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Forum Juridicum

THE SHREVEPORT PLAN FOR PREPAID LEGAL SERVICES—A UNIQUE EXPERIMENT*

*Robert Roberts, Jr.***

The initiation of the Shreveport Plan for Prepaid Legal Services is a current and noteworthy example of useful public service by a group composed largely of younger Shreveport lawyers, with the support of the Shreveport Bar Association. Let me say here that modesty does not foreclose me from describing the importance of the Plan, since it was devised and placed in operation by the sustained efforts, over a period of two and one-half years, of the Association's Bar Activities Committee; my sole contribution was an occasional vote, in meetings of the Shreveport Bar Association, to continue the work and efforts of the Association's Committee.

The Shreveport bar has an honorable history of concern and accomplishment in making legal services available to the people in its area who had the need but lacked the means. Legal aid on a systematic and organized basis, with volunteer lawyers, was provided beginning soon after 1950. In a few years, with an appropriation from the Community Fund, an office staff and one full-time lawyer, working under close supervision of a Bar committee, were provided. Still later, additional lawyers were added with the help of funds from the Federal Government's Office of Economic Opportunity. The Bar Activities Committee's creative and successful work on the idea of a prepaid legal services arrangement is another approach to the problem of providing needed legal services to local people to whom such services have heretofore, for practical reasons, been largely unavailable.

There is no direct evidence—that is, evidence based on modern sampling techniques and statistical studies—that the self-supporting working people of this country, the middle class, need more legal service than they are presently getting. Experience with the Shreveport Plan is expected to provide such evidence. Undoubtedly many people, probably all who have written on the subject, think that such an unmet need exists.

* Adapted from the speech made by Mr. Roberts on his induction as Honorary Member of the Louisiana Chapter of The Order of the Coif, April 24, 1971.

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Their reasoning is persuasive: The OEO Legal Services Program was based on an assumed need for legal services by the poor; while the program has had an expansion that can be explained partly by Parkinson's Law, it does seem to be filling a genuine need for its clients, the poor. That experience leads naturally to a comparable assumption that there is an unfulfilled need for legal services for people of modest means.

Reflection on the growth and problems of modern society also is persuasive of the conclusion that everyone has legal problems, perhaps problems that he does not recognize. Without elaborating on this idea too much, we need only to be reminded that everyone has tax problems, and is entitled to government benefits—welfare, social security, veterans' benefits; and must face regulations, such as zoning, licensing, environmental pollution restrictions, and many others.

There are certain types of legal services which are already fully available, for instance, through the universal practice of personal injury litigation on a contingent fee basis and similarly, in Louisiana, in a genuine dispute about workmen's compensation. We also have insurance, under automobile and property liability policies, for the legal expense involved in defending such suits. People with an average income, however, may also be faced with litigation about divorce and domestic relations, about estate matters, criminal charges, and other disputes where suit is brought against them. These are low-frequency, high-cost personal disasters which fit into a scheme of insurance, at least after some experience is developed for their actuarial evaluation. Without such insurance, any of these legal involvements may be as disastrous, financially, as a major medical case.

People now deal with these problems as best they can, and the Shreveport Plan, as will be explained, has some help for them by way of true insurance. But the unmet need of these same people is for counsel and advice on their everyday problems from lawyers familiar with the rules and the machinery with which their clients must deal—problems that often can be solved by a telephone call or a letter, or perhaps that go away when they are explained. Also, the availability of legal counsel in the early stages of a problem, as a preventive of serious trouble later, should not be ignored.

There have been heretofore two plans which have been used

to satisfy this unmet need of the middle class for legal services. The more important of these is the provision of so-called group legal services. It should be stated that the "group" involved in group legal services is composed of the clients, not the lawyers—in contrast to group medical practice, where the group is composed of doctors. The name is applied to the planned availability to some group (*e.g.*, a union, employees of a particular employer, etc.) of a lawyer to counsel with and represent them in their individual legal problems. There are, of course, variations in the extent of the legal service afforded, as well as in the conditions and determinants of its availability.

Group legal service goes directly counter to the history and traditions of the legal profession, since the client does not freely choose the lawyer and a third person is, in effect, selling the lawyer's services. Indeed, the concept was considered to be a flat violation of the canons of ethics until the decision of the United States Supreme Court in the *United Mine Workers* case¹ struck down the American Bar Association's Canon 35.

A plan of group legal services, like insurance, spreads the cost of the service among those entitled to participate. It has competitive advantages which probably make it cheaper—economies of scale, repetitive problems susceptible of being reduced to a set of formulas, and the ability to use non-lawyer assistants on recurring types of problems. It has, however, serious disadvantages—a tendency to give less legal service than a particular problem justifies; the quality may seem casual and abrupt to clients; cases may be "wholesaled," that is, the advantages of one case balanced off against the demerits of another in charge of the same lawyer. There are also the administrative problems that would have to be faced by a union official, for example, in attempting to run a law office and provide acceptable legal service. Above all, however, the client has no choice as to his lawyer—he must accept the lawyer provided by the group and the service he receives, whatever may be his opinion of either the lawyer or his product.

Another plan that has been tried is pre-arranged fee financing, under a cooperative arrangement between a bank and a local bar association. The bank accepts installment notes (after credit approval) given for the lawyer's fee. The discount is said

1. *United Mine Workers, District 12 v. Illinois State Bar Ass'n*, 389 U.S. 217 (1967).

to be about equivalent to the cost of administering an insurance plan. This scheme is merely post-event budgeting of an expense that is pre-budgeted in a group or prepaid legal services plan, and it has no insurance features at all. It lacks entirely the incentive of group and insurance plans which encourage participants to see a lawyer when they first feel that they have a problem.

Four or five years ago, the American Bar Association created a Special Committee on the Availability of Legal Services and gave it the task of determining whether there was an unmet need for legal services and, if so, to suggest a remedy. The committee's study was soon concentrated on the concept of legal cost insurance or its near equivalent, a prepaid legal services plan. The American Bar Foundation commissioned Professor Preble Stolz of the School of Law of the University of California to make a study of the feasibility of such an insurance or prepayment plan, and his findings and conclusions were published in 1968.² A review of his findings by actuarial consultants (though specific data were then unavailable, as they still are) confirmed Professor Stolz's conclusion that the insurance concept was feasible.

Professor Stolz's article is the starting point for the work which has since been done on legal services insurance and prepaid legal services plans. It is too detailed for a complete review here but it should be summarized. His study was aimed toward the provision of low cost legal services in the *personal* affairs of lower and middle income people and his plan totally excluded legal services required in the operation of a business. It also excluded needs for legal services which he judged to be already met—for example, tort cases (customarily handled on a contingent fee basis), legal defense in liability cases now available from auto and property liability insurance, divorce on the ground of cost and lack of market appeal, and perhaps criminal matters for which the state provides a defense. The plan concentrated on providing benefits which would permit and encourage participants to consult freely and early with a lawyer of their own choice who, on Professor Stolz's assumption, could probably solve most problems with one interview. Lawyers' services for trials were to be provided on a very limited basis and a major trial

2. Stolz, *Insurance for Legal Services: A Preliminary Study of Feasibility*, 35 U. CHI. L. REV. 417 (1968).

benefit was provided where the necessity arose from an event not in the control of the insured; no benefits were provided for trial preparation and legal research on the theory that such benefits were subject to abuse and could not be policed.

He pointed out the dangers and disadvantages of his plan, which he saw as difficulty of administration and the ethical problems of encouraging litigation and discouraging careful preparation. Professor Stolz also conceded that his plan did not provide complete coverage, just as most health insurance does not.

It should also be mentioned that the plan described by Professor Stolz was influenced to a considerable degree by his effort to avoid the necessity, in the administration of the plan, of any intervention between the lawyer and his client; that is, the benefits provided only for "verifiable" services, consultation, court appearances, and excluded such things as trial preparation, negotiation, legal research—matters in the control of the lawyer.

Professor Stolz thought that a plan such as was outlined by him could be financed for about \$50 per person and that it was thus feasible as a possible way of financing legal services for individuals at a cost that would make it marketable. He also concluded that such a plan should cover low cost, preventive law services that the public is not now buying, that it would encourage wider use of such services and that it thus would, in this respect, have a social value. He thought that legal insurance could be expected to be more attractive than group legal services, but that group services would probably turn out to be cheaper. He concluded that legal insurance is far from a complete answer to the economic threat—to the lawyers—of the spread of group services, and that it will not revolutionize the economics of law practice.

In May 1968 the President of the American Bar Association wrote to more than eighty local bar groups, including the Shreveport Bar Association, asking for cooperation in the establishment of a legal services insurance program and suggesting the availability of staff help, financial support, and assistance in procuring a grant from a foundation to fund an experimental program. By the end of the summer, the Shreveport Association had secured the help of a competent firm of benefit plan consultants and administrators who had agreed to prepare a plan without

substantial charge so long as the plan had not been funded, and notified the American Bar Association of its desire to proceed with the establishment of a plan.

In October 1968 the ABA authorities decided on the Clackamas County, Oregon Bar Association as its primary choice and the recipient of its grant and help in securing foundation funds, with Shreveport as an alternate choice. While the Shreveport group remained in contact with the ABA officers and committees, it lacked commitments of even the minimum funds necessary to develop a plan, although contacts had been established with a local union apparently willing to become a "guinea pig" as the insured group.

However, in the spring of 1969, the Clackamas County plan foundered on the inability of the bar association to make the necessary arrangements with a homogeneous group to be insured under its proposed plan; and the ABA mantle descended on the Bar Activities Committee of the Shreveport Bar Association. After a great deal of work by the members of this committee, meetings and correspondence with the interested officers, committees and staff of the American Bar Association and with the representatives of the local union and their employers, as well as effective help from the benefit plan consultants employed to devise the detailed plan and actually to administer it in operation, the Shreveport Plan was completed by April, 1970, and became effective on January 1, 1971 after financial support was assured.

The insured group under the Shreveport Plan is the membership of Local 229 of the International Laborers' Union, about 500 persons, and their dependents, together about 2,000 insured persons, more than 90% of whom are black. An attempt was made to fund a part of the cost through contributions or payroll deductions by the employers, but this was not possible. The final agreement with the Union requires the payment into the plan of two cents per hour worked by each member (estimated to produce 15 to 16 thousand dollars per year) paid by the Union from a working dues check-off of five cents per hour paid by the employers to the Union. The American Bar Association over the period 1969-1971 has provided more than \$30,000, primarily for the expenses of devising the plan and getting it in operation, but a part of which will be available for claims; and the Ford Foun-

dition has made a grant of \$75,000 for the two-year operation of the Plan.

The Shreveport Plan provides somewhat more extensive benefits than were contemplated by Professor Stolz:

First, consultation services with the lawyer chosen by the insured, to the amount of \$100 per family per year, but not more than \$25 per office visit. There are no limitations on subject matter, and no deductibles. This benefit is obviously and avowedly designed to encourage the insured, if he suspects legal complications, to take the problem to his lawyer.

Second, office work—investigation, research, conferences and negotiation, drafting and review—to the amount of \$250 per family per year, with a deductible of \$10 which must be paid by the client and cannot be waived by the lawyer.

Third, representation in judicial or administrative proceedings—not more than \$325 for legal fees, \$40 for court costs, and \$150 for out-of-pocket incidental expenses. If the insured is the moving party in the proceedings, a prepayment by him of \$25 is required. The Shreveport Committee was somewhat bolder than some of its advisers in providing this benefit, but was of the opinion that if the insured could not test the legal advice he got in the only place it can be tested, he might very well feel he was getting little real legal insurance. The deductible feature of this benefit was given very careful thought; it was adopted to provide at least some impediment to the use of the legal services available under the insurance for irrelevant, futile, harassing or frivolous legal proceedings.

Fourth, a benefit for major legal expenses—in addition to the benefit just described—where the insured is defendant in a civil action, is charged by indictment or information with a criminal offense, or is respondent in an action before an administrative tribunal. This benefit is 80% of the next \$1,000 of the insured's legal expense beyond that available under the primary litigation benefit.

The exclusions from the plan are legal expenses which are incurred by way of a business venture, controversies involving the immediate parties to the plan (to be handled by arbitration), cases normally handled on a contingent fee basis (except an expense allowance is made, subject to an agreement for reimburse-

ment in event of success), fines and penalties, filling out tax forms (but consultation is covered), certain unreasonable or fictitious charges, participation in a legal matter not involving the direct interest of the insured, and cases in which a defense is provided to the insured under an insurance policy or by a public agency.

The plan does not attempt to set the lawyers' fees, although lawyers seeking payment directly from the Plan agree to submit their bills on prescribed forms and to furnish certain information. The governing authority of the plan reserves the right to reject a lawyer's charge as unreasonable or for services that appear to have been unnecessary—in such event the lawyer has the right to arbitration of the issue.

The plan is governed and its assets are held and administered by a non-profit corporation, the Shreveport Legal Services Corporation, which has a seven-member board of directors appointed by the Executive Council of the Bar Association: Four are members of the Shreveport Bar Association, two are members of the Union, and one is a representative of the employers. The plan is described and funded, so far as the insured's payments are concerned, under an agreement between the Legal Services Corporation and the local union. Supervisory and administrative services in the operation of the plan are provided by the firm of benefit consultants who assisted in creating the plan, under an agreement between the firm and the Shreveport Legal Services Corporation.

It is expected that the Shreveport Plan during the minimum period of two years in which it will be in operation will contribute to the development of actuarial data which can be used in other legal services plans—for such guides to cost estimating are now practically nonexistent. Probably even more important, the experience under the plan will provide information as to the attitudes of the members of the insured group toward lawyers generally, as well as to their understanding of the role of lawyers, the proper use of legal services and the probable cost of such services, and their attitudes toward law and the administration of justice.

The attempt to obtain and evaluate such data is being handled in a systematic way. Before the plan became operative, a team of experts from the American Bar Foundation made

a survey in Shreveport during which they interviewed every member of the insured Union and at least one-third of the Shreveport lawyers. Their questionnaires were designed to reveal the attitudes of the group on the matters just mentioned, as well as the attitudes of the lawyers toward the perhaps unsophisticated clients that might come to them for advice as a result of the plan. Interim surveys of a similar nature will be made and, finally, after two years, a terminal survey. The hope, of course, is that any changes of attitude toward the law and lawyers will be made apparent.

Legal services plans, particularly those like the Shreveport Plan which involve an employee or union group, present certain legal problems where they are the subject of negotiation as a fringe benefit provided by the employer under a collective bargaining agreement. These problems, as well as other legal complications involved, are too technical to be reviewed here in detail but should be mentioned briefly.

One is whether a union request for the establishment, at the employer's expense, of a legal services insurance plan is a mandatory bargaining subject, that is, one as to which the employer is required, by section 8 of the Taft-Hartley Act, to bargain. Probably it is.

Another is whether, under section 302 of the Taft-Hartley Act, enacted to prevent labor-management bribery and extortion, a legal services plan is permitted to be supported by payments of an employer to a jointly administered trust fund. This was avoided in the Shreveport Plan, since the money comes from the Union, and is a part of the employees' compensation.

Other problems are whether such a plan is subject to the requirements of the Welfare and Pension Disclosure Act, whether the particular organization by which it is administered is taxable, and the extent to which the benefits paid to participants are income taxable to them. Each such plan, too, must be reconciled with and conformed to the insurance laws of the particular state in which it is operative.

The Shreveport Plan has been in operation now for three months, and the members of the Shreveport Bar Activities Committee who have assumed responsibility for its success are encouraged by the use which the insured persons have made of its

provisions. Of the approximate 500 family groups insured, twenty-five have filed claims, several with more than one use of the plan. The matters involved seem to be wholly typical of the personal legal problems that people have—a foreclosure, a wrongful seizure, domestic relations, property transactions, auto accidents, complications from a prior bankruptcy, will drafting, workmen's compensation, consultation on unspecified matters, a drunk driving charge, collision with a mule, a boundary line dispute, an estate problem.

There is evidence in these modern times that respect for law and the use of legal advice and legal solutions to solve problems have declined, and that lawyers have less influence on public opinion than was formerly the case. Our society has suffered from these tendencies. The Shreveport Plan, all of us should hope, will point to one way in which citizens of this country can learn again that the law is their friend and their defender, that lawyers have a useful and important role in our society, and that the law's protection can be again made available to all.