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**The Shreveport Plan: An Experiment in the Delivery of Legal Services. By F. Raymond Marks, Robert P. Hallauer, and Richard R. Clifton. Judicare: Public Funds, Private Lawyers, and Poor People. By. Samuel J. Brakel.**

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## BOOK REVIEWS

THE SHREVEPORT PLAN: AN EXPERIMENT IN THE DELIVERY OF LEGAL SERVICES. BY F. RAYMOND MARKS, ROBERT P. HALLAUER, and RICHARD R. CLIFTON. Chicago, Illinois: American Bar Foundation 1974, xi + 95 pages.

JUDICARE: PUBLIC FUNDS, PRIVATE LAWYERS, AND POOR PEOPLE. BY SAMUEL J. BRAKEL. Chicago, Illinois: American Bar Foundation 1974, xi + 145 pages.

MARJORIE GIRTH\*

During the 1960's, this country's programs providing publicly-funded legal services to the poor were significantly expanded. Observers have since perceived the need to increase the availability of legal services for another substantial group: those whose incomes were too high to be eligible for the free service, but too low to afford counsel at the going market rate. The response to that need was based in part upon the obvious inequity of having counsel available for "the rich" and "the poor," but not for those in middle income brackets. In addition, "no-fault" legislation, by reducing the compensation of private counsel, caused lawyers to consider ways of developing new markets for legal service.

Meanwhile, the public programs which operated on a salaried staff basis were being swamped by their caseloads. Public defenders and Office of Equal Opportunity lawyers were faced with both limited budgets and the responsibility of representing all clients who met their standards of eligibility for service. The use of private practitioners to represent the poor was an obvious alternative as a delivery system.

*The Shreveport Plan* and *Judicare* provide interim evaluations of two experiments with new delivery systems. *The Shreveport Plan* reports the results of field research carried on through the initial year's operation of the first "legal insurance" experiment undertaken

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in this country. *Judicare* describes experience with the model which relies upon private attorneys who submit vouchers for government payment after they have completed the work in each case. Both experiments use the "open-panel" system of choosing lawyers, so that clients are theoretically free to approach any member of the private bar for help with their problems. Each study focuses upon the reactions of eligible individuals and participating attorneys to the prospect and reality of increased service.

The Shreveport plan was designed for Local 229 of the Laborers International Union of North America. Funding for the four-year experiment was based upon a two-cents-per-hour contribution by the union's members, with the Ford Foundation guaranteeing to cover any deficit. The plan began operating in January, 1971, and provided maximum annual benefits for consultation, office work, and litigation in both civil and criminal matters.<sup>1</sup>

The authors' assessment of clients' reactions to the plan is based upon interviews with 301 men who were members of the union in both July, 1970, and January, 1972.<sup>2</sup> The respondents were almost exclusively blacks, employed as unskilled labor in an urban setting. Because of the short-term focus of this study, the data which Marks, Hallauer, and Clifton analyze cannot be considered definitive. Follow-up data are needed to assess actual cost and to make more accurate projections of the union members' longer-term use of lawyers.<sup>3</sup>

The *Shreveport* authors alternate between realistic acknowledgments of the data's limitations and less-substantiated hopes for the long-term impact of legal insurance plans. They predict not only that clients may become more sophisticated about the appropriate use of lawyers, but that these plans will help clients become more autonomous

1. For the details of the coverage of this plan, see F. MARKS, R. HALLAUER & R. CLIFTON, *THE SHREVEPORT PLAN* 8-9 (1974) [hereinafter cited as *THE SHREVEPORT PLAN*].

2. The authors note that approximately 1,000 people are members of the union in any one year, but that membership fluctuates because of the uneven demands for unskilled labor. *Id.* at 14 n.4, 59. An earlier published summary of preliminary research findings in this study produced a valuable methodological critique which should be heeded by designers of future field experiments. Getzman, *A Critique of the Report of the Shreveport Experiment*, 3 J. LEGAL STUDIES 487 (1974); Hallauer, *The Shreveport Experiment in Prepaid Legal Services*, 2 J. LEGAL STUDIES 223 (1973).

3. For an analysis of intake and lawyers' claims which were paid through 1972, see BAR ACTIVITIES COMMITTEE, SHREVEPORT BAR ASSOCIATION, *PREPAID LEGAL SERVICE PLAN: A COMPILATION OF THE BASIC DOCUMENTS* (undated).

individuals. As a result, they foresee that the mutual views of lawyers and clients as groups may even change for the better.<sup>4</sup>

Less idealistic goals for such plans might include easier access to lawyers and higher-priority handling of the client's problem because it is no longer a charity case. From this perspective, the initial data should be encouraging to those who might be considering similar experiments elsewhere. The frequency of clients' perceptions of lawyers as problem-solvers increased, and three-quarters of them indicated a willingness to participate in such a plan if it were offered at the same cost by a private company.<sup>5</sup> Lawyers were also enthusiastic about the amount of service which they could deliver under the plan,<sup>6</sup> although readers may decide to discount some of the lawyers' enthusiasm since the Shreveport bar association volunteered for the experiment. Even so, the results would suggest that further monitoring of this program would be useful to those who have a long-term interest in increasing the availability of competent counsel.<sup>7</sup>

While endorsing the legal insurance concept, the authors wisely refrain from claiming that Shreveport's insurance plan provides the best system for delivering legal service. Furthermore, they question the practical limitations of "open-panel" insurance plans. The union's members had previously relied heavily on referrals from friends and relatives when they needed lawyers. During the first year of this experiment, they turned to union officials for recommendations in approximately one-quarter of their cases.<sup>8</sup> Lawyers who are planning such experiments should consider the implications of the role of the sponsoring organization as a source of referrals. Unless lawyers' subject-matter competencies are available to the public in a manner which

4. Chapter four of the report does provide a useful description of the organization of the Shreveport bar. In doing so, it documents the psychological distance between the almost exclusively white, male professionals and the segment of their clientele which is black, male, and employed as unskilled labor.

5. *THE SHREVEPORT PLAN* 79, 82.

6. *Id.* at 87.

7. When the original experiment ended on January 31, 1975, the union decided to continue the program as a service to its members. The members' contribution was increased to three cents per hour. The "major legal" benefit was increased from 80 percent of the first \$1,000 in expenses exceeding the litigation benefit to 80 percent of the first \$2,500 of such expenses. The union replaced the Ford Foundation as the guarantor of any deficit. Telephone interview with Henry Politz, member of the Shreveport Plan's Board of Trustees, March 15, 1975.

8. *THE SHREVEPORT PLAN* 68.

is easily usable, the *Shreveport* study indicates that sponsors' recommendations will be requested. As a result, the unfettered choice which is theoretically available under an "open-panel" plan will be considerably narrowed.

Mr. Brakel's *Judicare* is much more assertive than the enthusiastic *Shreveport* study needed to be. The *judicare* model has been discussed at least since 1964 when substantial public monies were first provided for civil legal service. Those monies were overwhelmingly committed to the salaried attorneys who provided service through the Federal Legal Services Program. *Judicare* experiments were few in number and funded almost entirely in rural areas.

Mr. Brakel's carefully documented report compares the *judicare* programs in Wisconsin and Montana with the staff-counsel program which serves Michigan's Upper Peninsula through a network of regional offices. All three areas are predominantly rural with low population density. Indians constitute a significant proportion of the population served by the *judicare* programs, but are less visible in the Michigan program area.<sup>9</sup> Field research for this study occurred in 1971 and 1972, after these programs had been operating for at least four years.

Mr. Brakel minces no words in assessing the assumptions which have been used to support the preference for staffed offices in publicly-funded legal service programs.<sup>10</sup> Idealistic hopes of "eradicating poverty" through the staffed offices have outdistanced even the optimistic *Shreveport* authors' expectations. Simultaneously, opponents of significant *judicare* experiments have cited rising medical costs under publicly-funded delivery systems which utilize private practitioners. Still, Mr. Brakel insists that we cannot continue to ignore data about *judicare's* potential merely because we have political or personal investments in the staffed-office concept.<sup>11</sup> At least we cannot do so unless we are willing to be recognized as hypocritical about our supposed commitment to developing the best possible method for delivering civil legal service to the poor.

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9. Details can be found in S. BRAKEL, *JUDICARE* 12-16 (1974).

10. *Id.* at 1-7.

11. The present legal service program has been under political attack almost from its inception. In 1973, the American Bar Association Journal printed a summary of Mr. Brakel's research. Brakel, *The Case for Judicare*, 59 A.B.A.J. 1407 (1973). The emotional investment in the preservation of the program was exemplified by the response to the summary. *E.g.*, Letter from William R. Klaus & Robert W. Meserve to Editor, 60 A.B.A.J. 144 (1974); Letter from John D. Robb to Editor, *id.* at 144, 152.

## BOOK REVIEW

In order to obtain publicly-funded service, the Michigan clients were limited to the attorneys who happened to be on the staff when their problems arose. By contrast, the client's ability to choose a lawyer is emphasized as important to the success of the judicare model, as it was in Shreveport. But lawyers were in much shorter supply in these rural areas than they were in the Shreveport metropolis. A more specific description of the practicing bar would have been useful, so that one could assess how problems of geographical access to lawyers might change in the foreseeable future. If the practicing lawyers in these rural areas were closer to retirement age than is the bar in general, difficulties in ensuring that counsel are available may require supplemental staffing for a judicare system. On the other hand, it would be important to know whether there is any evidence that the existence of the judicare programs has drawn lawyers to these areas or caused them to stay when they had options elsewhere.

One of the real strengths of Mr. Brakel's work is his candor in assessing issues of research methodology and standards, as well as the substantive responses to his own efforts. In taking this approach, he establishes a highly desirable professional standard for those who may try to refute his conclusions. For instance, he acknowledges the difficulty of using our current judicare experience as a basis for attempting definitive assessments of how the system would work in an urban setting. He also clearly notes the limits of his data on such issues as the comparative costs and amounts of "impact" litigation in the staffed office and judicare programs.

Nonetheless, Mr. Brakel ultimately concludes that his data support the implementation of judicare as "the basis for the national attempt to help the poor use legal resources."<sup>12</sup> This conclusion is based in large part upon two findings: (1) the available comparative data do not rule out judicare on the basis of cost, and (2) his comparison of clients' responses to both the judicare and staffed-office programs indicated that a substantially larger proportion of the judicare clients were satisfied with the service they received. Moreover, a number of the satisfied staffed-office clients asserted that they would have preferred a judicare format for legal assistance.<sup>13</sup>

From another perspective, Mr. Brakel's conclusion is premised

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12. S. BRAKEL, *JUDICARE* 128 (1974).

13. *Id.* at 91-110.

upon the fact that proponents of continued staffed-office programming have failed to substantiate their claims of superiority for their concept. The change in delivery systems which Mr. Brakel proposes, however, will be perceived as dramatic and radical. That perception, together with the political realities of the investment to date in the staffed-office programs, make the acceptance of a nationwide *judicare* experiment unlikely at this time. But, at a minimum, the data in *Judicare* argue for the objective evaluation of significant tests of the system in urban settings if we have serious intentions of equalizing the access to counsel for all of our citizens.