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# CLIENT'S CHOICE, A BETTER PLAN FOR LEGAL ASSISTANCE FOR THE POOR

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The elements of the various client's choice plans for providing free legal services to the poor are basically the same: the indigent client has his choice of attorneys, limited only by the number of attorneys participating in the program.

Such plans are not new. In England, in 1944, a committee of distinguished citizens was appointed to make a study of all phases of legal services to the poor, including in-court, out-of-court, and criminal as well as civil cases. The committee, known as the Rushcliffe Committee, held 48 meetings of which 26 were for the hearing of evidence. Members of the bench and bar, interested laymen and various organizations such as labor and those interested in reform were heard. A year later the Committee submitted its report.

That report emphatically recommended that no governmental agency be used but that the plan be administered by the legal profession itself, through the Law Society, the bar association of the solicitors. Another very important recommendation of the Committee was the freedom of every client to choose his own lawyer. The report stated that upon acceptance of a case by a solicitor, the relationship of solicitor and client is established and the solicitor will proceed with the conduct of the case the same as with a paying client. The poor were not to be treated on an assembly line basis, but were to be treated as any client who had the means to pay.

As a result of the Rushcliffe Report the Legal Aid and Advice Act was introduced in Parliament in 1948, was enacted in 1949 and became effective in 1950. In recent years similar plans have been implemented in Scotland, Northern Ireland and in Ontario, Canada. These plans have become known as the English Plans.

After the United States Congress enacted the Economic Opportunity Act in 1964 the Office of Economic Opportunity was established. The Act did not specifically provide for legal services but was construed to permit the furnishing of such services to the poor. The Office of Economic Opportunity refused to fund legal assistance plans similar to the English Plan and for the most part insisted upon institutionalized programs, such as the one administered by the Legal Aid Society in Albuquerque. For example, in 1965 the OEO requested that the Albuquerque Bar Association present a plan for free

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legal services to the poor. The author of this article was on the committee to which this task was assigned, and that committee developed a plan similar to Judicare and the English Plan. It was rejected by the OEO. A notable exception is the plan covering the Northern 28 counties in Wisconsin, known as the Wisconsin Judicare Plan, which is funded by the OEO.

The elements of the English Plan and Judicare are practically the same.<sup>1</sup> An applicant for free legal assistance, after establishing his eligibility, chooses an attorney. The attorney is notified, an appointment is made, and thereafter, except for the filing of a report at the conclusion of the case for statistical purposes and payment of the attorney, the attorney and his client proceed as in any other case. As in the institutional programs, there are certain types of cases which Judicare Plans will not handle. Principally, they are criminal cases, the fee generating cases such as representing Plaintiffs in negligence and workmen's compensation cases, and other cases in which the attorney would expect his fee to be contingent upon the successful outcome of negotiations or litigation.

In 1970 the Albuquerque Chapter of the United Community Fund decided not to contribute any funds to the local Legal Aid Society for its legal service program for the year 1971. The Albuquerque Bar Association drafted another plan similar to Judicare, submitted it to the UCF and received a grant for the year 1971 sufficient to cover administrative costs. The plan was implemented in January, 1971, opening its doors on January 10.

Briefly, the Albuquerque Bar Association program is administered by an Executive Director under the supervision of the Legal Services to the Poor Committee. It has its offices at 1418 Bridge Blvd. SW. The Executive Director, Mr. Robert H. Lafollette, is a licensed attorney with more than 40 years of experience in the private practice of law. One of his functions is the interviewing of applicants to ascertain whether their problems are legal problems or something else. If the problem proves to be legal, the applicant chooses an attorney from a panel of more than 100 volunteer, uncompensated, attorneys. The attorney is contacted, an appointment made, and a letter of confirmation sent with a form for filing a final report for statistical purposes.

Critics of Judicare and the English Plan have leveled several charges against them. Some of the charges are:

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1. Three differences between the English Plans and Judicare, not significant for our purposes, are: (1) the English Plans cover criminal as well as civil cases, (2) the successful litigant's attorney's fee is assessed against the loser and helps defray the costs of the program, (3) the English Plans provide for partial assistance on a graduated scale as well as free assistance.

1. Judicare programs are too expensive.
2. Judicare programs do not furnish attorneys for pushing law reform and for lobbying in favor of laws in the interest of the poor.
3. The poor are afraid of lawyers and can't find their offices.
4. Under the Judicare program some lawyers would make too much money as did some doctors under Medicare.
5. Judicare programs will not develop attorneys who are skilled in solving the problems of the poor while institutional programs will.

The available statistics do not support the charges. The information for comparing costs is meager because for several years the OEO refused to make a comparison between Judicare and the institutional programs. However, an evaluation of Wisconsin Judicare was recently made public by the OEO. The study,<sup>2</sup> headed by Professor Herbert Semmel of the University of Illinois Law School, showed that the program serviced an area with a population of 500,000 at a cost of \$150,000 to \$200,000 per year, between 30 cents and 40 cents per resident. According to the 1970 census, Bernalillo County had a population of 315,774. The Legal Aid Society's proposed budget for 1971 was \$279,297 based on an estimated population of 350,000 for that county,<sup>3</sup> between 80 cents and 88 cents per resident depending upon the population figures used. In the Wisconsin Judicare program the participating attorneys are compensated.

The criticism concerning law reform presents a philosophical issue. Many tax payers are opposed to paying taxes to support a lobbyist who is advocating the passage of legislation to which such tax payers are opposed. Also, they believe that these matters are properly handled politically through the electing of representatives. Another unanswered question in this area is "Who decides which laws are in the interest of the poor or against their interests?" A self-appointed group of lawyers?

In England, a total of 1,649,282 applications for assistance have been received from 1950 to 1969 and 1,123,890 certificates issued. As of March 31, 1969, 281,257 cases remained open<sup>4</sup> so it is obvious that some 900,000 applicants overcame their fears and found the lawyers' offices. In Ontario, a much more sparsely settled area, 42,300 certificates of assistance were issued in the second year of the operation of its plan.<sup>5</sup>

To assuage the fears of those who believe that a few unprincipled

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2. Judicare Progress Rep. (unpublished material on file at the author's law office).

3. Proposal for Refunding submitted to the OEO by the Legal Aid Society of Albuquerque, Dec. 1970 (unpublished material on file in the author's law office).

4. *Legal Aid and Advice*, Nineteenth Rep. L. Soc. and Comments & Recommendations of the Lord Chancellor's Advisory Comm. (1968-69).

5. The Law Soc. of Upper Canada, Ontario Legal Aid Plan Annual Rep. (1970).

lawyers will scandalize the bar by making too much money through Judicare and bring shame to the profession as did a few doctors to their profession under Medicare, it should be pointed out that in the Wisconsin Judicare Plan there is a limit of \$300 per attorney per case and another limit of \$5,000 per attorney per year.<sup>6</sup>

In the countries which have the English Plan, the largest category of cases is divorce and other domestic relations cases. That category comprised approximately 67%\* of the cases handled by the Scottish Plan in 1965-66. The second largest category was conditional sales contracts which comprised approximately 11.6%\* and was followed by landlord-tenant at 5.15%.\* Those figures are taken from the Seventeenth Report of the Plan in Scotland.<sup>7</sup> In Albuquerque, even after several years of the institutionalized plan, domestic relations problems are more than 40% of the cases being handled by the Albuquerque Bar Association Plan.<sup>8</sup>

Many believe that the advocates of the English Plan and Judicare are opposed to the concept of providing free legal services to the poor. They are not. They believe it to be the best plan for furnishing such services in a free society. The client is free to choose his attorney and to discharge him if dissatisfied, instead of having a staff attorney assigned to him. The attorney is completely free in the conduct of the case and the client's file remains in the office of a private practitioner. The attorney is not subject to being transferred from one neighborhood office to another without notice to himself or to the client and he is not subject to pressure from a supervisor or from a bureaucratic agency. The client is not limited by the competence of the staff attorneys. The experience of the members of the volunteer panel of the Albuquerque Bar Association varies from approximately one year to more than fifty years. Most of the volunteers have practiced ten years or more and several have had experience as district attorneys, district judges, city commissioners, assistant city attorneys, state representatives, county commissioners, and assistant U.S. attorneys.

Would you rather choose your own attorney or have one assigned to you?

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\*Figures adjusted to eliminate criminal, workmen's compensation, and other fee generating type cases.

6. Preloznik, *The Role of a Private Attorney in Providing Legal Service to the Poor*, 5 Docket Call, Sept. 1970, at 3.

7. 1968 Scottish Home and Health Dep't, Seventeenth Rep. L. Soc. of Scotland on the Legal Aid Scheme.

8. Interview with Robert H. Lafollette, Executive Director of the Albuquerque Bar Ass'n Legal Services Plan, in Albuquerque, Apr. 30, 1971.