEO guidelines and the objections of the Council of the State Bar—an effort not appreciably assisted by the failure of the Council to particularize its objections at this point.

The editorial reaction of the newspaper to the opposition of the State Bar was sufficiently vocal that the administrative assistant to the Chief Justice of the Supreme Court issued a statement taking note of said editorials and stating that legal services programs would be allowed to operate when they are in compliance with North Carolina law and practice.\textsuperscript{123}

A special meeting of the Council of the State Bar was held in December, 1966. At the meeting the Committee on Legal Aid to Indigents and Referrals, which had been appointed, was requested to study the possibility of preparing a specific plan for legal services to the indigent citizens of North Carolina which would both comply with Rules and Regulations and Canons of Ethics of the North Carolina State Bar and at the same time qualify for OEO funding.\textsuperscript{124}

At the December meeting of the Council, the Legal Aid Society of Charlotte and Mecklenburg County, the legal aid program in Durham to be funded through Operation Breakthrough, Inc., the

\begin{itemize}
  \item 121 \textit{Id.} at sub-para. 5.
  \item 122 \textit{Id.} at sub-para. 8.
  \item 123 13 N.C.B., No. 4, at 5 (1966).
  \item 124 \textit{Id.} at 10.
\end{itemize}
Legal Aid Society of Forsyth County and the program to be funded through Tri-County Community Action, Inc., were specifically condemned by the Council as being in violation of the General Statutes of North Carolina and the Canons of Ethics and the Rules and Regulations of the North Carolina State Bar.\textsuperscript{125}

The Council also resolved that lawyers "feel a high sense of responsibility to see that legal services are made available to persons who may be in need of such legal services but who are unable to pay fees for them,"\textsuperscript{126} emphasized its willingness to make legal services available to the indigent, and encouraged the "appropriate officials" of the organizations condemned to:

[U]ndertake to the best of their ability to modify their composition of the plans which have heretofore been promulgated so that they may be operated in accordance with rather than contrary to the laws of North Carolina and the Rules and Regulations of the North Carolina State Bar; and that this Council encourages the efforts of the officials of those organizations, as well as members of the bar of each Judicial District, to continue working so that plans for furnishing legal services to the poor . . . may be promulgated and activated . . . \textsuperscript{127}

Although the other programs were stymied in their efforts to organize and begin operations, the Legal Aid Society of Forsyth County had never ceased operations.

Following a meeting in early March of officials of OEO, the Legal Aid Society of Forsyth County and the Council of the State Bar, new Articles of Association for the Legal Aid Society were prepared.\textsuperscript{128}

The salient features of the Forsyth Plan compromise are: (1) a prohibition against the Society engaging "directly or indirectly in political lobbying or propagandistic activity,"\textsuperscript{129} (2) the creation of a fifteen-member Board of Trustees, eight of whom must be attorneys,\textsuperscript{130} (3) a requirement that a majority of any quorum

\begin{itemize}
  \item \textsuperscript{125}Id. at 8, 9.
  \item \textsuperscript{126}Id.
  \item \textsuperscript{127}Id.
  \item \textsuperscript{128}Articles of Association of the Legal Aid Society of Forsyth County, adopted by its Board of Trustees on April 7, 1967.
  \item \textsuperscript{129}Id. at Art. III (D).
  \item \textsuperscript{130}Id. at Art. VI.
\end{itemize}
must be attorneys,\textsuperscript{131} (4) a requirement that the president and vice president of the Board of Trustees be attorneys,\textsuperscript{132} (5) a prohibition against the receipt of funds from any donor, to which funds are attached conditions conflicting with other of the Articles of Association,\textsuperscript{133} (6) a prohibition against the utilization of the financial audit of the Society to involve "control, directly or indirectly, of the practice of law or the responsibilities of the attorneys employed by the Society,"\textsuperscript{134} (7) the institution of a Personnel Committee appointed by the president and composed of six Trustees, four of which must be attorneys, having authority to employ and discharge personnel,\textsuperscript{135} and (8) a prohibition against amending certain Articles of the Articles of Association.\textsuperscript{136}

The most vexing problem resolved by the Forsyth Plan was that revolving around the issue generally described as "lay control." As described, supra, the Articles required that a majority of the Society's Trustees and a majority of any quorum be attorneys. It was felt by a representative of the Council that additional controls should be instituted. The compromise was a Professional Services Committee of the Board of Trustees, composed entirely of attorneys and empowered to:

A. Supervise and exercise control over those operations relating to the practice of law and the attorney-client relationship to insure that the same are conducted in accordance with the General Statutes of North Carolina, the Rules and Regulations and the Canons of Ethics of the North Carolina State Bar.

B. Provide adequate procedures for the determination of indigency and to insure that those procedures are complied with.

C. Insure separation of functions of employees so that those employees not members in good standing of the North Carolina State Bar do not perform functions which should be performed by lawyers.

\textsuperscript{131} Id.
\textsuperscript{132} Id. at Art. VII.
\textsuperscript{133} Id. at Art. IX(A).
\textsuperscript{134} Id. at Art. IX(B)
\textsuperscript{135} Id. at Art. X.
\textsuperscript{136} Id. at Art. XI. The effect of this article would be to require the dissolution of the Society and the resubmission of its Articles of Association to the Council of the North Carolina State Bar rather than to permit amendment of certain of its articles.
D. Preserve fully the relationship of attorney and client between applicants for legal services and attorneys employed by the Society.137

At the April, 1967, meeting of the Council, the Committee on Legal Aid to Indigents and Referrals reported a model legal aid plan for use in the state consistent with the Canons of Ethics and the Rules and Regulations promulgated by the North Carolina State Bar and the Statutes applying thereto.138 This model plan, the Forsyth Plan, was transmitted to OEO with the request that the Council be advised as to whether or not it met OEO's approval for the funding of legal aid programs on a state-wide basis in North Carolina.139 OEO approved the Forsyth Plan on April 25, 1967.140

In October, 1967, the Council approved legal services programs based on the Forsyth Plan in Buncombe County and the Twenty-Eighth and Twenty-Ninth Judicial Districts. The Tri-County and Mecklenburg Plans were approved with amendments.141

OEO funded legal services programs via the Forsyth Plan now had the blessing of the State Bar. Regrettfully, that blessing came tragically late. The obstruction of the Council had aided and abetted the forces of local opposition to organized legal aid, and during the months from the autumn of 1966 until the spring of 1967 little activity was undertaken, except in Mecklenburg County, to develop work programs and to forward them through OEO channels. The appropriations bill for fiscal-year 1968 and the portion allotted, administratively, to OEO's Legal Services Programs did not contain sufficient monies to fund even all existing programs at their 1967 levels. It was therefore impossible to activate any additional programs in North Carolina from 1968 monies. One of the casualties was a variation of the Judicare Plan which had been submitted by Durham.

THE NORTH CAROLINA EXPERIENCE AND WEST VIRGINIA

What, then, is the relevance of the North Carolina experience to the development of legal aid work in West Virginia?

It would appear that a state-wide legal services program such as that suggested in another paper not in this journal142 is the

137 Id. at Art. VIII.
139 Id.
140 Id. at 7.
141 14 N.C.B., No. 4, at 3 (1967); 15 N.C.B., No. 1, at 17 (1968).
desirable goal. It is also the practical goal. Although the writer retains his preference for Judicare, it appears unlikely that additional programs of this type will be funded. There would appear to be two basic problems facing the activation of additional legal aid services in West Virginia, of whatever type may be finally selected: philosophical opposition and lack of funds.

Certain of the objections to OEO funded legal service programs in North Carolina by the Council of the North Carolina State Bar might be anticipated in West Virginia. It is possible that those portions of the Forsyth Plan relating to lay members on the governing board, if incorporated in a state-wide West Virginia plan, might head off any fear of lay control of the practice of law. Certainly, the prohibition against lobbying and propagandistic activity should not be adopted, particularly in view of OEO's emphasis on law reform as a major goal of its funded programs.

The shortage of funds available from OEO and the manner in which that shortage has affected the activation of additional programs has been described, supra. That shortage will prevent the activation of state-wide legal aid, or any additional legal aid programs in West Virginia for the balance of fiscal-year 1968. Small comfort is to be found in attempting to anticipate the situation for fiscal-year 1969. The most sanguine view of congressional action in 1968, with the combination of an election year at hand and the Vietnamese War unresolved, cannot anticipate greatly increased appropriations for fiscal-year 1969. This should not prevent the development of a work-program and the obtaining of the necessary approval from OEO against the day when funds will become available for its operation. Some interim developments are, however, clearly necessary.

The opportunity most readily at hand is the utilization of the resources of the Law School of West Virginia University. The manifold advantages of a legal aid clinic at the Law School from the practical experience gleaned by the participating students to the relative inexpense with which this type of legal aid can be operated vis-a-vis other legal aid operations has been pointed out elsewhere.\(^1\)\(^4\)\(^3\) That the legal aid clinic approach is eminently practical, twenty-eight years of experience in North Carolina has demonstrated.

\(^1\)\(^4\)\(^3\) Id.
In addition, it would also be endowed with that degree of dynamism and idealism which only a university can generate and which is essential, in some measure, to any effective legal aid work. Beginning operations with a sufficiently modest program the first year, there is no reason why funding by the state or from other sources should be a particular problem. A wealth of published material is available on the establishment and operation of legal aid clinics. West Virginia University already possesses the necessary ingredients, a dedicated administration and faculty and an enthusiastic student body.

It would also appear wise to undertake, immediately, to create in those West Virginia counties which possess no legal aid committees or other organized legal aid, the minimum structure of a legal aid committee of the local bar, or, if too few lawyers exist in any given county, at least one attorney who will serve as a contact on legal aid matters. The supervision as well as the co-ordination of this effort is logically the business of a committee of the State Bar. If a legal aid clinic as described, supra, is established at West Virginia University, there is no reason why it could not work, as did the Duke Legal Aid Clinic, with legal aid committees or individuals responsible for legal aid, in distant counties as well as providing legal aid services in its own and adjoining counties. If the North Carolina experience holds true, the effort to establish legal aid committees in every county will not completely succeed and of those established, some will function with dubious efficiency, if they function at all. Some effective organizations, however, can be expected to come into being where none now exist.

In those counties where it appears feasible, it would appear best to go one step beyond the creation of a legal aid committee, and, with a relatively small amount of funds necessary, employ a full or part-time receptionist who would refer cases to a volunteer panel of attorneys. She could be a member of the United Fund staff or have, as her basic duty, employment with a social or welfare agency.

All the proposals set forth, supra, are in the nature of interim or stop-gap solutions. All are both feasible and practicable within existing West Virginia resources and conditions.144 It is submitted

144 Wheeler & Pearson, The Legal Needs of the Poor in West Virginia, 1968 (unpublished paper at West Virginia University College of Law); Osburn & Vieweg, A Profile of the Legal Profession and Legal Services in West Virginia, 1968 (unpublished paper at West Virginia University College of Law).
that attention should be given to the institution to one or more of these proposals for three reasons: (1) the need is urgent, (2) they will pave the way for large scale legal aid operations anticipated in the, hopefully, not too distant future by familiarizing an increasing segment of the bar and lay public with legal aid operations and thereby create a more favorable climate for such operations, and (3) they will provide a reservoir of experience, personnel and techniques which will be required when adequate funding by OEO of state-wide legal aid activity in West Virginia becomes possible.