

February 2017

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### Recommended Citation

Robert P. Patterson, Jr. (2017) "The Importance of the Legal Aid Society to the Legal Profession," *The Catholic Lawyer*: Vol. 16 : No. 3 , Article 8.

Available at: <http://scholarship.law.stjohns.edu/tcl/vol16/iss3/8>

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# THE IMPORTANCE OF THE LEGAL AID SOCIETY TO THE LEGAL PROFESSION

ROBERT P. PATTERSON, JR.\*

DEAN POUND DEFINED a profession as “a group of men pursuing a learned art as a common calling in the spirit of public service.”<sup>1</sup> We lawyers have always been proud of the designation “profession.” It sets us apart and gives us distinction. As a profession, we have been granted and administer a monopoly on services determining man’s right to justice in our society.

Drinker has stated that the primary responsibility of the legal profession is “a duty of public service, of which the emolument is a by-product”<sup>2</sup> and that “in recognition of his exclusive privileges” the lawyer is charged with an obligation to the public “to represent without charge those unable to pay.”<sup>3</sup>

In New York, as in most jurisdictions, the oath upon admission to the bar acknowledges the responsibility of the lawyer to act both as an officer of the court pledged to insure the fair and impartial administration of justice, and as an individual pledged to defend the cause of the defenseless or oppressed without personal consideration. Correlatively, as members of the bar, we recognize that a violation of that oath or of our rules of conduct can result in denial of the right to earn a livelihood at the bar.

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<sup>1</sup> R. POUND, SURVEY OF THE LEGAL PROFESSION: THE LAWYER FROM ANTIQUITY TO MODERN TIMES 5 (1953).

<sup>2</sup> H. DRINKER, LEGAL ETHICS 5 (1953).

<sup>3</sup> *Id.* at 59.

THE LAWYER'S RESPONSIBILITY  
TO THE COMMUNITY

The responsibility which we undertake to the community for the administration of justice is both broad and important. The preamble to the Canons of Professional Ethics begins:

In America, where the stability of courts and of all departments of government rests upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing justice be developed to a point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. The future of the republic, to a great extent depends upon *our maintenance of justice pure and unsullied*. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men.<sup>4</sup>

This responsibility is based upon a conception of the lawyer's role best exemplified in fiction by Arthur Train's "Mr. Tutt."<sup>5</sup> For the benefit of those who are unfamiliar with the exploits of Mr. Tutt, he was a lawyer possessing a shrewd skill, a depth of wisdom and a dry humor. He practiced in a small New England town where almost everyone was known by reputation. He represented the rich and the poor in equal proportion and his overriding concern was the pursuit of justice; remuneration seemed an almost nonexistent consideration. One wonders how many present day lawyers were

enticed to the law by this romanticized version of its practice.

THE LAWYER'S STATUS TODAY: ONE OF  
ISOLATION FROM THE POOR

How different a practice exists today! An afternoon's fishing to sort out the extraneous from the relevant and to plan strategy for a client's benefit is no more than a dream to the present day lawyer. Defending rich and poor with equal fervor is also an opportunity not afforded most lawyers. Law practice is now generally located in the business centers of metropolitan areas. It is here where fees are to be earned, and consequently where the lawyer gravitates. Since he must support his family, operating in a business area is likely to attract clients, particularly paying clients.

In the economic development of our large cities, the low-paying or non-paying client has been eliminated from the average metropolitan lawyer's practice, because the pauper does not live in the business district. Rather, he resides in an inner-city area where the ratio of laymen to lawyers is very large; moreover, the lawyers available are likely to be the landlord's representatives or the collection agents for installment contracts. Thus, the poor client generally knows little about lawyers and their ability to solve his problems.

As the cities have grown, most lawyers have rendered themselves unavailable to the non-paying or low-paying client; although we cheerfully represent our personal acquaintances, *i.e.*, the cleaning woman, the elevator operator, the widow, the refugee, the comrade-in-arms. Generally, however, our practice is not representative of the

<sup>4</sup> 1968 YEARBOOK OF THE N.Y.C.B.A. 340 (emphasis added).

<sup>5</sup> A. TRAIN, MR. TUTT AT HIS BEST (H. Medina ed. 1961).

population of the city in which we live. This isolation from the poor is more than geographic. The advent of specialization in fields of no immediate relevance to the problems of the poor contributes to the problem. Thus, to a large extent, the practice of law mirrors the business attitude of the city we live in.

Accordingly, the Tutt-like portrait of a lawyer painstakingly vindicating personal and social wrongs is no longer typical. In general, lawyers<sup>6</sup> are not doing this in any significant manner and have not done so for a long time. This is due in large part to the urbanization process rather than to a lack of desire. The lawyer living in the suburbs and working in a skyscraper office remains unaware of the problems of the poor. The isolation of lawyers has been furthered by law school curriculums which, until recently, dealt principally with matters useful in business, excluding those aspects of the law where fees are small or non-existent; more importantly, little or no emphasis has been placed upon the lawyer's responsibilities and the rules of legal ethics.

Similarly, lawyers have failed in their function as officers of the courts. The lower courts, which serve the majority of our population, are jammed and congested. Many courthouses in our city are rundown, dirty and dilapidated from years of neglect; certainly not designed for modern case-

loads. Consequently, great pressure is placed upon court procedures, obscuring even the essential appearance of due process. In New York City, for example, calendars for hearings involving evidence before a single Criminal Court judge have reached 200 cases a day, leaving approximately two minutes for the presentation of each case. The legal profession has done little to ameliorate this situation. Leaders of the bar no longer practice criminal, family, and landlord-tenant law, specialties which are not highly regarded within the profession, and it is the courts which deal with these areas of the law which are in the worst state of neglect. In contrast, courts of higher jurisdiction, where business matters of "more importance" are litigated and fewer people are involved, enjoy better conditions.

Lawyers are not performing their obligation to the public "to see to it that able and upright judges are chosen and that any who prove manifestly unworthy or unfit are removed."<sup>7</sup> Rather than demanding the highest standards, the legal profession too often approves persons for judicial positions because they are no worse than those already sitting. Nonetheless, it is common for greater care to be taken in appointments to courts of higher jurisdiction than in choices for the lower courts.

Despite the fact that lawyers generally predominate in choice political positions, the high standard of efficiency enunciated in the preamble to the canons of ethics is not maintained in our courts. In fact, our legislative and executive bodies at every

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<sup>6</sup> Throughout this article lawyers are referred to as a whole group. When speaking of fulfilling legal responsibilities to the poor, it is recognized that a small but significant number of lawyers are devoting all of their time and energies to this important task. Unfortunately, their number is still far too small to cope with the problems.

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<sup>7</sup> H. DRINKER, *supra* note 2, at 59.

level have failed to provide the courts with the organization and resources necessary for the prompt and efficient administration of justice.

Thus, the performance of lawyers as officers of the courts again reflects the isolation of the profession and the one-sided business orientation which has limited our outlook and screened us from our responsibilities.

#### THE ROLE OF THE LEGAL AID SOCIETY

The erosion of the lawyer's role as the ready representative of both rich and poor is not a new development in this country. In 1876, the German Legal Aid Society<sup>8</sup> was formed not as a charity for the poor but primarily for German immigrants in New York City who did not know where and how to obtain legal assistance in such a large city. In effect, this was an early recognition of the inaccessibility of legal services for the poor minorities. Because justice could only be served by having lawyers available, similar Legal Aid Societies sprang up in other cities throughout the country. Their role was clear—to fill the void which centralized urban legal practice was creating within the profession. Legal Aid Societies have grown in number and in size to the present day, but unfortunately their expansion has not matched the development of either the large metropolitan business areas or the inner cities within those areas.

Such members of the legal profession

as Arthur Von Briesen, Charles Evans Hughes, Allen Wardwell, Harrison Tweed, Whitney North Seymour, Timothy Pfeiffer, Eustace Seligman and Orison Marden devoted endless hours in pursuit of "equal justice for all." Recognizing the economic forces at work within the profession, they sought to gain both a greater commitment from lawyers and public support for this concept. Under their leadership Legal Aid became, and to a large extent still is, the bar's first line of defense against injustice. In its attempt to correct social wrongs, the Society's demands on the profession were for money and volunteers. It thus offered lawyers a real opportunity to discharge the professional duty of public service which Drinker classed as primary.

Today, in New York, the Legal Aid Society, with a staff of 330 full-time lawyers<sup>9</sup> is the strongest organization of its type in the country. The Society has a Criminal Courts Branch, a Family Court Branch (for juvenile cases) and a Civil Branch, all of which have severe problems with heavy caseloads.

In criminal matters, 198 full-time attorneys represent those unable to afford legal assistance in more than 100,000 cases each year in New York City. These attorneys, whose training emphasized the criminal law, are present in every court, during all hours of the day or night and even on weekends. Moreover, legal services are also performed

<sup>8</sup> The society was originally called "Der Deutsche-Rechtsschutz-Verein." In 1898, the name was changed to "The Legal Aid Society."

<sup>9</sup> There are approximately 400 full-time lawyers engaged in poverty law in New York City, about 1.2 percent of its bar. Estimates of the number of poor persons qualifying for these services range from 1,300,000 to 2,000,000 persons, or 18 to 25 percent of the total New York City population.

on the appellate level, through the Society's Appeals Bureau which has pressed hundreds of cases in its quest for equal justice for the less fortunate. Of particular significance have been the Society's efforts to obtain jury trials in misdemeanor cases and youthful offender proceedings, and to ensure that the State Narcotic Addiction Control Law did not infringe upon the constitutional rights of its clients.

In *People v. Fuller*,<sup>10</sup> the appeals staff succeeded in assuring the right to a jury trial on the issue of addiction for criminal defendants. Previously, in *Matter of James*,<sup>11</sup> the staff succeeded in obtaining a ruling that certain of the procedures adopted for alleged addicts under the Narcotic Addiction Control Law were unconstitutional. As a direct result, most of these procedures were substantially revamped.

In *People ex rel. Blunt v. Thomas*,<sup>12</sup> the Society pursued through the state courts a test of the adequacy of the addict treatment program at Rikers Island, claiming it did not meet minimal treatment requirements and thus violated the patient's right to due process, equal protection of the law and freedom from cruel and unusual punishment. The case was continued on a federal writ of habeas corpus in the United States District Court. Prior to disposition there, the Narcotics Addiction Control Commis-

sion agreed to close the Rikers Island facility and to release or transfer all addicts confined there.

Supported by the decision of the United States Supreme Court in *Duncan v. Louisiana*,<sup>13</sup> the staff of the Legal Aid Society initiated test cases for most criminal proceedings in which jury trials were not being afforded under New York law. Although not victorious on the state level, *People v. Baldwin*,<sup>14</sup> involving the right to a jury trial for persons charged with Class A misdemeanors, was brought before the United States Supreme Court where the decision was reversed.<sup>15</sup> However, not all such cases result in defeat at the state level.

In a series of decisions last year, the Appellate Term of the First and Second Departments held that the maximum period of confinement for youthful offenders and young adults sentenced subsequent to May 20, 1968, is one year, a decision resulting in the release of more than 200 clients serving longer reformatory sentences.<sup>16</sup> In fact, fifty percent of the cases before the New York Court of Appeals last term were victories. In order to achieve similar justice in civil actions, the society is presently organizing a special civil appeals staff to prepare test cases in housing, consumer fraud and other civil problems.

<sup>10</sup> 24 N.Y.2d 292, 248 N.E.2d 17, 300 N.Y.S.2d 102 (1969).

<sup>11</sup> 22 N.Y.2d 545, 240 N.E.2d 29, 293 N.Y.S.2d 531 (1968).

<sup>12</sup> 58 Misc. 2d 57, 295 N.Y.S.2d 276 (Sup. Ct. Bronx County), *aff'd*, 24 N.Y.2d 850, 248 N.E.2d 918, 301 N.Y.S.2d 89 (1969).

<sup>13</sup> 391 U.S. 145 (1968).

<sup>14</sup> 24 N.Y.2d 207, 247 N.E.2d 260, 299 N.Y.S.2d 424 (1969).

<sup>15</sup> 399 U.S. 66 (1970).

<sup>16</sup> *See, e.g.*, *People v. Soto*, 55 Misc. 2d 219, 285 N.Y.S.2d 166 (App. T. 1st Dep't 1969); *People v. Reyes*, 33 App. Div. 2d 673, 305 N.Y.S.2d 162 (App. T. 1st Dep't 1969).

The Society began its work in the Juvenile Term of the Family Court of the City of New York in 1962. It now serves the Family Court in all five counties. Early recognition by the Legal Aid Society of the need for independent counsel in the form of law guardians for children in the Juvenile Courts was cited by the Supreme Court in *In re Gault*,<sup>17</sup> which held that the right to such guardians is a constitutional requirement in all juvenile courts. Forty-eight lawyers and a supporting staff in the Legal Aid Society's Family Court Branch handle over 17,000 cases a year, most of which involve children charged with delinquency or in need of supervision, and parents charged with neglect. Cases involving a delineation of the rights of juveniles have been pressed in the appellate courts.<sup>18</sup>

Concerning civil actions, the Legal Aid Society has a main office and five local offices in those neighborhoods where its clients are concentrated. The vast majority of these cases involve landlord and tenant, family and contract disputes. Each of the neighborhood offices has a community committee made up of local residents to ensure adequate service to, and communication about, the needs of the community. Last year over 45,000 people came to these offices for help. Typical of the situations encountered include: widows facing eviction, tenant groups desiring repairs, victims of installment sales contracts, persons needing help and advice on welfare rights,

wives seeking support money and groups desiring to start cooperative nurseries.

But the Society's work is broader than representing the poor and defenseless without personal consideration. It also has a duty to act as an officer of the court pledged to insure the fair and impartial administration of justice. Accordingly, it endeavors to keep the government, the bar and the general public informed about the problems encountered while seeking equal justice for all. In 1968 it pressed the State executive and legislative bodies in a successful campaign to create additional judgeships in the Criminal and Family Courts. The Society has also been active in drawing the attention of bench and bar to the extremely congested conditions and inadequate facilities of the courts and making recommendations for dealing with them. The staff has also helped, advised, and educated fellow members of the bar, including those from the new OEO legal assistance corporations, on all aspects of poverty law, particularly in programs sponsored by the Society, the Association of the Bar of the City of New York and the Practising Law Institute. In the field of legislation, the Society successfully urged the passage of a measure which allowed the poor greater access to New York's liberalized divorce laws.<sup>19</sup> Unfortunately, other measures directed to aid the poor's access to "justice pure and unsullied" were not passed.<sup>20</sup>

<sup>17</sup> 387 U.S. 1 (1967).

<sup>18</sup> See, e.g., *In re Samuel W.*, 24 N.Y. 2d 196, 247 N.E.2d 253, 299 N.Y.S.2d 414 (1969), *rev'd sub nom. In re Winship*, 397 U.S. 358 (1970).

<sup>19</sup> See N.Y. DOM. REL. L. § 232 (McKinney Supp. 1970).

<sup>20</sup> See, e.g., Assembly 6814—to provide notice to defendant by Civil Court of commencement of action in that court by plaintiff (to avoid consequences of sewer service); Assembly 6815—to

Over the years, in matters of judicial selection, witnesses from the Legal Aid Society have been forthright in their criticism and approbation of sitting judges, and have upheld the professional "duty to further the choice of able and upright judges and to see to the removal of those manifestly unworthy."<sup>21</sup> Because of their everyday involvement in courts which many lawyers never see, these witnesses are particularly suited to act for the bar in performing this obligation to the public.

In order to improve service to its clients, to increase the bar's knowledge of this segment of the community and to obtain a greater and longer lasting commitment from the bar, the Society initiated programs in both civil and criminal areas calling for volunteer service by lawyers. Since volunteers make themselves available on every conceivable basis, such programs have been designed for participation allowing a wide range of commitments.

For instance, the Society accepts full-time volunteers on the criminal side for periods of a month or longer after which, the volunteer may make himself available on a part-time basis, *i.e.*, days, nights, or during the weekend. In addition, under its

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prohibit actions on installment sales contracts in remote counties; Assembly 6816—to require notice on summons of availability of Legal Aid or other legal assistance to those unable to afford a lawyer; Assembly 6817—to authorize furnishing information to spouse of criminal offender for purpose of divorce or annulment action; Assembly 5481—to provide for a landlord covenant of compliance with Multiple Dwelling Law and the New York City Housing Maintenance Law.

<sup>21</sup> H. DRINKER, *supra* note 2, at 60.

"joint appeals program"<sup>22</sup> volunteers handle criminal appeals for the Society in the state and federal courts. Under this program, a volunteer's efforts may be fitted into those slack periods which arise in the course of an active practice.

On the civil side, the Society accepts full-time volunteers for a two-month period after which shorter periods may be arranged to fit the convenience of the volunteer. For lawyers not available on this basis, the Society has a program by which its neighborhood offices are kept open at night primarily for the working poor. In this situation, teams of lawyers from a number of the larger firms staff a particular office one night a week. They complete the cases received at their offices downtown and often hold subsequent consultations with their clients in those offices.

Finally, volunteer lawyers are taken on an individual basis by Community Law Offices (CLO), the Society's experiment under which a group of young volunteer lawyer-trustees is operating an office in East Harlem with the aid of community-trustees, a small full-time staff, and certain members of the Society's Board of Directors. Again the volunteer is expected to complete his case on his own time. This commitment calls for a minimum of 100 billable hours a year.

The variety of these programs offers the bar an opportunity to participate on almost

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<sup>22</sup> This program is co-sponsored by the Association of the Bar of the City of New York, the New York County Lawyers Association and The Legal Aid Society.



any basis permitted by the demands of each individual's practice.<sup>23</sup>

However, in all its work, the Society has not received sufficient support from the bar, and it is only with vociferous and unrelenting support involving some personal sacrifice that "equal justice for all" can be obtained, and that the responsibility called for by the preamble to our canons of ethics can be performed.

#### THE TASK FOR LAWYERS TODAY

Since we have not carried out our responsibility to maintain the efficient administration of justice as our cities have grown, both in the area of courtroom justice and in the area of justice as a whole, the right to call the law a profession has been jeopardized. In order to fulfill our professional responsibility of assisting indigent persons, we must improve the administration of justice in our lower courts. Facilities must be up-to-date and modern; all lawyers must insist upon new courthouses with sufficient space to assure that each case will be the obvious result of deliberation. Lawyers must also address themselves to the possibility of removing from the lower courts, in one way or another, matters which no longer have a close relation to the maintenance of justice. If for no other reason than to leave sufficient time for more important matters, consideration should be given to removing prostitution, gambling,

housing violations and other offenses from the criminal courthouses, and bringing negligence matters before compensation boards.<sup>24</sup> The more significant matters, *i.e.*, those affecting basic justice, must be given a preference in court, because justice delayed very often cannot be justice pure and unsullied.

Lawyers must also insist on adequate detention facilities. Certainly it is unsatisfactory administration of justice to make a practice of confining prisoners awaiting trial for long periods in facilities designed for one-half their number. In addition, detention facilities for children *must* be reformed in order to achieve their purpose—rehabilitation rather than punishment.

We must insist that courtroom proceedings be conducted properly. Improper demeanor by lawyers and judges should be promptly reported to and dealt with by the appropriate disciplinary bodies. The standards of conduct must be raised as should the standards for judicial selection. To ensure a high quality judiciary, capable of dealing with present day pressures on the courts, the bar should review the length of terms of the judiciary and court personnel with a view toward shortening them. The bar should further consider the advisability of public evaluation reports of a qualitative and quantitative nature by an administrative body to eliminate judges who lack appropriate temperament or ability.

Lawyers must also insist that the courts

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<sup>23</sup> The law student volunteer is also offered the opportunity to participate during the regular school year and during summer vacations in programs in which 188 students participated in 1968-1969 and the summer of 1969.

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<sup>24</sup> Traffic cases were removed from the criminal courts by a 1969 legislative act supported by the Legal Aid Society.

be administered efficiently. Some of the inefficient practices and needless errors which recur every day in our courts downgrade the entire judicial process in the mind of the public. The bar must insist that there be sufficient resources available to enable the courts and related agencies to operate efficiently. It is regrettable that as a profession, lawyers have not been consistently active in any of these areas.

In the broader field of justice outside the courtroom, the bar must also act vigorously. In order to maintain justice "pure and unsullied" lawyers must be available to the community. The bar should insist upon greater federal and state financial assistance for legal aid agencies so that the current imbalance within the profession can be corrected.<sup>25</sup> Federal, State and City governments have recognized their obligation to grant such support but not to the extent required. It is not surprising that all legal assistance agencies are overburdened by heavy caseloads since only 1 percent of the lawyers are attempting to represent 20 percent of the population. A public internship program directed to representation of the poor would insure a generation of young non-isolated lawyers and in time would correct the existing imbalance within the profession.

Lawyers should demand that the law schools substantially increase their enroll-

ments. There are not enough lawyers to handle the legal problems of the rich, middle class and the poor. Just as the medical profession is being swamped with medical problems under Medicare so too the legal problems of the poor will soon be swamping the bar as presently constituted; we should anticipate the problem now.

The profession should undertake the training of a large group of paraprofessionals similar to nurses, orderlies and dental assistants in the medical profession. Experiments by the Legal Aid Society and other agencies show that in a large number of cases the complexities of the welfare, housing and other agencies can easily be handled by non-lawyers if they are given adequate training.

Each of the above actions will take time to put into effect. In the meantime, short-term solutions are necessary. All lawyers should give generously of their time as volunteers. The caseload demands for the poor are so great that they prevent a number of cases from being handled in the most effective way possible.<sup>26</sup> As volunteers, we will help cure the blindness resulting from years of isolation. If the outlook of the bar has become one-sided it can become whole again by such participation.

All lawyers should also give generously by way of donations. Experience indicates

<sup>25</sup> The bar should also press for a year of public internship for all law graduates as proposed by Chief Judge Lumbard. See Lumbard, *Legal Internship: A Year of Public Service*, 65 THE LEGAL AID REV. 24 (1969).

<sup>26</sup> See Bellow, *Reflections on Caseload Limitation*, Getzel, *Legal Aid Cases Should Not Be Limited*, in THE LEGAL AID BRIEF CASE (1969); Silver, *The Immediate Failure of Legal Services to the Poor: Why and How to Limit Caseload*, 46 J. URBAN L. 217 (1969).

that a full-time lawyer specializing in poverty law can handle the same number of cases as 20 part-time volunteers. Lawyers regarding their donations as charitable tend to donate too little toward the employment of full-time lawyers. It would be too much to expect that where 20 percent of the population is poor a lawyer specializing in business problems should donate 20 percent of his income, but many lawyers give nothing. Among fund raisers, lawyers are known for their lack of generosity. At present, no firm in New York, even those with 100 or 200 lawyers, donates the equivalent of its payroll costs for single young law school graduates not yet admitted to the bar. Some law firms with 40 or 50 lawyers give nothing, preferring to give to charities through persons from whom business may result. In 1925, law firms contributed \$50 per partner to become law firm members of the Legal Aid Society. Despite the large growth in the size and the number of law firms, many now give nothing or give less, adjusting for the cost of living. If we are to remain a profession, every lawyer not engaged in poverty law practice should contribute and every law firm should increase its contribution considerably.

#### CONCLUSION

The Legal Aid Society's objective today is to provide first-class legal services to persons who cannot afford a lawyer in spite of increasing caseload pressures which will not diminish for a considerable period of time. The Society's aim with respect to the profession remains the same—to rekindle the spirit of public service in the profession so that "justice pure and unsullied" is available to all. Thus, it demands from lawyers the support which "justice for all" requires in funds, in volunteer effort and in support for administrative and legislative changes. Its demands have not always met with success particularly because lawyers have been increasingly isolated from the segment of our society served by Legal Aid. Nevertheless, the Society continues to offer ways, many of them new, in which the profession may maintain its professional status. Today, the young members of the bar seem particularly disposed to accepting these opportunities.

Let us hope that this is not a passing fancy and that a rededication to our ideals will allow lawyers to achieve the high professional status to which we all aspire. Justice in our nation depends on it.