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Cover Page Footnote

* This article, in modified form, is one of a series of monographs being prepared under an American Bar Foundation project on Availability of Legal Services and will be published in book form by the American Bar Foundation. The opinions and views expressed are those of the author alone and should not be imputed to either the American Bar Foundation or the American Bar Association. ** Reporter to the American Bar Association Special Committee on Availability of Legal Services and staff member of the American Bar Foundation.

AIDS IN MEETING LEGAL EXPENSES*

BARLOW F. CHRISTENSEN**

THE problem of making legal services more readily available to the public—and particularly to people of moderate means¹—seems to be partly an economic problem. This is not to say, necessarily, that lawyers' fees are universally too high or that people of moderate means cannot generally "afford" legal services—although this may in fact be true with respect to some fees and some people. Instead, this acknowledgment of the economic elements in the problem of availability of legal services is meant primarily as a recognition that cost has much to do with the extent to which people *actually do* utilize lawyers and legal services in the solution of their problems.

Being able to afford something and actually purchasing it are quite different matters. A man may be genuinely able to afford the price of a will, a lawyer's fee for representation in a real estate transaction, or the cost of legal services in one of the many other situations in which people might beneficially make more frequent use of lawyers' knowledge and skills. But at the same time, he may choose to spend his limited means for something else, either because this "something else" is more pressing or desirable than legal services, or because he regards the "something else" as offering him more value for his money. If the cost of a legal service in relation to the anticipated benefit from it seems excessive in comparison with the cost and value of other possible purchases, then the potential client will forego the legal service in favor of the thing that to him seems the better value—landscaping in preference to estate planning, for example.

If the cost does have some significant effect on the use of lawyers' services by people of moderate means, then it is appropriate to examine

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** Reporter to the American Bar Association Special Committee on Availability of Legal Services and staff member of the American Bar Foundation.

1. As used here, the term "people of moderate means" refers to people who are above the poverty level but who neither operate any form of business enterprise nor possess sufficient money or property to have serious concern about finding ways of protecting it. Obviously, such a category cannot be delimited precisely; indeed, it seems to overlap at both ends with the categories that bound it. As a rough characterization, however, "people of moderate means" might be thought of usefully, in terms of income, as those earning between \$5,000 and \$15,000 a year.

the question of cost as well as possible methods of reducing the adverse effect of cost upon the use of lawyers' services. Such an examination might be divided logically into three parts.

First, it would seem that one major element of the cost problem has to do with the public's lack of knowledge about both the value and the cost of legal services. Many people are perhaps not fully aware of the benefits to be derived from lawyers' services, and many may seriously overestimate the cost. Thus, attention might well be given to possible methods of helping people to identify problems to which lawyers' services might be beneficially applied, of causing them to appreciate the value of lawyers' services with respect to such problems, and, perhaps, of dispelling unfounded fears about cost.²

Second, consideration might be given to possible methods of reducing the cost. Of course, the problem of cost is implicit in the American system of law and law practice. By the very nature of the common law, the services of lawyers are essentially custom products, and possibilities for lowering costs are limited. At the same time, measures designed to increase the efficiency of lawyers—better law office procedures, for example, or greater use of non-lawyer personnel—might serve to effect some reduction in the cost of some legal services.³

There is a third facet to cost problems. The resolution of large and difficult legal problems will probably always be expensive, no matter how efficient lawyers may become. And, although more efficient law practice may enable lawyers to perform routine services at lower cost, an optimum use of even modestly priced, routine services may nevertheless cause serious budgetary problems for many people of moderate means. Thus, attention might also be given to various possibilities for assisting people to meet the expense of legal services. Among such possibilities four methods of spreading or reallocating the cost of legal services will be discussed in this article. (1) The proposal that a successful litigant should be able to recover his attorneys' fees from the unsuccessful party as a cost of litigation would shift entirely to the losing litigant a burden that now falls on both parties. (2) Legal service financing programs would relieve the economic burden of legal services by spreading the expense out over the client's own future earnings through loans or other time-payment arrangements, thus enabling a client with limited financial resources to purchase services he could not otherwise afford. Legal service prepayment arrangements, included in most legal service insurance proposals but not technically "insurance," would do much the same

2. For a discussion of some aspects of this part of the problem, see B. Christensen, *Bringing Lawyers and Clients Together* (Am. B. Found. Tent. Draft, 1968).

3. See ABA Comm. on Availability of Legal Services, Rep. No. 18, pt. 3 (Aug. 5-9, 1968) (unpublished); ABA Summary of Action: House of Delegates 7-8 (Aug. 5-8, 1968).

thing, though spreading the expense over an earning period *before* the services were used. (3) Genuine insurance for legal services would attempt to deal with the major expenses occasioned by the fortuitous occurrence of legal catastrophes to some individuals among a larger group of insureds by spreading such occasional major expenses of a few among the entire group. (4) Legal service subsidies would spread the expense of legal services, or a part of the expense, among the taxpayers or some other subsidizing group.

I. RECOVERY OF ATTORNEYS' FEES AS A COST OF LITIGATION

A number of writers have discussed this subject, covering much the same ground but in different ways.⁴ Generally they make the following points: First, it is unjust to impose upon the party who is "in the right" the economic burden of asserting or defending his rights against the wrongdoer. Second, while allowing prevailing parties in law suits to recover their attorneys' fees from the losers would probably inhibit the bringing of frivolous claims or the raising of frivolous defenses, it would probably not deter people with legitimate claims from bringing actions or people with legitimate defenses from defending actions. The risk of having to pay the opponent's legal fees would be but a minor uncertainty added to the much greater uncertainties of litigation. Third, the allowance of attorneys' fees might well encourage the bringing of legitimate claims and the raising of legitimate defenses by assuring the litigant who is confident of his case that he will be made *entirely* whole if he wins. Fourth, in many other countries, including both England and Canada, the prevailing party to a lawsuit is generally allowed to recover his fees from the loser. Fifth, attorney's fees were at one time generally allowed as a cost of litigation in this country; the discontinuance of this practice has been attributed variously to "historical accident," to the public's distrust of and hostility to the legal profession in earlier days, or to the individualism of early America and the "sporting theory of justice." Sixth, recovery of attorneys' fees is presently allowed in this country under certain limited circumstances, such as divorce proceedings, workmen's compensation cases, eminent domain proceedings, and even generally in Alaska, subject to the discretion of the supreme court. Seventh, the awarding of attorneys' fees as a cost of litigation encourages the

4. E.g., Ehrenzweig, Reimbursement of Counsel Fees and the Great Society, 54 Calif. L. Rev. 792 (1966); Ehrenzweig, Shall Counsel Fees Be Allowed?, 26 J. St. B. Cal. 107 (1951); Kuenzel, The Attorney's Fee: Why Not A Cost of Litigation?, 49 Iowa L. Rev. 75 (1963); Stoebuck, Counsel Fees Included in Costs: A Logical Development, 38 U. Colo. L. Rev. 202 (1966); Note, Attorney's Fees: Where Shall the Ultimate Burden Lie?, 20 Vand. L. Rev. 1216 (1967). But see Note, Distribution of Legal Expense Among Litigants, 49 Yale L.J. 699 (1940).

settlement of disputes by compromise and adjustment rather than by litigation. And eighth, the awarding of attorneys' fees as a cost of litigation might obviate the contingent fee, with its attendant evils. Here, attention will be focused on only the second and third of these points.

With respect to availability of legal services, the primary consideration in determining the proper allocation of the burden of attorneys' fees between parties to litigation is the effect a given allocation will have upon the public's use of the litigative process and, as a consequence, upon the public's use of lawyers' services. As is the case in so many other fields of concern to the legal profession, the data are inadequate to support any kind of precise determination as to the effect of a particular allocation in either encouraging or discouraging litigation. But there are a few pertinent facts that appear to possess some inferential value.

To begin with, the present American system, which generally denies to the successful litigant any recovery of the attorneys' fees required for the vindication of his rights, does in fact seem to inhibit the assertion of some legitimate claims—particularly small ones.⁵ No one knows how many, of course. In addition, as noted above, many other countries do allow a successful litigant to recover his attorney's fees from the losing party, with apparently satisfactory results.⁶ Furthermore, recovery of attorneys' fees is allowed in certain kinds of cases even in this country, again with apparently satisfactory results.⁷

Any attempt to determine how a rule allowing recovery of attorneys' fees as a cost of litigation would affect the public's use of lawyers and the litigative process requires examination of a number of relevant factors. Such variable factors as the size or importance of the matter at issue and the strength of the respective cases appear to be especially significant.

The deterrent effect upon litigation of any given allocation of the burden of attorneys' fees between the parties appears to be primarily a function of the probable expense of the litigation and the value or importance of the matter in issue. Where the probable cost of litigation is small in comparison with the value or importance of the matter to be litigated,

5. Professor Ehrenzweig gives a classic example from his own experience. Ehrenzweig, *Reimbursement of Counsel Fees and the Great Society*, 54 *Calif. L. Rev.* 792 (1966).

6. See *Comm. Reports of Comparative Law Division, ABA Section of International and Comparative Law* 115 (1962); Baeck, *Imposition of Fees of Attorney of Prevailing Party Upon the Losing Party Under the Laws of Austria*, *id.* at 119; Baeck, *Imposition of Legal Fees and Disbursements of Prevailing Party Upon the Losing Party—Under the Laws of Switzerland*, *id.* at 124; Dietz, *Payment of Court Costs By the Losing Party Under the Laws of Hungary*, *id.* at 131; Freed, *Payment of Court Costs by the Losing Party in France*, *id.* at 126; Schima, *The Treatment of Costs and Fees of Procedure in the Austrian Law*, *id.* at 121; Note, *Attorney's Fees: Where Shall the Ultimate Burden Lie?*, 20 *Vand. L. Rev.* 1216, 1223-24 (1967).

7. See Note, *Attorney's Fees: Where Shall the Ultimate Burden Lie?*, 20 *Vand. L. Rev.* 1216, 1226-30 (1967).

then the allocation of the burden of attorneys' fees would seem to have little to do with whether or not the action would be brought. And this would seem to be so regardless of whether the parties' cases were strong or weak. Obviously, a plaintiff with a strong case would bring his action even though he thereby risked the loss of an amount that included not only his own attorneys' fees but also those of his opponent. Similarly, the defendant with a strong case would make his defense rather than settle, regardless of the allocation of the burden of attorneys' fees between the parties.

Nor would the allocation of attorneys' fees seem to be determinative in even weak cases where the probable cost of litigation is small in comparison with the value of importance of the matter in issue. If a party's case is strong enough to justify risking his own attorney's fees, he would probably be willing to risk the burden of paying his opponent's as well, so long as the value of the matter far outweighs the probable cost. There may be a narrow field where the allocation of attorneys' fees might have some effect, but it would seem to be extremely small.

The allocation of the burden of attorneys' fees may have a great deal to do with encouraging or discouraging litigation, however, where the probable cost of litigation is large in comparison with the value or importance of the matter in issue. For when the cost of prosecuting or defending an action is as great as the value of the matter involved, even the winning party loses. This is so, for example, with virtually all of the great mass of so-called small cases. It may also be so with some large ones.⁸

Significantly, the effect of the allocation in *these* circumstances depends largely upon the strength of the cases of the respective parties. The plaintiff with a weak case may very well be deterred from bringing his action, or the defendant with a weak case may be induced to settle rather than to defend. On the other hand, the man with a strong case but one in which the cost of litigation was large in relation to its value would be encouraged to assert his claim, and the man with a strong defense to a similarly uneconomic case would be encouraged to make his defense, by the prospect of being made entirely whole if successful. Thus, the virtue of a system allowing the winning party to recover his attorney's fees from the unsuccessful party—and its potential contribution to the availability of legal services—is in its probable tendency to make the traditional legal process truly relevant and accessible to what must surely be a vast number of people who have not heretofore been able to afford representation.

The argument is sometimes made that relatively few cases can be

8. E.g., an anti-trust case, where a corporation may be forced to comply with what it regards as an improper regulation or ruling because of the prospect of ruinously expensive litigation.

described in the "strong" or "weak" terms of the foregoing discussion. Of course, disputes often involve intermediate degrees of strength or weakness, and sometimes the parties' cases are very evenly matched. But this observation merely points up the superiority of a system which would allow recovery of attorney's fees by the successful party. Under such a system, effective access to the courts would not depend solely upon the economic value of the matter in issue or upon the relationship between that economic value and the probable cost of litigation, but rather upon the party's own evaluation of, and faith in, the merits of his case. The present American system says to the man with a small case: "Regardless of the merits of your cause, you cannot have justice because your case is not worth it." A system allowing recovery of attorneys' fees would say: "If you really believe in your cause—enough to assume the risk of paying your opponent's attorney's fees if you lose—then you can have justice regardless of how small your case is." The latter seems vastly superior.

II. LEGAL SERVICE FINANCING PROGRAMS

An entirely different kind of reallocation of the burden of legal expenses is involved in the legal service financing programs now becoming so popular with the bar.⁹ Many such programs are springing up around the country. They vary in detail, but all employ the familiar time payment principle.

Typically, an agreement is entered into between a local bar association and a bank or other lending institution. Under it, the lending agency agrees to grant installment loans at specified rates to qualified clients for the payment of lawyers' fees. Thus, instead of attempting to shift the burden of legal expenses to someone other than the person using the legal services, such financing programs seek to spread it out over an extended segment of the user's own earnings. Consequently, many people can, in theory at least, afford legal services that they would not be able to purchase if they had to pay the entire fee at the time the service was received.

The questions of ethics and propriety that were at first raised against these plans have now been substantially laid to rest,¹⁰ and the bar seems to be accepting them enthusiastically.¹¹ There remains, however, a question that is essential from the standpoint of availability of legal services: Will legal service financing programs in fact cause significant numbers

9. For a description of the pioneer program, see B. Ass'n of Erie County Legal Service Financing Plan, ABA Award of Merit Summary 10 (1965).

10. ABA Comm. on Professional Ethics, Opinions, No. 320 (1968).

11. See ABA, Coordinator, Dec., 1965, at 1, col. 2. See also Stolz, Insurance for Legal Services: A Preliminary Study of Feasibility, 35 U. Chi. L. Rev. 417, 468 n.125 (1968); Traycik & McKenzie, Bank Financing of Attorney Fees, 44 Mich. St. B.J. 15 (Dec. 1965).

of people to use lawyers' services who would not otherwise have done so?

While such programs may be of benefit to both lawyers and clients in a number of ways, they come with serious limitations built in. To begin with, legal expense financing is available only to qualified clients—those with good credit ratings and good prospects of repayment. Thus, they exclude at the outset many of the clients and potential clients who most need help in meeting legal expenses. Moreover, because most programs contemplate only modest publicity, much of the financing will be done, in the immediate future at least, for people who have already sought out a lawyer.

It may be that the availability of financing will one day become a matter of such common knowledge that people will go to lawyers' offices with the expectation that the fees will be financed much as they are when shopping for television sets. But for now, and for a good while in the future, it is likely that legal service financing will be used mainly by people who would have taken their problems to lawyers anyway.

One further limitation is of some importance. Legal services must compete with a potential client's other needs and desires for a share of his limited financial resources. This is so with respect to his future earnings no less than with his current income. The extent to which a man may be willing to encumber future income in order to purchase legal services in preference to other services or goods is limited. Thus, even the person who does have a good credit rating and good prospects of repayment may opt for a television set instead of estate planning, even though the latter becomes as easily financed as the former. The main value of legal service financing, it would seem, is that it gives him at least the same opportunity to choose estate planning.

III. LEGAL EXPENSE INSURANCE PROPOSALS¹²

The marked success of medical insurance has prompted many lawyers to speculate about the feasibility of some kind of insurance for legal services.¹³ Such speculation has been founded generally on the assumption that similarities between legal services and medical services make the medical insurance experience a relevant model for a legal expense insurance program. On the other hand, some critics, pointing out important

12. The definitive work on the subject is the preliminary feasibility study by Professor Preble Stolz of the University of California School of Law. Stolz, *supra* note 11. It was done under the auspices of the American Bar Foundation as an adjunct to the Project on Availability of Legal Services and at the request of the American Bar Association Special Committee on Availability of Legal Services. This careful study made use of the best available actuarial advice. Much of the following brief discussion derives from it.

13. E.g., Brown, *Legal-Cost Insurance*, 1952 *Ins. L.J.* 475; Sonnenberg, *Why Not Blue Scales for Legal Services?*, 22 *Milw. B. Ass'n Gavel* 12 (March 1961).

differences between medical and legal services, have expressed serious doubt about the feasibility of insurance for legal expenses.¹⁴

Most proposals for legal expense insurance contemplate spreading the burden of legal expenses in two ways, only one of which involves genuine insurance principles. Under orthodox theory, insurance spreads among all members of an insured group the burden of substantial losses incurred fortuitously by only a few members of the group. Although the loss occurs randomly among group members, its incidence in the group as a whole is predictable. Thus, pure insurance for legal services would be limited to major legal expenses that might be expected to be incurred by only a relatively small number of insureds in any given period—such expenses, for example, as those arising out of a serious criminal charge, a negligence suit, a divorce, or the like.

However, most legal expense insurance proposals include, as well, many lower cost services that are, or might be, used frequently by nearly everyone covered by the program. These services include such things as the preparing of simple legal instruments and the giving of routine legal advice. Indeed, one of the arguments most commonly made in favor of legal expense insurance is that it may encourage people of moderate means to seek legal help and advice before their problems have become so serious as to require expensive remedial action. Coverage for such services is clearly not insurance in the true sense. Rather, it is in the nature of budgeting or prepayment of anticipated expenses. It spreads the burden over the insured's own earnings for a period of time before the services are used, much like loan or time payment plans spread it over the client's earnings for a period of time after the services have been used.

The combining of both insurance and budgeting elements in one so-called "insurance" program is not novel. Although perhaps predominantly insurance in character at its inception, medical insurance has now come to include a substantial budgeting element, with some programs now covering routine visits to a doctor's office. Even automobile insurance, which is viewed by many people as true insurance, seems to be more nearly budgeting than insurance in its coverage of glass breakage and the like.

Although they do so differently, both insurance and budgeting elements contribute to what is probably the greatest problem associated with legal expense insurance—marketability. In the case of the insurance element, many of the major legal expenses that might be included in an insurance program are already handled in other reasonably satisfactory ways. For example, the cost of defending negligence actions is included in regular

14. E.g., Enersen, *Group Legal Services*, 35 J. St. B. Cal. 11 (1960).

casualty insurance policies and the cost of prosecuting negligence actions is dealt with by means of the contingent fee. Other major legal expenses involve problems which most people would find so difficult to imagine happening to them that they would not see any need to cover them by insurance. The expense of defending oneself against serious criminal charges—perhaps excepting those resulting from the operation of automobiles—is probably of this type. Divorce, another common major legal expense, involves a remedy against which a substantial number of people have moral or religious scruples. The person whose beliefs preclude his use of a particular legal service or make his use of the service unlikely is not apt to be enthusiastic about assuming part of the burden of another's use of it. As a result of such problems, it becomes difficult to find enough suitable major legal expenses to make a really attractive insurance package from the marketing standpoint.

The problem with the budgeting element is perhaps equally troublesome. Few people who now do go to lawyers for low cost, high frequency legal services really have trouble paying for them. Thus, for these clients, a prepayment scheme fills no urgent need. The budgeting element of legal expense insurance proposals is therefore actually directed at people who do not now consult lawyers for help and advice in small or routine matters. The theory seems to be that people will make greater use of legal services if those services are already paid for. However, it comes up squarely against the marketing problem: How can people be induced to pay in advance for legal services that they cannot now be induced even to use?

Advertising may be part of the answer. Perhaps it would be possible to do vastly more to "sell" legal services through the advertising of legal expense insurance than it has ever been possible to do in "selling" them directly. Even so, legal expense insurance still does not appear as a highly attractive "package" for purposes of marketing.

If legal expense insurance is salable at all, it will probably be on a group basis. Although in this event, such insurance would have to compete with other group benefit programs, there may be reason to hope that it would be marketable to groups when it might not be marketable to individuals. In union contract negotiations, employers, because of their special interest in sustaining the productivity of employees, might well be receptive to an insurance program that would relieve employees of the burden of major legal expenses when such expenses do occur and that would encourage employees to have their minor legal problems taken care of before they become serious. With interests generally embracing the welfare of their members, unions also might be receptive to programs that offer genuine benefits even though the members might not have purchased the same benefits individually.

Legal expense insurance would have to compete as well with other possible group methods of obtaining legal services. Group legal services, for example,¹⁵ would seem to have an advantage over insurance inasmuch as the group can select lawyers who are experts in the fields of law which concern group members and can assist in bringing lawyers and group members together. Insurance, on the other hand, is an attractive alternative because it would preserve for the individual his free choice of attorneys and because it would relieve the group of the burden of administering a legal services program.

The marketing of legal expense insurance on a group basis may also be responsive to another of the problems of such insurance, adverse selection. In the absence of controls of some sort, any kind of legal expense insurance would, of course, be purchased most readily by those who were likely soon to be claimants. Obviously, a program that insures a disproportionately large number of people who already have or soon will have claims is in a doubtful economic position. Most insurance programs have adopted restrictions to control their exposure to risk. Life insurance companies, for instance, typically either reject applications from prospective insureds who are deemed unacceptably high risks or accept them at higher premium rates than standard. Similar controls are used in medical and automobile insurance. In addition, another kind of restriction is also used in medical insurance to deal with adverse selection; insureds become eligible for certain benefits—obstetrical benefits are the most common example—only after a specified waiting period. However, knowledge of behavior and causation does not yet appear adequate to permit the identification of those individual prospective insureds who present high risks of legal expense insurance claims. And there are no neatly defined gestation periods for most legal problems. Thus, these controls are not at present feasible for legal expense insurance. Instead, adverse selection would probably best be handled, at least at the outset, by marketing such insurance on a group basis rather than individually, controlling the incidence of claims through selection of the group to be insured. While it may not be possible to predict whether individual applicants will be acceptable insurance risks, it should be possible to predict generally that the incidence of legal problems among the members of a group with fairly stable characteristics, such as a labor union, will be within acceptable limits for insurance purposes.

Another problem is the possibility of abuse or over-use of insurance benefits. Under orthodox insurance doctrine, abuse occurs whenever an insurance benefit is utilized to secure or pay for a service that would not have been used by the insured except for the insurance benefit. Obviously,

15. See Christensen, *Group Legal Services* (Am. B. Found Tent. Draft, 1967); *Group Legal Services*, 39 J. St. B. Cal. 639 (1964).

abuse tends to raise the amount that must be paid out in claims and, in turn, the price of the insurance. Legal expense insurance would appear to be especially susceptible to this kind of abuse. There are two reasons. First, one objective of such insurance, at least with respect to small and routine legal problems, is to encourage the use of lawyers' services. But here the problem is not serious, as the principles involved are budgeting principles and not insurance principles. Thus, presumably, *all* insureds could make the fullest possible use of covered minor and routine services—within the limits budgeted for—without in any way impairing the program's economic integrity. The second reason is that many of the major problems that might be included in an insurance program are not really fortuitous in their occurrence. Indeed, their occurrence is to one degree or another within the control of the insureds. While it is unlikely that many people would commit crimes, obtain divorces, or adopt children merely because the legal fees were covered by insurance, the availability of an insurance benefit might induce a good many people to utilize a service like estate planning when they would not have done so in the absence of insurance. While it may be desirable to encourage people to make greater use of such "optional" legal services, their inclusion in an insurance scheme without adequate controls would probably result in the insurance being priced too high to be marketable.

The problem is compounded by the further fact that the amount of legal service to be devoted to a given problem is largely within the control of the client and the lawyer, both of whom have an interest in the lawyer's devoting as much time and effort to the case as possible. Moreover, the amount of service that might be devoted to a problem is highly elastic. Thus, if insurance were to provide what was in effect a blank check for legal services, the tendency in many cases might be to abuse the insurance benefit by the application of a greater amount of time and effort than the cases would otherwise justify.

There are a number of possible approaches to the problem of over-use of insurance benefits. One is to limit the benefits offered, excluding those that present the greatest danger of abuse. Another possibility is to adopt a set schedule of fees for specific services, thus removing at least part of the lawyer's incentive to provide more service than the case requires. This approach would take some of the elasticity out of the cost of insurance benefits, but it would also leave insureds only partly protected in extraordinary cases where the legal services that were legitimately required exceeded what would be covered by the set fees. In addition, of course, there is the difficulty of formulating any set fee schedule as well as the virtual certainty that any system of set fees would be unacceptable to the bar.

Still another approach is the device of co-insurance, under which the

insured remains obligated to pay a significant portion of the expense—the first one hundred dollars, for example, or a percentage. Co-insurance does seem to be a workable control, although it is by no means a complete one. Indeed, effect in limiting over-use of benefits seems to correspond roughly to the extent to which it leaves the burden of legal expenses on the insured. Still, a middle ground may be reached where insurance might provide adequate protection while permitting useful and significant coverage, much as do major medical insurance policies.

This sketch of the principles and problems of legal expense insurance should serve to suggest something of the difficulties to be expected in any attempt to develop a workable insurance system. But the problems do not appear insurmountable. A thorough preliminary study has concluded that a system of legal expense insurance has reasonable prospects of proving feasible, despite the problems.¹⁶ In response, the American Bar Association, upon the recommendation of its Special Committee on Availability of Legal Services, has undertaken to sponsor an experimental program that should eventually provide a definitive answer to the question of feasibility.¹⁷ Legal expense insurance may never be a complete solution to the problem of the cost of legal services. If it does prove workable, however, it should be a significant help in making legal services available to those people who need them.

IV. LEGAL SERVICE SUBSIDIES

The proposal that public funds be used to assist people to meet legal expenses contemplates spreading the burden among the taxpaying public. This discussion will review two main proposals for doing so. The first is an indirect subsidy: Taxpayers would be allowed to claim personal legal expenses as deductions in the computation of income taxes. The second is a direct subsidy of the type embodied in the English Legal Aid and Advice Schemes.

A. *Income Tax Deductions for Legal Expenses*

It is sometimes suggested that people might be encouraged to use lawyers' services by a modification of the income tax laws to permit individuals to claim deductions for personal legal expenses, much as individuals now may with medical expenses¹⁸ and as businesses now do with legal expenses classifiable as business expenses.¹⁹ This, of course, is simply

16. Stolz, *supra* note 11, at 476.

17. See ABA Resolution of the Board of Governors, Prepaid Legal Cost Insurance Pilot Experiment, Oct. 8, 1968; ABA, Summary of Action: House of Delegates 3 (Feb. 19-20, 1968); Goldberg, Report to the [ABA] Board of Governors in re Prepaid Legal Services Pilot Project, Oct. 17, 1968.

18. Int. Rev. Code of 1954, § 213.

19. Int. Rev. Code of 1954, § 162.

a form of subsidy, seeking to spread among all taxpayers—in the form of higher taxes to compensate for the loss of revenue to the government—that portion of an individual's legal expenses represented by the actual tax saving from the deduction.

Such deductions may afford people some help in meeting legal expenses, but they involve three problems. First, there is the political problem of getting such legislation enacted. Second, tax deductions for legal expenses would tend to give the greatest benefit to those who need it least, and the least benefit to those who need it most. And third, there may be some question about the real effectiveness of such a device either in relieving people of moderate means of the burden of legal expenses or as an incentive to the use of lawyers' services.

The history of the medical expense deduction does not shed much light on the political problem. In 1942, the demands of a world war made necessary substantial increases in federal income taxes. The medical expense deduction appears to have been offered and adopted as a means of mitigating this increased tax burden for individuals.²⁰ The proposed medical expense provision allowed extraordinary expenses to be deducted from individual income subject to taxation—"extraordinary" being defined as those expenses in excess of an amount (expressed as a percentage of income) regarded as normal and routine for medical expenses. Among witnesses appearing before Congressional committees to support the medical expense deduction were the Tax Advisor to the Secretary of the Treasury and representatives of the Teachers' Union of the City of New York, the National Lawyers' Guild, the National Association of Retail Druggists, and the Congress of Industrial Organizations. The gist of their testimony was that a person who incurs an extraordinary burden of medical expenses during a given year should be relieved of a part of the burden of increased wartime taxes for that year.²¹

One might only guess about the reception Congress would give to a bill providing for a legal expense deduction, or about the sources of support for such legislation. As high wartime taxes have become more or less permanent, the same argument that supported the medical deduction would appear to be applicable to a legal expense deduction. Moreover, the legal expense deduction would surely present far less of a political problem than would a proposal for a comprehensive subsidy system. On the other hand, the use of tax laws to accomplish special ends not related to the collection of revenue—particularly through tax-avoidance measures

20. Hearings on H.R. 7378 [Revenue Revision of 1942] Before the House Comm. on Ways and Means, 77th Cong., 2d Sess. 1612 (1942).

21. *Id.* at 1611-23, 2042-43, 2115-20, 2200-06, 2304-08; Hearings on H.R. 7378 Before the Senate Comm. on Finance, 77th Cong., 2d Sess. 1676-78 (1942).

that amount to subsidies for special interests—seems today to be meeting with increasing disfavor.

One characteristic of tax deductions is that their benefit to the taxpayer is proportional to the tax rate. One hundred dollars of deductible legal expense would save a taxpayer in the lowest tax bracket \$15.40 in federal income taxes under present rates.²² The same one hundred dollars of legal expense would save the taxpayer in the 55% bracket \$60.50.²³ It might be argued that \$15.20 would be more significant to the man with a low income than \$60.50 would be to the high income person. Still, this kind of graduated subsidy would seem to be less than ideal as a method of assisting persons of moderate means to pay legal expenses because it would give comparatively little help to those who need it most. Furthermore, the same reasoning suggests that, as a practical matter, a tax deduction would offer only slight incentive toward increased utilization of lawyers' services by people of moderate means. It seems unlikely that many people presently give a great deal of consideration to the presence of tax deductibility in deciding whether or not to seek medical services. Little reason exists for believing that it would be otherwise with legal expenses. A man will not ordinarily spend \$100 for services he doesn't think he needs merely to get a \$15 tax saving. Thus, although a legal expense tax deduction might be of some value in assisting people to pay for legal services, there are serious limitations on the help it could offer. An outright subsidy system would seem to be far more promising.

B. Direct Legal Service Subsidies

Perhaps the best example of an outright subsidy is the Legal Aid and Advice Schemes that have been in operation in England and Wales since 1949.²⁴ This program is funded by the British government but administered by The Law Society, the national organization of solicitors. The system presently consists of three parts: the Statutory Advice Scheme, the Voluntary Advice Scheme, and the Statutory Assistance Scheme.

Under the Statutory Advice Scheme, an eligible applicant is entitled to obtain up to half an hour of consultation and advice from a participating solicitor of his own choice either without charge or for a minimal

22. Int. Rev. Code of 1954, § 1.

23. Int. Rev. Code of 1954, § 1.

24. The Legal Aid and Advice Schemes (the term "scheme" carries no unsavory connotations in Great Britain) have been described by a number of commentators. E.g., Q. Johnstone & D. Hopson, *Lawyers and Their Work* 508-21 (1967); Parker, *The Development of Legal Aid in England Since 1949*, 48 *A.B.A.J.* 1029 (1962); Pelletier, *English Legal Aid: The Successful Experiment in Judicare*, 40 *U. Colo. L. Rev.* 10 (1967); Utton, *The British Legal Aid System*, 76 *Yale L.J.* 371 (1966).

fee.²⁵ All fees paid are added to a governmentally-subsidized Legal Aid Fund, from which the solicitor is compensated at the rate of one pound (\$2.40) for a half hour advice session.²⁶

The Voluntary Advice Scheme is a supplementary program offered by the solicitors participating in the Statutory Schemes. Under it, any person, regardless of his means, may obtain half an hour of consultation and advice for a fee of one pound.²⁷ The solicitor keeps this fee which, of course, is the same as the compensation solicitors receive from the Legal Aid Fund for advice given to clients who qualify under the Statutory Advice Scheme.

Legal services beyond an initial half hour of advice are covered by the Statutory Legal Assistance Scheme. A person is eligible for legal aid under this program if his means are below specified levels.²⁸ In addition, he must satisfy a committee of local solicitors that he has reasonable grounds for asserting or disputing his claim or for defending or being a party to the proceedings to which his application relates.²⁹ An applicant who is thus determined to be eligible for legal aid is then entitled to obtain the services of a solicitor of his own choosing and, where necessary for the trial of a case, a barrister. The statute provides specifically that the relationship between the solicitor or barrister and his legal aid client is to be precisely the same as with other clients.³⁰

A person receiving legal aid may be required to contribute to the Legal Aid Fund in accordance with his means.³¹ In matters not involv-

25. An applicant who is receiving National Assistance (welfare) pays nothing; one whose disposable capital does not exceed 125 pounds (\$300) and whose disposable income is less than 7 pounds 10 shillings (\$18) per week pays only 2/6d (30 cents) for the half hour of advice. Capital considered "disposable" for this purpose is for the most part property in excess of the applicant's dwelling, furniture, clothing, tools and a limited amount of other property. Disposable income is income in excess of a specified sum, the amount depending upon the number of dependents the applicant must support and upon other relevant factors. Legal Aid and Advice Act of 1949, 12 & 13 Geo. 6, c. 51, § 7(8); Stat. Instr. 1959, No. 47, as amended, Stat. Instr. 1966, No. 729.

26. *Id.*

27. See Pelletier, *supra* note 24, at 23. See also Matthews, Lawyer Referral—The English Equivalent, *The Lawyer Referral Bull.* 2 (Jan. 1963).

28. To be eligible, an applicant's disposable income must not exceed 700 pounds (\$1,680) a year nor his disposable capital exceed 500 pounds (\$1,200). Legal Aid and Advice Act of 1949, 12 & 13 Geo. 6, c. 51, § 2, as amended, Legal Aid Act of 1960, 8 & 9 Eliz. 2, c. 28, § 1. See also Stat. Instr. 1962, No. 148, as amended, Stat. Instr. 1962, No. 1714 and Stat. Instr. 1964, No. 1893.

29. Legal Aid and Advice Act of 1949, 12 & 13 Geo. 6, c. 51, § 1(6).

30. *Id.* § 1(7).

31. The recipient of legal aid may be required to contribute a sum not more than one-third of the amount by which his disposable income exceeds 250 pounds (\$600) a year and the amount by which his disposable capital exceeds 125 pounds (\$300)—not exceeding, of

ing litigation, however, legal aid is available only to those applicants whose resources are below the levels set for requiring contribution to the Legal Aid Fund.³² Again, the solicitors and barristers providing services under the Legal Aid Act are compensated from the Legal Aid Fund, generally for ninety per cent of the fees allowed by court or, for some services, according to a set schedule.³³ Virtually the entire legal profession participates in the Legal Aid and Advice Schemes.³⁴ Furthermore, because the Schemes cover a large portion of the population,³⁵ a substantial amount of the work now being done by English lawyers is done under the Legal Aid and Advice Schemes.³⁶

Most of the commentary on the Legal Aid and Advice Schemes expresses general satisfaction with the results.³⁷ There have been complaints, however, the most significant of which are treated in a recent memorandum from the Council of The Law Society.³⁸ Much of this criticism is directed at the Advice Schemes and concerns two main problems. First, experience seems to have demonstrated that the posting of panels of participating lawyers and other forms of rather passive publicity are not adequate methods of reaching all who need legal help. This would appear especially to be so with respect to the people who most

course, the amount that the Fund may have paid out on his account. *Id.* § 3, as amended, Legal Aid Act of 1960, 8 & 9 Eliz. 2, c. 28, § 1.

32. *Id.* § 5, as amended, Legal Aid Act of 1960, 8 & 9 Eliz. 2, c. 28, § 1(2). Thus, it would appear that a person whose disposable income was below 250 pounds a year or whose disposable capital was below 125 pounds would be eligible for legal aid both in matters involving litigation and in those not involving litigation, while he would not be required to make any contribution to the fund. A person whose resources were above those levels but below 700 pounds a year of disposable income and 500 pounds of disposable capital would be ineligible for legal aid in matters not involving litigation; in matters involving litigation, he would be eligible for legal aid but would also be liable for a contribution. A person whose disposable income exceeded 700 pounds a year and whose disposable capital exceeded 500 pounds would be ineligible for legal aid of any kind.

33. *Id.* §§ 6(5), (6), sched. 3, as amended, Legal Aid Act of 1960, 8 & 9 Eliz. 2, c. 28, § 2. See also Stat. Instr. 1962, No. 148, § 19, sched. 2.

34. Matthews, *supra* note 27; cf. Pelletier, *supra* note 24, at 38, estimating the participation of the profession at approximately two-thirds.

35. It has been estimated that three-quarters of the English people come within present eligibility standards. Pelletier, *supra* note 24, at 31 n.82.

36. Some 119,815 applications for legal aid were granted, and advice was given to another 63,196 people, under the Statutory Schemes in 1966-67. See The Law Society, Annual Report of the Council and Accounts 194-95 (1966-67). The Law Society estimates that about half of the serious cases brought are assisted under the Scheme. The Law Society, Legal Aid and Advice—Fourteenth Report and Comments and Recommendations of the Lord Chancellor's Advisory Committee 2 (1963-64).

37. E.g., Matthews, *supra* note 27; Parker, *supra* note 24; The Law Society, Annual Report of the Council and Accounts 31-33 (1966-67).

38. The Law Society, Legal Advice and Assistance—Memorandum of the Council of The Law Society (Feb. 1968).

need the advice—those who do not know a lawyer and who have no way of selecting among them. The second problem has to do with the compensation set for advice rendered under the Schemes. One pound is no longer adequate to compensate the solicitor for half an hour of his time. As a result, solicitors are becoming increasingly reluctant to give legal advice under the program. Still another problem has to do with minor services rendered in small matters not involving litigation. Solicitors are finding that helping clients to fill out the applications for legal aid and to establish their eligibility is so time-consuming that the rendition of legal aid services in small matters is unprofitable.

Variations of the English Legal Aid and Advice Schemes are now in operation in some other countries.³⁹ In the United States, the subsidy approach has been utilized primarily as one method of compensating assigned counsel in criminal cases under the Criminal Justice Act of 1964⁴⁰ and in a few limited "Judicare" experiments funded under the Legal Services program of the federal Office of Economic Opportunity.⁴¹ These Judicare programs operate generally in rural areas where indigent persons may obtain the services of practicing lawyers of their own choice, with the fees being paid out of governmentally-provided funds. Both the subsidy approach under the Criminal Justice Act and the experimental Judicare programs differ most significantly from the English Legal Aid and Advice Schemes in being limited solely to the indigent and in making no provision for any contribution by the recipient of the services. In addition, the Criminal Justice Act arrangement does not contemplate the defendant choosing his own lawyer.

The Judicare experiments have sometimes been opposed by American legal aid authorities on the grounds that private practitioners will not—or will not be able to—handle the peculiar problems of poor people as well as those problems are handled by career legal aid lawyers, that Judicare is not well adapted to the realization of such goals as law reform, and that the Judicare system cannot do an effective job of bringing lawyers and poor clients together.⁴² On the other hand, where the

39. These include systems in Ontario, Canada, Martin, *Legal Aid in Ontario*, 10 *Can. B.J.* 473 (1967); Parker, *Legal Aid—Canadian Style*, 14 *Wayne L. Rev.* 471 (1968); Silverstein, *The New Ontario Legal Aid System and Its Significance for the United States*, 25 *Legal Aid Briefcase* 83 (1967), and in Hong Kong and Scotland, Pelletier, *supra* note 24, at 44.

40. 18 U.S.C. § 3006A (1964).

41. See Preloznik, *Wisconsin Judicare*, 25 *Legal Aid Briefcase* 91 (1967); Schlossberg & Weinberg, *The Role of Judicare in the American Legal System*, 54 *A.B.A.J.* 1000 (1968).

42. E.g., Bamberger, *Legal Aid: An Opportunity for the American Bar*, 42 *N.D.L. Rev.* 287, 291 (1966); Johnson, *An Analysis of the OEO Legal Services Program*, 38 *Mts. L.J.* 419, 428 (1967); Marsh, *Neighborhood Law Offices or Judicare?*, 25 *Legal Aid Briefcase* 12 (1966); National Legal Aid & Defender Ass'n, *Summary of Conference Proceedings* 113

only alternative to a Judicare subsidy system appears to be an institutionalized salaried lawyer system, many local bar groups seem to favor the subsidy, at least when limited solely to services for the indigent.⁴³

Many reasons are given for rejecting the English comprehensive subsidy system for use in the United States. It has been contended that the American Bar is too large and heterogeneous for the administration of such a program. It is sometimes argued as well that the American people are more contentious and litigious than the English, and that the total cost of such a program would therefore be excessive. There are also those who contend that such a system would be unacceptable to the American people because of political ideology. And finally, many lawyers are concerned that a subsidy system would result in the "socialization of the legal profession." A few observers, however, appear to favor adoption of a subsidy system similar to the English Legal Aid and Advice Schemes.⁴⁴

From the standpoint of availability of lawyers' services, there can be little doubt about the efficacy of a subsidy system. The English experience demonstrates clearly that cost is a major factor in the demand for lawyers' services and that a subsidy will do much to increase the public's utilization of such services.⁴⁵ The issue, of course, may be resolved by weighing this obvious value against those objections that may be implicit in a subsidy system.

Some of the objections to a subsidy system seem to be of relatively little weight. For example, the claim that the American public is more litigious than the English appears to be somewhat frivolous. There may be some truth in the generalization, of course, but one cannot help but wonder whether differences in temperament between the two peoples are all that great or significant. While problems of administration might be substantially more difficult for the American bar, they would not appear to be insurmountable and should not preclude institution of a subsidy system if it were to be found otherwise acceptable.

Similarly, problems of bringing lawyers and clients together would not appear insurmountable. There is no real reason why methods could not

(1966). See also Masotti & Corsi, *Legal Assistance for the Poor: An Analysis and Evaluation of Two Programs*, 44 *J. Urban L.* 483 (1967).

43. E.g., Preloznik, *supra* note 41. See also Frankel, *Experiments in Serving the Indigent*, 51 *A.B.A.J.* 460 (1965).

44. E.g., Pelletier, *supra* note 24, at 42-44; Silverstein, *supra* note 39, at 89-90.

45. It is estimated, for example, that litigation has increased by seventy-five per cent since the Legal Aid and Advice Schemes were inaugurated, although it is impossible to tell just how much of that increase is attributable to the Schemes. See, Pelletier, *supra* note 24, at 39. In sixteen years, some 1,125,010 applications for legal aid were received, of which 831,664 were granted. The Law Society, *Legal Aid and Advice—Sixteenth Report and Comments and Recommendations of the Lord Chancellor's Advisory Committee 27* (1965-66).

be found to enable a subsidy program to reach people who have problems just as effectively as do institutionalized programs. And, while the claimed inability of private lawyers to deal adequately with the peculiar problems of the poor may be a legitimate objection to a subsidy system limited to the poor, there may be some reason to hope that a subsidy system covering a substantial portion of the entire population might result in the development of practitioners expert in the kinds of problems of most concern to the poor. This hope stems from the possibility that a comprehensive subsidy system might, by making practice among the poor and among people of moderate means economically feasible, stimulate specialized practice along substantive lines. Thus, for example, a subsidy system might make it possible for private lawyers to specialize profitably in consumer credit problems, drawing clients from among all segments of the population having such problems. And law reform might well be one result.

The other two main objections are perhaps more serious. The problem of political ideology is especially difficult because the American electorate is far more sharply divided than the English on the question of the proper role of government in the affairs of citizens. Sentiment favoring an essentially passive role is still very strong in this country and may be expected to constitute a major obstacle to adoption of any comprehensive subsidy system. It is true that political sentiments change, and that many governmental activities now almost universally accepted were at one time vigorously opposed as outside the government's proper sphere.⁴⁶ Where this has happened, the benefits to the public from such activities have come to be seen as justifying the resultant enlargement of the role of government. A comprehensive legal service subsidy may one day become similarly acceptable. But for now, political ideology will surely be a major deterrent to acceptance of any "American Legal Aid and Advice Scheme."

The fear of "socialization of the legal profession" is likewise a serious consideration. It is interesting, however, that the English legal profession views the Legal Aid and Advice Schemes as a means of *avoiding* "socialization."⁴⁷ The Law Society, seeing the nationalization of medical care and anticipating a similar development with respect to legal services, took the initiative by formulating its own plan for comprehensive legal services.⁴⁸ In so doing, the English legal profession was able to secure adoption of a program that leaves direction and control substantially in the hands of the profession itself.⁴⁹ To be sure, the subsidy comes from

46. Social security, for example.

47. See Parker, *supra* note 24, at 1030, 1033.

48. *Id.*

49. Legal Aid and Advice Act of 1949, 12 & 13 Geo. 6, c. 51, §§ 8-14.

the government, substantive changes in the program require legislative ratification, and, of course, The Law Society must report periodically to Parliament on its administration of the program. Still, both the effective direction of the program and its actual administration remain with the legal profession. It may be doubtful whether the American legal profession could secure adoption of a government subsidy program leaving such a high degree of control with the profession, even by means of such timely action as that taken by The Law Society. Without the retention of control by the profession, there is perhaps good cause to fear that a subsidy system would cause a large part of the bar to become mere employees of a government bureaucracy.

Underlying the various objections to legal service subsidies is a notion that the economic burden of litigation should rightly fall on those who use the litigative process. This notion has been accompanied by a fear that giving the poor man the same options as the rich man with respect to litigation would swamp the courts in frivolous cases. These two ideas have also been responsible for much of the resistance over the years to the concept of free legal aid for the poor, as well as for the resistance to measures for relieving poor litigants of the burden of ordinary court costs. However, individualistic notions about the burden of the cost of litigation require a closer look. Lawyers' fees and so-called court costs are only part of the real cost of litigation—the tip of the iceberg. Underneath lie other costs that must also be considered as costs of litigation: the expense of building and maintaining courthouses, of paying the salaries of judges, sheriffs, bailiffs, clerks, and reporters, of keeping records of various kinds, and even of maintaining police forces. Why does society thus subsidize the litigative process? The reason, manifestly, is that the resolution of disputes through some peaceful process is essential to public order and safety. Thus it is entirely appropriate that public funds be used to provide such a process. Moreover, because any such system must rest ultimately upon the confidence of the people in its fairness, the equality of the justice dispensed is of basic importance. Taken to its logical conclusion, the individualistic notion that it is somehow wrong to have the costs of litigation paid by anyone but the litigants would mean that *all* the costs of administering justice would have to be paid by the individual parties, with the administration of justice becoming a self-supporting enterprise. As a result, the courts would be effectively closed to all but the very wealthy, and even they would be able to use litigation for only the most weighty and economically important matters.

So, then, the matter comes back to the idea of "equal justice," which must mean that disputes are resolved according to the *merits* of the respective cases and not according to the *power* of the respective parties. Moreover, except in Orwellian style "double-think," the concept of equal

justice permits of no qualifying adjectives. If all litigants are to be equal—if merits, not power, are to govern—then no litigants can be “more equal” than others.

If merits rather than power are to govern, then either the poor man must have the same options as the rich, or rich as well as poor should be foreclosed from frivolous or uneconomic use of the publicly-subsidized litigative process. Interestingly, the small claims court is in some ways a limited—albeit not entirely successful—attempt to deny both rich and poor the assistance of counsel in the small cases submitted to it.

The partial subsidizing of litigation through the maintenance of courts and the litigative machinery, as well as the halting steps that have been taken to provide legal services to the poor, are in large part a striving by society toward the ideal of equal justice under law, a goal not yet attained. Viewed from this perspective, and questions of political ideology aside, the essential issue with respect to legal service subsidies is a question of allocation of resources. How much is society willing to spend to ensure that disputes will be determined on their merits and not according to the power of the parties? How much is America willing to pay for equal justice?

Even the English commitment is not a total one; the legal aid recipient must still satisfy a local committee of lawyers that he has reasonable grounds for bringing or defending his cause. And presumably, the rich Englishman may still get into court without reasonable cause—although he may be thrown right out again. But the English subsidy system comes as near as any system has ever come to realizing the ideal of equal justice under law. Should a nation that prides itself on being the richest on earth be willing to do less?

CONCLUSION

This brief survey describes, at least in a general way, some of the measures that might be taken to assist people of moderate means to meet legal expenses. While each of the measures discussed might have some beneficial effect, none promises an immediate and conclusive solution to the whole problem of legal expense. Discussion of them tends to lead, however, toward other, perhaps more basic, questions.

This is especially so with respect to the proposal for comprehensive legal service subsidies. Even if it were to be accepted that the concept of equal justice under law required a comprehensive subsidy system or some comparable method of achieving genuine equality for all people in the adjudication of disputes, and even if such a system were ideologically and politically acceptable, important questions would remain: Are the legal processes that are to be subsidized really adequate and responsive to society's problems? With respect particularly to small claims and

minor disputes, is it justifiable for society to spend more to subsidize litigation than the matters being litigated are worth? Does this make any more sense for society as a whole than it does for individual litigants? Does every dispute or every claim really require full scale formal litigation? Or might some of them be resolved satisfactorily through less involved and less costly procedures?

There are no easy answers, of course. But it seems noteworthy that a number of dispute-resolving and claim-deciding mechanisms are developing as alternatives to formal litigation. Some of them, indeed, are of long standing. Administrative procedures, mediation arrangements, small claims tribunals, ombudsmen, advice bureaus—all have arisen or are arising at least partly in response to the same economic pressures that are producing legal service loan plans, legal expense insurance, and legal service subsidies.

While no new procedure or institution is likely ever to eliminate completely the problem of expense as an obstacle to equal justice, they could perhaps reduce the problem to the point where, insurance, subsidies or similar measures might be able to deal effectively with the balance of the problem. It is therefore appropriate that the legal profession should give attention both to the adequacy of present legal processes and to measures for helping people to meet legal expenses. The public and the profession alike will benefit.