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## Prepaid Legal Services: An Overview

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has been estimated that by such tests a defendant falsely accused of fathering a child "has a 50-55% chance of proving his non-paternity."<sup>30</sup>

## CONCLUSION

The presumption of legitimacy of a child born in wedlock is clearly not conclusive. The presumption may be rebutted by evidence of non-access, impotency, racial differences, and excluding blood-grouping tests. North Carolina simply states that such evidence must show that defendant could not be the father, and it is entirely possible that new methods of proving this will be recognized in the future. One hopes that the legislature will take a new look at the weight to be given blood-grouping tests results. While a conclusive presumption is unwarranted due to the possibility of human error in administering such tests, it, nevertheless, appears that the results should be entitled to more weight than merely being considered along with all the other evidence. It is conceivable that a jury upon hearing evidence of illicit sexual intercourse might find against the defendant even though the blood tests convince them that he is not the father. That is, they may decide to punish him for the illicit sexual activity regardless of his paternity or nonpaternity of the child. Although some may consider this justice, such a result is clearly contrary to the statutes and beyond the province of the jury. It would seem that excluding blood tests should at least create a rebuttable presumption that the defendant is not the father. Such a rule would leave the tests open to attack as to the quality and skill of those administering the tests. At any rate this is an issue that the legislature should face, hopefully in the near future.

THOMAS SHUFORD

**Prepaid Legal Services: An Overview**

People in middle income brackets usually spend a substantial portion of their incomes on various types of insurance. This is done for the purpose of avoiding the full financial impact occasioned by major losses or personal injury. To accomplish this goal of adequate coverage, insurance must broaden its reach to all areas in which major costs could foreseeably occur. While various plans are widely available in the areas of accident, fire, and health insurance, there are very few such systems designed to insure against the costs of legal services. Any void in the insurance field is

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<sup>30</sup> *Id.*

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really immaterial, however, unless the groups of people with whom we are dealing need more legal services than they are now receiving, and unless a type of prepaid insurance plan would adequately fulfill their need.

Before narrowing our scope of inquiry to legal services for the middle classes, the reasons should be stated as to why our main concern is with the needs of the middle classes rather than those of the lower and upper economic groups. The 10% of the population that make up the higher echelon of society can probably afford most unexpected legal expenses. The 20% of the population that are impoverished are provided for by free legal aid, funded through a federal government program, administered by the Office of Economic Opportunity.<sup>1</sup>

The designation of middle income groups, as we use that concept, is to be broadly construed to include people within the middle income bracket. So broadly, in fact, some of its members touch on the poverty level, while others fall just below upper class economic status. Anyone who would feel financially constrained from consulting an attorney but who could pay into a legal plan just as he pays into a health plan is included in this group for the purpose of this study.<sup>2</sup> However its size and internal differences make it difficult to draw generalizations both about the need for legal services, and also about the feasibility of a prepaid legal plan that could be used by all.

For the members of the middle income group that are close to the poverty level, a problem arises. They cannot qualify for free legal aid, yet they cannot afford to pay into insurance plans that would safeguard them from future legal expenses. To illustrate, the Legal Aid Bureau in Pulaski County, Arkansas, can be considered as being fairly typical

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<sup>1</sup> McCalpin, *The Work of the ABA Special Committee on Prepaid Legal Services*, in TRANSCRIPT OF PROCEEDINGS—NATIONAL CONFERENCE ON PREPAID LEGAL SERVICES—WASHINGTON, D.C., APRIL 27-29, 1972 at 8 (Am. Bar. Ass'n ed. 1972). [The Nat'l Conference on Prepaid Legal Services was attended by 325 people. 37 speakers made presentations and moderated both general sessions and special workshops. The speeches given and the discussions that followed at each workshop have been published by the Am. Bar Ass'n, and whenever any of that publication is referred to in this report, it will be hereinafter cited as TRANSCRIPT OF PROCEEDINGS—CONFERENCE ON PREPAID.]

Mr. McCalpin's figure of 10% in reference to those affluent and therefore able to afford legal services is probably large. A much smaller percentage can actually afford substantial legal expenses without hardship. Also, the fact that OEO programs serve the impoverished 20% does not mean poor people take advantage of the free legal help or that coverage in that field is adequate.

<sup>2</sup> Drawing a money cut-off line in order to divide the public into groups will always involve an element of arbitrariness, but most writers include the 70% of the Americans who make between \$5,000-15,000 as the middle income group which cannot easily afford legal services. Whitmer, *Group and Prepaid Legal Services*, 36 Ky. B.J. 21 (1972).

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of legal aid offices in general.<sup>3</sup> An average family of four that earns under \$3,360 per year in Pulaski County is eligible to receive free legal aid. If the same family makes a few dollars over that amount, it does not qualify for free aid and is referred by the Bureau to private attorneys. Usually the family feels that it cannot afford a private attorney and becomes one of many that never reach the attorney it was referred to. Since prepaid legal insurance is also an unviable alternative, possibly the reach of legal aid offices should be expanded to include people who really fall below the middle income level.

The majority of the population which does not qualify for free legal aid, yet cannot afford to shoulder necessary legal costs, is inadequately served by the legal profession. To say that attorneys are there and waiting for clients does not make legal services available if a person cannot afford to avail himself of them. This, in turn, leads to injustices. Valid claims are either not pursued or are pursued without the assistance of an attorney familiar with courtroom procedure.

An example of this injustice is revealed in a study of four cities made by David Caplovitz, and reported to the National Conference on Prepaid Legal Services in April of 1972. Caplovitz interviewed 1,330 default debtors, who were summoned to court because of default judgments obtained by creditors. The study found that although 25% to 30% of the debtors had valid defenses, the creditors won 99% of the cases. In New York City alone, only 3 out of 330 default debtors interviewed were scheduled for trial and when those 3 appeared before the judge, they were told to settle the matter out of court. The majority of the debtors in the study never contacted a lawyer because the average debt was between \$500 and \$700 and with the cost of the attorney added to that figure, the debtor felt he could not win in court. Those who tried to represent themselves found they were tied up in court for several working days, writing and rewriting answers which were knocked down by the creditors' attorneys, and in the end, still losing to the creditors. The solution, as Caplovitz sees it, is to remove all cases involving creditors and debtors from the courts and let the creditors police their own systems.<sup>4</sup>

However, another solution, which Caplovitz considers and discards, is that of prepaid legal services.<sup>5</sup> Under such a program the debtor could have consulted an attorney as soon as he received an incorrect bill from

<sup>3</sup> Byrd and Gitchel, *Two Lawyers Look at Legal Aid*, 25 ARK. L. REV. 446, 466 (1972).

<sup>4</sup> Caplovitz, *What Are the Consumers Asking For? The Marketplace Emptor*, in TRANSCRIPT OF PROCEEDINGS—CONFERENCE ON PREPAID 362, 363-366.

<sup>5</sup> *Id.* at 365.

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the creditor or as soon as he noticed the product he had purchased was faulty, and his attorney would have handled the matter from the beginning before the creditor sued for nonpayment. When the case was closed, the attorney would submit his bill to a corporation established by the legal service program and in turn be compensated by it. The main advantage of a system like this is that the debtor would not be afraid to consult an attorney for fear of the exorbitant cost; and often times the matter could be squelched before ever reaching trial proportions, as will be pointed out later.

Patricia Wald prepared a paper for the National Conference of Law and Poverty in 1965, and she gave four major reasons why two-thirds of the people in the lower income groups never went to an attorney. This is mentioned now because these same reasons apply to many of the people within the middle income groups. The lower the income, the more relevant the reasons Wald gives. The point is that even though a need for legal services is determined, people will not necessarily take advantage of them. The four reasons are these: first, the lower income people often cannot define a legal problem, and therefore never know when they have one; second, they do not know where to go to get legal help if and when they decide they do have a problem; third, the poor or lower middle income person usually finds the attorney too remote and cannot identify with him; and fourth, the poorer the man, the more afraid he is to bring an action against his creditors, landlord, employer, or anyone he depends upon for services or goods.<sup>6</sup>

Barlow Christensen, who works closely with the American Bar Foundation, points out in his book, *Bringing Lawyers and Clients Together*, several reasons why people of moderate means in our modern society do not use legal services as they might be expected to. With urbanization expanding, he says there is an increase in the lack of communication because many lawyers are found in the cities; whereas the people are in the suburbs. People do not know where to go to get help. Also, while modern advertising techniques present needs and options to the consumer, the person who needs legal help must affirmatively seek out an attorney. A system that operates in this manner does not foster a preventive legal service, because the consumer is too accustomed to having everything placed before him.<sup>7</sup>

Christensen believes that people can best be served by allowing at-

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<sup>6</sup> P. WALD, *LAW AND POVERTY*: 1965, at 42-47, 82 (1965).

<sup>7</sup> B. CHRISTENSEN, *BRINGING LAWYERS AND CLIENTS TOGETHER*, 6, 8-9 (1968).

torneys to reach out to the clients through methods now considered unethical by the organized bar. He advocates changes in advertisement and solicitation, with the purpose of easing restrictions now imposed on attorneys. He also says that lawyers should not be restricted from working in the area of group legal services, as long as the professional judgment and independence of attorneys are protected. He believes these changes are necessary to meet the ever-increasing needs of the middle income groups.<sup>8</sup>

Another segment of the modest income group that is not adequately served by the legal profession, consists of farmers and non-farmers living in rural areas. Many have a fear of lawyers personally and a fear that the cost of a lawyer would be prohibitive, which often is the case. But rural people would greatly benefit by a preventive type of program, such as prepaid legal services, to help them in their everyday problems, the most common of which are estate planning, business insurance, self-employment retirement programs, contract arrangements, and loan-connected matters. The rural person who could have consulted an attorney at the early stages, before a problem has developed, could have prevented a future legal entanglement.<sup>9</sup>

How can we make legal services more available to the vast middle classes? Group legal services and prepaid legal services are the two most common answers given in reply to this question, but both entail complications and must be discussed in detail. Since there are numerous sources available dealing with group legal services, a discussion on that alternative will be limited; and we will concentrate instead on prepaid legal services.

#### GROUP LEGAL SERVICES

There is no commonly accepted definition for group legal services; but it is essentially a group arrangement whereby individual members of a group, for example a labor union, are provided with legal services by an attorney recommended or selected by the group.<sup>10</sup> The plan is generally funded by dues paid by members of the group and specifically allocated for legal services. The lawyer is usually a full-time employee of the group,

<sup>8</sup> *Id.* at 43, 48.

<sup>9</sup> Anderson, *What Are the Consumers Asking For? Rural Cooperatives*, in TRANSCRIPT OF PROCEEDINGS—CONFERENCE ON PREPAID, 352, 353-356.

<sup>10</sup> B. CHRISTENSEN, GROUP LEGAL SERVICES, 9 (1967). For the purposes of this study, group legal services will refer only to closed panel plans, while prepaid legal services will refer only to open panel plans. However, the reader should be aware that there are group legal service plans with open panels and prepaid legal service plans with closed panels. In open panel plans, the client chooses his own attorney, while in the closed panel plans, the group chooses the attorney for the client.

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hired to handle the legal matters of the members; or he can be a private lawyer hired by the group whenever his services are needed.<sup>11</sup>

California has done the most extensive research on group legal services; and as a result, the California State Bar has a wealth of information on the subject.<sup>12</sup> In 1959, a special committee of the California Bar recommended that California not get involved with group legal service because it violated the California Canons;<sup>13</sup> but by 1964 the committee said there was a need for the service and that the California Canons should be revised to allow group legal plans.<sup>14</sup>

There are advantages of group legal services, the most common of which are identified by Preble Stolz, after a study he conducted for the Special Committee on the Availability of Legal Services of the American Bar Association. He said that group legal services can provide more services at less cost, because the number of cases that come across the desks of the group of attorneys hired by the group (labor unions in this case) will increase as the size of the insured group gets larger. As cases increase in number, the cost per case decreases. As a second point, Stolz points out the fact that it can be an advantage to the client not to have to worry about choosing his attorney, especially when he is unfamiliar with attorneys. The third advantage is that the fee charged by lawyers would be controlled because no opportunity would exist to inflate fees, since his salary is predetermined.<sup>15</sup>

While there are advantages, most group legal services have been criticized by members of the Bar Association for violating the Canons of Professional Ethics of the American Bar Association. For instance, group legal services violate Canon 27, which states that it is unethical to solicit clients by circulars or advertisements<sup>16</sup>—the reason being that such a practice would encourage competition in attracting clients.<sup>17</sup> While this may occur, the advantages in allowing more advertising will probably offset the few abuses that may occur. Today it is essential that legal services be made available to more people, and advertising on a restricted basis will help

<sup>11</sup> Whitmer, *Group and Prepaid Legal Services*, 36 Ky. B.J. 21, 22 (1972).

<sup>12</sup> E. CHEATHAM, A LAWYER WHEN NEEDED, 73 (1963).

<sup>13</sup> *Id.* at 74.

<sup>14</sup> Hourigan, *Group Legal Services—An Old Wine in a New Bottle*, 39 PA. B. ASS'N Q. 18, 20 (October 1967).

<sup>15</sup> Stolz, *Insurance for Legal Services: A Preliminary Study of Feasibility*, 35 U. OF CHI. L. REV. 417, 472 (1968).

<sup>16</sup> P. WALD, *supra* note 6, at 98; ABA CANONS OF PROFESSIONAL ETHICS NO. 27.

<sup>17</sup> Stolz, *Sesame Street for Lawyers: A Dramatic Rendition of United Transportation Union v. The State Bar of Michigan*, 1971 UNAUTHORIZED PRACTICE NEWS 14, 18-19 (November 1971).

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achieve this goal.<sup>18</sup> Consequently, rules regarding advertising should be modified. One proposal for such modification is to allow an attorney to spend only a certain percentage of his gross receipts from fees on advertising.<sup>19</sup> Of course, unreasonable ads and extremes can still be held in check through various disciplinary measures under the existing canons.

Another canon violated by group legal services is Canon 35, which does not allow a lay intermediary, such as a union, to interpose itself between the lawyer and the client.<sup>20</sup> Members of the bar see such interposition as a threat to professional independence. A union that can hire an attorney for its members can exert some pressures and controls over the attorney and abuse the power to its own interest and to the detriment of the public.<sup>21</sup> The Bar also sees a possible conflict of interest. The Code of Professional Responsibility says a lawyer has a duty to represent his client completely and not to assume multiple interests potentially detrimental to his client.<sup>22</sup> For example, the lawyer could not represent both a client who is a member of the union, and the union, which pays his salary, when an action is brought by the member against his union. This would be a clear-cut violation of the Canon prohibiting conflicts of interest.<sup>23</sup>

Theodore Voorhees, in an article on group legal services, commented on Canon 35, which bars lay intermediaries from taking a role in the accepted practice of law. He supports the Canon if such lay groups should attempt to exercise control over the attorney, but favors revision of the Canon if such groups simply provide legal counsel to its members without exercising control over lawyers. Voorhees felt a need for change in favor of the utilization of lay intermediaries, but not to the extent of sacrificing the standards of the profession.<sup>24</sup>

While some members of the Bar are undoubtedly concerned with the prospect that the group legal service programs are violating the canons and see them as a threat to their long-established independence, others are no doubt concerned about the effect group legal service programs may have on their personal incomes. These attorneys see a group, such as a union, having control over a large portion of the population as its mem-

<sup>18</sup> *Advertising, Solicitation and the Profession's Duty to Make Legal Counsel Available*, 81 YALE L.J. 1181, 1208 (1972).

<sup>19</sup> Moore, *What Are the Consumers Asking For?*, in TRANSCRIPT OF PROCEEDINGS—CONFERENCE ON PREPAID 368, 371.

<sup>20</sup> E. CHEATHAM, *supra* note 12, at 74; ABA CANONS OF PROFESSIONAL ETHICS No. 35.

<sup>21</sup> Hourigan, *supra* note 14, at 28-29.

<sup>22</sup> ABA CANONS OF PROFESSIONAL ETHICS No. 6.

<sup>23</sup> E. CHEATHAM, *supra* note 12, at 74.

<sup>24</sup> Voorhees, *Group Legal Services*, 39 PA. B. ASS'N Q. 13, 16 (October 1967).



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bers and channeling these members to a few chosen attorneys, thus leaving many attorneys short of clients. In other words, to attorneys who do not work for a group, a legal services program poses a threat to their very existence in the legal profession.<sup>25</sup>

Preble Stolz, in a 1971 article in *Unauthorized Practice News*, discredits the independence argument of opponents of group plans by saying that even lawyers who work for groups can still exercise their professional judgment. In response to the fears of non-participating attorneys, Stolz contends that group services would primarily benefit people who would not normally consult an attorney, and that the average big city law firms would remain unaffected.<sup>26</sup>

The controversy over group legal services may not seem as valid today as in the past when we look at the number of programs in existence throughout the United States. Frederick G. Fisher, Chairman of the Committee on Group Legal Services of the American Bar Association Section of General Practices, told the National Conference on Group Legal Services that he found group legal services of one type or another in all but seven states by 1972.<sup>27</sup> Many of these programs came into existence after a series of four Supreme Court decisions handed down from 1963 to 1971, which were favorable to group legal services.<sup>28</sup> Fisher said there were 192 groups with a membership of 750,000 persons.<sup>29</sup> Another committee, the American Bar Association's Special Committee on Availability of Legal Services, has also recommended that the American Bar Association support programs where attorneys would work in conjunction with lay intermediaries, through group legal programs.<sup>30</sup>

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One of the alternatives to group legal services and the "other" most prevalent answer to the question of how to make legal services more avail-

<sup>25</sup> Stolz, *supra* note 15, at 422.

<sup>26</sup> Stolz, *supra* note 17, at 21.

<sup>27</sup> Fisher, *The Prevalence of Group Legal Service Plans in the U.S. Today*, in TRANSCRIPT OF PROCEEDINGS—CONFERENCE ON PREPAID 78.

<sup>28</sup> United Transp. Union v. The State Bar of Mich., 401 U.S. 576 (1971); Illinois State Bar Ass'n v. District 12, UMW, 35 Ill. 2d 112, 219 N.E.2d 503 (1966), cert. granted 386 U.S. 941 (1967); Brotherhood of R.R. Trainmen v. Virginia ex. rel. Va. State Bar, 371 U.S. (1964); National Ass'n for the Advancement of Colored People v. Button, 371 U.S. 415 (1963); *Group Legal Services: A Blessing in Disguise for the Legal Profession*, 58 IOWA L. REV. 174 (October 1972).

<sup>29</sup> Fisher, *supra* note 27, at 81.

<sup>30</sup> *Group Legal Services: A Blessing in Disguise for the Legal Profession*, 58 IOWA L. REV. 174 (October 1972).

<sup>31</sup> As mentioned in note 10, for the purpose of this study, all prepaid legal ser-

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able to the vast middle classes, is prepaid legal insurance. We start with the assumption that the need exists for legal services to moderate income groups, even though they have not voiced demands. One proposed solution, and perhaps the best one, possibly to be used in conjunction with other methods, is prepaid legal services.<sup>32</sup>

The theory inherent in prepaid legal services is that of advance payment for future need.<sup>33</sup> Preble Stolz feels that a system into which people have already paid will help overcome the fear of the cost of legal services, but will not reduce the cost per se, the reason being that most of the problems of the middle classes are of a "low-frequency, high-cost nature."<sup>34</sup>

Perhaps the earliest writer to ask why prepaid legal insurance would not work was Louis M. Brown, who brought the subject to light in a law review article in 1952. He said that the idea of voluntary insurance to cover legal fees and court costs was not new because the liability insurance concept had been in existence for years. He contended that such a form of insurance would be beneficial not only to the people but also to the legal profession. Brown's original thought was to form a Legal Cost Insurance Company where any person could buy an annual policy for a fixed premium, the amount of which would be set following extensive study.<sup>35</sup>

The inquiry as to whether this type of insurance would be ethical was answered in the affirmative, since the client could choose his own attorney, rather than having a group pick out an attorney for him.<sup>36</sup> Legal cost insurance was seen as a way to give to the middle classes what the poorer classes had access to in legal aid. Brown's Legal Cost Insurance Company is still not a reality although some groups are experimenting in prepaid

vices are considered to be open panel plans. Also, the term prepaid legal insurance will be used interchangeably with prepaid legal services, although the latter distinction is more accurate.

<sup>32</sup> Not all writers will agree that there is a need for legal services among the moderate income groups. This is an important consideration because if there is not a need, there is no reason to be searching for a means to make legal services more available. Another consideration is that even if there is a need, but people do not recognize it as such, then actually no practical need exists. Randolph W. Thrower, Chairman of the ABA Special Committee to Survey Legal Needs, is conducting an objective study of the entire population to determine if there is a need for legal services. He discussed the project with people in attendance at a workshop during the Nat'l Conference on Prepaid Legal Services in April of 1972. Comment made at Discussion Period, in TRANSCRIPT OF PROCEEDINGS—CONFERENCE ON PREPAID 44-45.

<sup>33</sup> Whitmer, *supra* note 11, at 22.

<sup>34</sup> Stolz, *supra* note 15, at 422.

<sup>35</sup> Brown, *Legal-Cost Insurance*, 1952 INS. L.J. 475 (July 1952).

<sup>36</sup> *Id.* at 476.

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legal insurance, with the idea that someday there will be a plan open to the entire populace.<sup>37</sup>

Another early study was made by John J. Barton and was published in the *Insurance Law Journal* of 1956. As many of the early writers did, he compared a prepaid legal plan with the many types of prepaid medical plans. His plan would have provided for either full or part reimbursement for legal expenses, medical examinations, testimony, and investigatory services, but only if the claim was covered under the policy. Areas which, because of public policy, were not covered included crime, domestic relations, and quasi criminal fields. As in Brown's plan, the client could choose his own attorney, who would set his fees in accordance with a minimum fee schedule as specified by the bar association. If the client needed help in his selection of an attorney, the bar association would refer him to one, using the lawyers referral service.<sup>38</sup>

A more recent article written by H. F. Sonnenberg in 1963 commented on the growth of prepaid medical plans as the need for medical services increased. He believed people would eventually accept the prepaid legal services just as they have accepted analogous concepts in the field of medicine for the past twenty-five years.<sup>39</sup>

Sonnenberg spoke of doctors as having open-panel or closed-panel systems. The open-panel plan allows the individual to select his own doctor, while the closed-panel plan provides a salaried physician for a defined group of people. In 1963, Sonnenberg saw many of the medical plans as being closed and a similar trend developing in the legal profession, through group legal services. He advocated open-panel plans, to preserve the attorney-client relationship and a free bar, not obligated to any group, which might be acting as an intermediary between the client and his attorney.<sup>40</sup>

Stolz maintains that prepaid legal services should not be compared with prepaid health insurance. The main reason he gives is that attorneys did not support prepaid legal insurance in the way the doctors supported health

<sup>37</sup> The Financial Indemnity Co. in California is providing broad legal expense insurance on a group basis, thus becoming the first insurance company anywhere to make it available to the public generally. The coverage is broad, being designed to insure the average wage earner in his ordinary, personal, non-business affairs. The plan allows the insured to choose his own attorney. *Legal Expense Insurance Now Available*, 207 THE WEEKLY UNDERWRITER 6 (January 27, 1973).

<sup>38</sup> Barton, *Legal Expense Insurance Plan—A New Approach*, 1956 INS. L.J. 231, 232-233 (April 1956).

<sup>39</sup> Sonnenberg, *Why Not Prepaid Insurance for Legal Services*, 68 CASE & COMMENT 36, 37 (July-August 1963).

<sup>40</sup> *Id.* at 37-39.

insurance. Influential lawyers did not think legal insurance would help their own situations, and they convinced the bars to follow policies of non-support. Another reason to reject the analogy was non-support by the public, who did not feel the need for legal insurance to the degree they appreciated the need for medical insurance.<sup>41</sup>

People today are beginning to take an interest in legal insurance as they become aware of its benefits. This interest, however, is being stimulated by labor unions and private groups, who are advocating group rather than prepaid legal services. The major difference is that group legal services are closed-panel, while prepaid legal services are essentially open-panel.

Leon Jaworski, a former president of the American Bar Association, warned attorneys at the National Conference on Prepaid Legal Services, that they should assume leadership in the area before outside groups did so. He noted that organized local bar associations were making some headway in the area of prepaid legal services, but that they were still not moving as rapidly as labor unions in the area of group legal services. The real danger is that outside groups do not have to abide by the same ethical standards established by the American Bar Association, to which lawyers are bound.<sup>42</sup>

To illustrate the involvement of labor in the area, it is pointed out that unions have introduced in Congress an amendment to the Taft-Hartley Act, which would bring legal insurance within the scope of collective bargaining. In effect closed-panel group legal service plans would become a fringe benefit in contract negotiations between workers and their employers.<sup>43</sup>

David K. Robinson, President of the State Bar Association of California, expressed the same concern as Leon Jaworski. He said:

The organized bar must assume early leadership in this field. Otherwise it may well come under control of people outside the profession who are governed by different professional and ethical standards.<sup>44</sup>

Labor lawyers take an opposite view and say that unions can play an important role in providing legal services to their members. They believe unions and lawyers can work together in the field and that a closed-panel system is essentially the best. Jules Bernstein, an Associate Counsel of the

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<sup>41</sup> Stolz, *supra* note 15, at 425.

<sup>42</sup> Jaworski, *The Responsibility of the Legal Profession to Provide Legal Services*, in TRANSCRIPT OF PROCEEDINGS—CONFERENCE ON PREPAID 1, 4.

<sup>43</sup> *Id.* at 4.

<sup>44</sup> *Id.* at 5.

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Laborers' International Union of North America, AFL-CIO, expresses these views for the majority of labor lawyers.<sup>45</sup>

Bernstein said that the unions' financial resources and able administrators could help reduce the cost of legal services. This would be especially true if the Taft-Hartley Act were to be amended, because the cost of legal insurance could merge with the costs of other fringe benefit programs, thus distributing the cost.<sup>46</sup>

Bernstein firmly believes that a closed-panel would be better than an open-panel system. His reasoning is that most workers are unfamiliar with lawyers, and the union would be more competent than the individual member to select an attorney best suited to handle his needs. However, Bernstein does mention that under appropriate circumstances, and in the proper geographic setting, the union would support an open-panel system.<sup>47</sup>

Bernstein compared the cost of three OEO closed-panel programs with two open-panel programs and concluded that the closed-panel systems cost less. His study took the average cost of a divorce case and a bankruptcy case in each system, and his conclusions were impressive. He attributed the higher cost of the open-panel plans to inefficiency in the manner in which the services were produced and distributed. For instance, smaller offices tend to serve the middle classes; and the smaller the unit of production the higher the cost. In a closed-panel system, on the other hand, the legal office of a thousand-member union will deal with many more cases, thus reducing the cost per case, and probably providing better quality service. Bernstein concludes that a higher cost and lower quality service is quite a price to pay for an open-panel plan.<sup>48</sup>

Fisher discredits Jules Bernstein's contention that a closed-panel system is of a higher quality, by studying a five-thousand-member union represented by two lawyers. An analysis of that situation reveals that an average of 88 clients are rushed through every day, meaning each client has approximately 12 minutes with an attorney. Fisher says this is hardly an example of quality service and does nothing to improve a layman's image of an attorney.<sup>49</sup>

<sup>45</sup> Bernstein, *Legal Services, The Bar and the Unions*, 58 AM. B. ASS'N J. 472, 473 (May 1972).

<sup>46</sup> *Id.* at 474.

<sup>47</sup> *Id.*

<sup>48</sup> Bernstein, *Open and Closed Panel Plans*, in TRANSCRIPT OF PROCEEDINGS—CONFERENCE ON PREPAID 175, 178, 180, 183.

<sup>49</sup> Fisher, *Open and Closed Panel Plans*, in TRANSCRIPT OF PROCEEDINGS—CONFERENCE ON PREPAID 185, 187.

In addition, Fisher indicated that it would be wrong to substitute a dedicated private attorney, who worked for the interest of his clients, for a salaried "8-to-5" OEO lawyer, who had no incentive to win a case for his clients. This statement drew heavy criticism from legal aid attorneys who were in attendance at the National Conference on Prepaid Legal Services, where both Fisher and Bernstein were voicing their opinions.<sup>50</sup>

Fisher also criticized the manner in which the three OEO closed-panel programs and the two open-panel programs were compared. Two cases, one on divorce and one on bankruptcy, are hardly representative of the cost of legal services. Fisher said Bernstein should have included in the cost of the programs all the free help most OEO programs utilize. If OEO had to pay for those services, the cost would have increased.<sup>51</sup>

Henry Politz, Chairman of the Shreveport Bar Activities Committee, supported Fisher's contention that two cases were not representative of the cost of lawyers' services under a prepaid legal insurance plan. He said that the \$477.50 Bernstein reported as being the average cost of a bankruptcy suit under the Shreveport open-panel plan involved unusual circumstances. The \$238.20 reported for a divorce case under the Shreveport plan was higher than divorce cases in most states because Louisiana has a community property problem that other states do not have. So when Bernstein compared \$238.20 for a divorce under the Shreveport Plan to \$27.49, \$38.59, and \$58.50 under three OEO plans and compared \$477.50 for a Shreveport bankruptcy case to \$35.43, \$45.92, and \$181.89 under the three OEO plans, it did no justice to the open-panel programs.<sup>52</sup>

The views of minority attorneys were heard at the National Conference on Prepaid Legal Services through Donald M. Stocks, Executive Director of the National Bar Foundation, who expressed concern over the closed-panel approach to legal services. He said that the closed-panel would probably exclude minority attorneys because most unions have white attorneys. Black members of the union, under a closed-panel plan would have to go to the white, union-hired attorneys; but if they had their choice, they would probably patronize a Black attorney.<sup>53</sup>

It should be remembered when dealing with prepaid legal insurance that the primary object is to reduce the need for legal services by early advice to the clients and to increase representation so as to make services

<sup>50</sup> *Id.* at 188, 201.

<sup>51</sup> *Id.* at 188.

<sup>52</sup> Comment made at Discussion Period, in TRANSCRIPT OF PROCEEDINGS—CONFERENCE ON PREPAID 202, 208.

<sup>53</sup> Stocks, *Open and Closed Panel Plans and the Minority Attorneys*, in TRANSCRIPT ON PROCEEDINGS—CONFERENCE ON PREPAID 216.

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available to everyone who needs legal help.<sup>54</sup> It would be a mistake for attorneys to support prepaid legal services in the hopes that such services would make attorneys richer, as they did the doctors 25 years ago. Some attorneys feel that attorneys who are against closed-panels would change their minds quickly if they felt their earnings would not be reduced by working under a closed-panel system.<sup>55</sup> In other words, attorneys who support open-panels to protect the client-attorney relationship and free choice often do so because they see closed-panels as economic threats.

## PREPAID LEGAL SERVICE PLANS

A previous look at group legal services indicates there are many such plans in existence within the United States. Prepaid legal service plans are not as widespread; in fact, they are only in the experimental stage.<sup>56</sup> There are no open-panel prepaid legal service plans for the general public on a statewide, bar-sponsored basis; but plans are in the making.<sup>57</sup> As data is accumulated from existing experimental plans, permanent open-panel plans will emerge.

In 1968, a special committee of the American Bar Association recommended that lawyers support group legal services and prepaid legal insurance plans.<sup>58</sup> The American Bar Association has also urged the state bar associations to adopt codes in keeping with the recent Supreme Court decisions that allow lawyers to participate in group and prepaid plans.<sup>59</sup>

Kentucky was the first to respond to the ABA request by adopting, on a one year trial basis, rules that permitted lawyers to participate in group legal plans. The rules set guidelines for participating attorneys and included suggested reasonable fees, free choice of lawyers and restricted soliciting activities. Other rules required a registration system with the state bar and annual reports. When the program ends on June 1, 1973, the courts will decide, after hearing from the Kentucky Bar Association, whether the rules should be permanent.<sup>60</sup>

In November, 1971, a Special Committee of the State Bar of California recommended to the Board of Governors that the State Bar initiate

<sup>54</sup> Dayton, *What Are the Consumers Asking For? Public Interest Advocacy*, in TRANSCRIPT OF PROCEEDINGS—CONFERENCE ON PREPAID 358, 359.

<sup>55</sup> Comment made at Discussion Period, in TRANSCRIPT OF PROCEEDINGS—CONFERENCE ON PREPAID 251.

<sup>56</sup> *Legal Expense Insurance Now Available*, *supra* note 37.

<sup>57</sup> Whitmer, *supra* note 11, at 22.

<sup>58</sup> Martin, *Prepaid Legal Insurance Forecast for Future*, 13 FOR THE DEFENSE 87, 88 (October 1972).

<sup>59</sup> Whitmer, *supra* note 11, at 24.

<sup>60</sup> *Id.* at 24-25.

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a statewide prepaid legal service program to serve the middle classes.<sup>61</sup> The Board of Governors polled 35,000 members of the Bar in May, 1972, and the results showed 91% of the attorneys favoring a statewide prepaid legal service program under the State Bar and 71% willing to participate.<sup>62</sup>

The proposed California open-panel plan is to be limited at first to group enrollment on a pilot basis but the goal is to make the plan available to all California residents. It is financed by enrollment fees from participating attorneys and by clients, who pay into the non-profit corporation established and controlled by the Bar. The Bar also hopes to receive foundation support, which is needed to get the program off the ground.<sup>63</sup>

The California plan has established a few rules that participating attorneys must follow. They must be members of the California Bar Association and agree to participate for at least one year, paying no more than \$50.00 into the program as an enrollment fee. Attorneys have to abide by the rules and accept from the client the plan-approved fee. Since it is an open plan, the client can choose an attorney not participating in the program, in which case, the latter is not bound to charge the fee set by the bar. When this happens, the plan pays the lawyer the set fee and the client must make up the difference.<sup>64</sup>

Another prepaid legal plan proposed by the New Jersey State Bar Association is similar to that proposed by the California Bar Association. It would be open to enrolled employee groups, again with the long range goal of having the services available to all New Jersey residents. It would be an open-panel plan with fixed fees, which lawyers would be asked to abide by, and a system of peer review to safeguard reasonable fees.<sup>65</sup>

The main difference in the New Jersey and California plans is that the administrator of the New Jersey plan will be the New Jersey Blue Cross, and not a non-profit organization established by the Bar. The advantage is that the New Jersey Blue Cross organization is a going concern that can channel its resources and facilities into this new service. The originators of the plan hope that other states will pattern prepaid legal plans after its own.<sup>66</sup>

<sup>61</sup> Becker, *The Plan of the State Bar of California*, in TRANSCRIPT OF PROCEEDINGS—CONFERENCE ON PREPAID 100.

<sup>62</sup> Martin, *supra* note 58, at 89.

<sup>63</sup> Becker, *supra* note 61, at 100, 102; Jaworski, *supra* note 42, at 5.

<sup>64</sup> Becker, *supra* note 61, at 101.

<sup>65</sup> Honig, *A Bar Sponsored Program in Conjunction with a Blue Cross Organization*, in TRANSCRIPT OF PROCEEDINGS—CONFERENCE ON PREPAID 105, 108.

<sup>66</sup> *Id.* at 108.



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New Jersey realizes that in order for their prepaid legal plan to be successful, changes in the code must be made. For instance, to have a prepaid legal plan available to the people does not automatically mean that people are going to flock to it. The principal means of finding an attorney today is by word of mouth, because the code does not permit advertising, or publicity of a lawyer's specialty. The New Jersey Bar thinks the American Bar Association should amend the code by recognizing specialties and allowing attorneys to list their specialties in appropriate places.<sup>67</sup>

A few more things must occur before the New Jersey plan can be fully implemented. First, the Internal Revenue Code must be amended so that prepaid legal insurance will be tax exempt, and secondly, the advisory Ethics Committee of the New Jersey Supreme Court must give to attorneys their approval of participation.<sup>68</sup>

Thomas A. Foster spoke at the National Conference of Prepaid Legal Services about a commercial legal insurance plan that could be tailored to fit any group that wished to use it. Areas covered by this plan would be consultation, criminal law costs, investigation, civil actions, and general practice. It is an open-panel plan. The feature that distinguishes this from other prepaid legal plans is that the coverage areas are more extensive. For example, all criminal violations are covered. The cost of the plan would depend on the location of the group interested in using it and the income level of the members in the group.<sup>69</sup>

Wyoming has had a private plan in effect for 3 years that is open to any person in the state. It is an open-panel system and members are reimbursed by the plan for the amount of money they have paid their attorneys. Coverage includes cases in which the member is a defendant, a plaintiff, or a client who merely needs consultation. There are exclusions in the plan, such as domestic relations and the preparation of income tax returns. Since the Wyoming plan began, the members have been reimbursed by the club in 98% of the cases. It has been estimated that 3,000 members have been helped, which is about 1% of the population of Wyoming. It has also been estimated that 315 of the cases or consultations would not have taken place unless the plan existed, because many people would not have contacted an attorney for fear of the expense involved.<sup>70</sup>

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<sup>67</sup> *Id.* at 106-108.

<sup>68</sup> *Id.* at 109.

<sup>69</sup> Foster, *Commercial Legal Insurance Plans*, in TRANSCRIPT OF PROCEEDINGS—CONFERENCE ON PREPAID 111, 113-117; *Legal Expense Insurance Now Available*, *supra* note 37.

<sup>70</sup> DeBuse, *Private Plans Allowing Free Choice of Attorney: Americal Legal Aid*, in TRANSCRIPT OF PROCEEDINGS—CONFERENCE ON PREPAID 120-122.

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The Laborers' Local 423 of Columbus, Ohio, has a closed-panel prepaid legal plan that serves 2,000 members and families. The plan itself does not warrant detailed discussion since we are not dealing with closed-panel prepaid legal services, but the reaction of the members to the plan would probably be the same whether it be open or closed panel. The workers voted unanimously to take 10¢ out of each paycheck to go into the legal plan. Their main reason for doing so was to be treated with dignity by landlords and police when they showed their cards saying "Columbus Laborers' Legal Service Plan." Studies have shown that people will receive more respectful treatment from those in authority when it is known that they are represented by counsel.<sup>71</sup>

## SHREVEPORT BAR ASSOCIATION PREPAID LEGAL SERVICES PLAN

At the present time there is only one bar-sponsored, open-panel prepaid legal service plan.<sup>72</sup> In fact, by the time this is published, the Shreveport Plan, in operation since January, 1971, will have ended (January 1973); and an extensive study of the results will have begun.

Whether we are talking about Shreveport, Louisiana, or any other place in the United States, the contingent fee basis of recovery is common. This type of legal service is already available to the middle classes, as is workmen's compensation, plans to insure property, and automobile liability insurance. No one would argue, for example, that an uninsured person involved in a major accident would always avoid financially disastrous results; and this is especially true if major medical expenses are involved. Yet, few people stop to think about the cost of litigation. Legal involvement such as divorce actions, criminal entanglements, and estate matters are expensive and do not occur often; yet if and when they do occur, they can be just as costly as a major accident. The need for a type of legal insurance is often revealed to the individual only after he encounters a legal problem.<sup>73</sup>

The Shreveport plan is intended to provide such insurance against the cost of litigation and, in addition, is directed to certain problems which could be cleared up in the beginning by brief consultation with the attorney. This preventive aspect of insurance uses advice and brief consultations to handle most everyday problems.<sup>74</sup>

<sup>71</sup> Comment made at Discussion Period, in TRANSCRIPT OF PROCEEDINGS—CONFERENCE ON PREPAID 208-209.

<sup>72</sup> Bernstein, *supra* note 45, at 473.

<sup>73</sup> Roberts, *The Shreveport Plan for Prepaid Legal Services—A Unique Experience*, 32 LA. L. REV. 45, 46 (December 1971).

<sup>74</sup> *Id.* at 46.

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The idea of the Shreveport Plan grew out of a study made by Preble Stolz for the American Bar Foundation concerning the need for legal services. Stolz concluded in his 1968 publication that a prepaid insurance plan is feasible.<sup>75</sup>

Stolz's Model Insurance Plan, limited in scope, was essentially followed by Shreveport. The plan did not duplicate any service that was already in existence and working satisfactorily, such as the contingent fee and automobile liability insurance arrangements. The basic benefit of the model plan was to allow a one-hour consultation per year between the client and his attorney on any matter, with the possible exception of divorce cases and criminal cases.<sup>76</sup>

Additional benefits of the plan could include another hour of consultation with an attorney and even one day in court, but trial preparation was not included. The reason for this latter exclusion is that legal services are not well-defined in this area and the door would be open to abuse by the lawyers. The plan could also include a major trial benefit that would cover the legal costs of a few days in court.<sup>77</sup>

The question Stolz asks is whether his prepaid plan will prove salable. He said most employees, when bargaining for fringe benefits through their unions, would probably ask employers for more vacation time or other benefits before they would request legal services. Stolz, however, feels that if as much as 30% of an employee's salary goes for fringe benefits, he will not complain about 1% going for legal services. In fact, he might find it attractive and actively bargain for it.<sup>78</sup>

Another problem Stolz discusses is the threat group legal services poses to prepaid legal insurance. Now that the Supreme Court has said it is not unethical for unions to hire lawyers for their members, group legal services have grown rapidly, possibly at the expense of prepaid legal services. While Stolz recognizes some advantages in group legal services, most of which were discussed earlier, he sees prepaid legal insurance as having advantages of its own. First, clients would choose their own attorney, thus preserving the independence of the bar; second, groups such as unions would not take on the responsibility of being an administrator of the program; and third, prepaid legal insurance would encourage a wider use of legal services than group legal services.<sup>79</sup>

Stolz also discusses the role of the insurance company in issuing legal

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<sup>75</sup> *Id.* at 48.

<sup>76</sup> Stolz, *supra* note 15, at 455-458.

<sup>77</sup> *Id.* at 460-461.

<sup>78</sup> *Id.* at 467.

<sup>79</sup> *Id.* at 471, 474.

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insurance. States regulate insurance, and before any insurance company will be able to write a policy on legal insurance, legislation will have to be passed. He feels that with the bar association's support, legislation can be passed that, "... could provide for a separate, professionally controlled non-profit entity exempt from both taxation and much of the insurance law, or it could take the form of authorizing the issuance of legal insurance contracts by commercial insurers."<sup>80</sup>

With Preble Stolz's model plan in mind, Ralph Jackson, President of Southwest Administrators, Incorporated, drafted the Shreveport Plan with the support of the American Bar Association, the Shreveport Bar Association, and representatives of a local union.<sup>81</sup> It was completed by April 1970 and became effective on January 1, 1971.<sup>82</sup> Raymond Marks, of the American Bar Foundation, in commenting on the plan just three months after its inception, said the plan "... concentrated more on producing insights into how the process of legal insurance worked rather than producing an actuarially sound plan."<sup>83</sup> This was understandable since the Shreveport Plan was the first of its kind, and was intended to provide data for the American Bar Association to aid it in determining whether the open-panel was feasible,<sup>84</sup> and whether or not the middle classes needed more legal services.<sup>85</sup> The Shreveport Plan was also designed to enable future programs to see the approximate cost of legal services in the covered areas and to see the attitudes that the insureds had concerning lawyers and the judicial system.<sup>86</sup>

There are approximately 2,000 people in the insured group under the Shreveport Plan. Five hundred of them belong to Local 229 of the International Laborers' Union, and the remainder are the dependents of these workers.<sup>87</sup> The covered group falls mainly in the unskilled, low income bracket; and before the plan took effect, most of them had never consulted an attorney about their problems.<sup>88</sup>

The Plan was financed by various methods. The union paid two cents

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<sup>80</sup> *Id.* at 475; *Legal Expense Insurance Now Available*, *supra* note 37.

<sup>81</sup> Roberts, *supra* note 73, at 50.

<sup>82</sup> *Id.*

<sup>83</sup> Marks, *The Shreveport Prepaid Legal Service Plan*, 1971 UNAUTHORIZED PRACTICE NEWS 24, 25-26 (March 1971).

<sup>84</sup> Politz, *A Bar Sponsored Not for Profit Corporation: Shreveport Legal Services Corporation*, in TRANSCRIPT OF PROCEEDINGS—CONFERENCE ON PREPAID 88, 89.

<sup>85</sup> Roberts, *supra* note 73, at 45.

<sup>86</sup> *Id.* at 52.

<sup>87</sup> *Id.* at 50.

<sup>88</sup> Comment made at Discussion Period, in TRANSCRIPT OF PROCEEDINGS—CONFERENCE ON PREPAID 43.

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per hour for each worker, taken out of a union fund financed by the employers. There were no contributions or payroll deductions. The American Bar Association gave the plan \$30,000 from the time Shreveport was picked as the experimental site until the plan got underway in January, 1971. Any money from this sum that did not go into setting up the program was used for attorneys' fees once the plan began operation. \$75,000 in grants was also received for the plan from the Ford Foundation.<sup>89</sup>

The benefits available to the members of the plan were more extensive than those of the model plan proposed by Preble Stolz. In the first of four areas of coverage, members could consult an attorney of their own choosing on any subject matter. Each family could spend up to \$100.00 per year on consultation, with a limit of \$25.00 per visit. Since there are no deductibles, members could consult an attorney whenever they felt they had a legal problem. This goes back to the preventive aspect of law.<sup>90</sup>

The second area of coverage includes office work expenses, such as research and investigation. Each family is allowed to spend \$250.00 per year in this area. However, the insured must pay a \$10.00 deductible, which cannot be waived, the purpose being to weed out irrelevant and frivolous claims.<sup>91</sup>

The third area covers representation in judicial or administrative proceedings. The member is covered up to a certain amount of money if he is involved in a court case. Each year, a family is allowed to spend \$325.00 for legal fees, \$40.00 for court costs, and \$150.00 for out-of-pocket incidental expenses. Whenever the insured is the one who wants to bring an action against another party, he must pay a \$25.00 deductible for the same reasons as expounded in the second area of coverage.<sup>92</sup>

The last area provides coverage for the major legal expenses of members who become defendants in civil or criminal actions. It is designed to cover 80% of the next \$1,000.00 expended by members over and above those set up in the third area.<sup>93</sup>

An attorney who has been consulted under the Shreveport Plan does not bill the client. Instead, he bills the Shreveport Legal Services Corporation, a non-profit corporation that administers the plan and holds its assets. If his fee is more than the plan covers, the client makes up the difference. However, an unreasonable sum can be arbitrated by a peer review

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<sup>89</sup> Roberts, *supra* note 73, at 50-51.

<sup>90</sup> *Id.* at 51.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

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group, which was set up to keep lawyers' fees reasonable. Any successful open-panel system will probably require a good peer review system.<sup>94</sup>

Robert Roberts, Jr., a member of the Shreveport Bar Association, has furnished us with a great deal of information on the Shreveport Plan, and commented on many of the problems that confront all prepaid legal service plans. Some of these problems are the same ones that confronted group legal services and have already been examined—for example, the question as to whether or not prepaid legal insurance will become a fringe benefit in collective bargaining agreements, which depends on the passage of an amendment of the Taft-Hartley Act.<sup>95</sup>

Another problem is that of tax exemptions. According to the present Internal Revenue Code, any benefit that goes to the insured in the way of legal services must be declared as income and taxed. Ralph Jackson, the plan's administrator, saw the problem as an administrative one, that would require no legislation to make the non-profit organization tax-exempt.<sup>96</sup>

Since the worth of the Shreveport Study depends on the data accumulated, the system being used to collect data becomes very important. With the goal of objectivity in mind, the Plan first had to be introduced to the participants in such a way as not to prejudice the results. Once the plan was underway, interim surveys were made at regular intervals; and a terminal survey was planned for the end of the two-year period. By studying the results of these contemporaneous surveys, experts hope to view change as it occurs.<sup>97</sup>

Roberts commented on a survey that was made after the Plan had been in operation for three months. It revealed that out of 500 family groups insured, there were only 25 claims, some of which were brought by the same families under different coverage areas. The claims dealt with, "... 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."<sup>98</sup>

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<sup>94</sup> *Id.* at 52; McCalpin, *Discussion at Conference Plenary Session*, in TRANSCRIPT OF PROCEEDINGS—CONFERENCE ON PREPAID 413, 416; Sloss, *The Legal Profession—'Peer Review' Systems to Control Quality and Changes*, in TRANSCRIPT OF PROCEEDINGS—CONFERENCE ON PREPAID 225, 230.

<sup>95</sup> Roberts, *supra* note 73, at 53.

<sup>96</sup> Comment made at Discussion Period, in TRANSCRIPT OF PROCEEDINGS—CONFERENCE ON PREPAID 253-254.

<sup>97</sup> Roberts, *supra* note 73, at 53.

<sup>98</sup> *Id.* at 54.

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Raymond Marks compared the member of insured that utilized legal services before the plan with the number that used them after one year in operation. He found that only 54% had ever been to a lawyer before the Shreveport Plan, and 60% of that figure had only been once. Only one person in the whole insured group had consulted a lawyer for advice. Statistics after one year showed that the Plan did not change the situation very much. Many of the insured group did not use the available service because of their primary distrust and fear of attorneys and their fees. Others stated the reason was their inability to know where and how to go about locating an attorney; and if one was found, they feared lack of rapport and a communication gap. Indications are that the lawyer will have to change his image in the eyes of this group of people. Also, a better lawyer referral system will have to be developed.<sup>99</sup>

Henry Politz compared a report Ralph Jackson made at the end of the first year with a report he made three and one-half months later (April 15, 1972). He found that the 20% who used the plan in December rose slightly to just over 20% by April 15. Within the same time period, the average payment per claim dropped from \$200.00 to \$182.00. The number of cases within each specific category of cases fluctuated only slightly in most instances, but in a few areas there were radical decreases or increases. For example, cases dealing with mortgages, deeds, and other property matters rose from 2% to 15%, while cases dealing with consumer problems only dropped from 10% to 8.5%.<sup>100</sup>

The Shreveport Plan, we recall, was divided into four categories of benefits. In other words, the insured could receive benefits from an attorney in four major areas. They were: 1) advice and consultation; 2) office work expenses; 3) representation in judicial or administrative proceedings; and 4) major legal expenses incurred as defendants. By December 31, after the program had been in progress for one year, the fourth category had never been used by any member of the insured group. Only 1% of the money paid into the plan was for advice and consultation, 22% was for office work, and 77% fell into the third category. This indicates that while no member of the plan had a problem that required the payment of major legal expenses, a high percentage of those who did have problems were those involved in adversarial proceedings. Few members sought an attorney's advice before a matter reached litigious proportions. Instead,

<sup>99</sup> Marks, *Current Research Data on Need for Legal Services by the Average American*, in TRANSCRIPT OF PROCEEDINGS—CONFERENCE ON PREPAID 24, 26, 28.

<sup>100</sup> Politz, *supra* note 84, at 91-93.

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they waited until they were actually at the courtroom door before they looked to the plan for help. Politz indicates that preventive law will only increase when people are made aware of the fact that they do have a legal problem. His study of the April 15 report showed that while the percentages in categories one and four did not change, judicial proceedings decreased from 77% in December to 68%, and that benefits paid for office work increased from 22% to 31%. He interprets this as a gradual move in the direction of preventive law.<sup>101</sup>

It should be noted that while advice and consultation only accounted for 1% of the money paid into the program, this may not be a fair indication of how often members of the plan called upon attorneys in Shreveport for advice. Politz points out that for 11 of the 128 certified cases a fee was not charged by the attorney, and that all 11 fell within the category of advice and consultation. It seems that attorneys in Shreveport do not make a habit of charging clients for brief conferences. This does not mean that the 11 did not have a legal problem. It does mean that they thought they had a problem, whether they did or not, and because they knew they would be covered under the plan, they took advantage of it and went to an attorney. This figure should be included in the final analysis when drawing conclusions from the plan.<sup>102</sup>

The Shreveport Plan is, of course, open-panel; so once the insured establishes his eligibility through the administrator's office, he can choose any attorney to handle his case. The only time advice is given to a client on the choice of an attorney is when the client asks for it, in which case a referral wheel with names of Shreveport attorneys on it is used on a rotation basis. The attorney has to make reports at various intervals and at the conclusion of the case submit his report, along with his bill to the administrator's office, to be paid directly by that office. Politz said that when interviewed, the attorneys who were used during the first year of operation seemed to think the plan worked effectively. The only problem that came up, and it was minor, was that while attorneys sent in the final report, they failed to send in the interim reports about the progress of the case.<sup>103</sup>

In the previous discussion on group legal services, it was mentioned that Black lawyers favored prepaid legal services over group legal services because in a prepaid system a client could choose his own attorney. A study of the Shreveport Plan seems to support this. Local 229, the union participating in the program, is 97% Black. There are only eight Black attorneys

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<sup>101</sup> *Id.* at 94-95.

<sup>102</sup> *Id.* at 95.

<sup>103</sup> *Id.* at 96-97.



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in Shreveport, and they are all in the District Attorney's office. Since members of the union can seek their own attorney from anywhere, the insured can draw from Black attorneys outside Shreveport; and they number about 250 in Louisiana. In a survey taken after the completion of 60 certified cases that came under the plan, Jackson found that more than a dozen cases out of 60 had been handled by Black attorneys. The figure is high when we consider the number of Black attorneys as compared with the number of white attorneys. It becomes even higher when it is revealed that only 29 lawyers were used in 60 cases.<sup>104</sup>

The two-year experimental period for the Shreveport Plan ended on January 1, 1973, and the final study of the plan by the American Bar Foundation is not yet available. Therefore, we are not yet able to answer the questions posed at the beginning of the study. It is clear, however, that Shreveport is only one small step in the direction of prepaid legal insurance, and that even when the final data becomes available, the Shreveport Plan involved only one union in one city. Every city is different, and every union is different. So Shreveport can only serve as a general guideline for future studies in this area of legal insurance. Plans will differ as the cities, people, and groups differ.

### CONCLUSION

The goal of the legal profession should be to provide legal services to all the people who need them. Over the years, legal services have been made increasingly available to lower income groups through OEO sponsored legal offices. Attempts are now being made to try to determine whether there is a need to make legal services more available to persons of moderate means. While some authorities are not admitting that there is a need until further studies have been conducted, the abundance of evidence seems to indicate that if more legal services were available to this large group in our society, that more people would take advantage of them. But they must be taught to recognize budding legal problems. Even if an attorney's services were available under a plan, if the plan members do not realize that they have legal problems, the help available will go unutilized. A massive learning process to educate the people to recognize when they may have an incipient legal problem is essential before any plan becomes workable.

Two methods mentioned that would make legal services available to

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<sup>104</sup> Comment made at Discussion Period, in *TRANSCRIPT OF PROCEEDINGS—CONFERENCE ON PREPAID* 234.

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the masses within the middle income group are group legal services and prepaid legal services. The former is primarily a closed-panel system under which a client may not choose his own attorney; whereas the latter is primarily an open-panel system in which a client may choose his own attorney. Each system has its advantages and disadvantages; and each runs contrary to law, to regulations of some government bureau, or to canons of the American Bar Association's Code of Professional Ethics. However, with support from the national and local bar associations, some of these obstacles should be able to be removed to allow prepaid legal services to grow to or beyond the level of development of group legal service plans. It is also important that the established bar assume an active role in developing prepaid legal service plans to guide its development within the guidelines of established legal ethics.

The only bar-sponsored, open-panel prepaid legal service plan to be implemented was the Shreveport Plan, which ran on an experimental basis for two years ending January 1, 1973. The final results are not yet available, but they are expected to help clarify the answers to many questions concerning the feasibility of a prepaid legal insurance plan. Reports have shown trends which the plan has taken from its inception on January 1, 1971 to April 15, 1972, and tentatively conclude that a gradual change occurred during that period, resulting in an increase in preventive services. This means that people, instead of waiting to be brought into court, may consult an attorney at the critical initial stages of problems and hopefully settle many of them without recourse to litigation. The shift, however, has been gradual; and it must be recalled that before preventive law can be effective on a large scale, the masses must be educated to realize the situations in which an attorney should be consulted, and once realized, how to go about locating an attorney. Even more importantly, people must be taught to trust the attorney and discard any negative impressions of him. Of course, Shreveport was only the first program; many more are needed before the whole picture of prepaid legal services can be more objectively evaluated.

It is impractical to conclude that a system of prepaid legal services is the only answer to the need for legal services among moderate income groups. An open-panel prepaid legal service plan or plans open to anyone who wishes to join, would be the best solution and probably the one most favored by a majority of the organized bar; but it is by no means the only alternative. There is no reason to believe that a plan that works well in one area of the country, or for one group of people, or one particular union,

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will work well for another group of people. The legal profession has a responsibility to all the people to explore any plan that could increase or improve services to them. This includes exploring more deeply into the area of prepaid legal services.

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