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LEGAL AID IN FRANCE

George A. Pelletier, Jr.*

I. Introduction

In French history legal aid traces back as far as the eighth century, when the Moravian and Carolingian kings instructed their judges to decide the cases of indigents and the elderly without delay and without cost.¹ The long history of the French bar evinces a similar sympathetic attitude toward the plight of the poor, for French advocates centuries before it was required had customarily accepted the cases of indigents without fee. During the age of Louis XIV, "pleading and consultation for the poor was one of the established rules of the ancient [Paris] Bar, and every week nine advocates met in order to hold gratuitous consultations on the causes of the poor."² Until the past one hundred years or so, the French bar, like the English, was primarily an honorary association of wealthy gentlemen performing a public service. They could not request payment for their services, although an honorarium would not be refused and later was even expected.³

Insofar as the bar primarily represented the wealthy or privileged classes, it was not altogether of a charitable nature.⁴ In time the bar itself came to be recognized as a privileged class, a factor that led to its temporary abolition immediately after the French Revolution.⁵ Ironically, the only person in the Assembly to defend the bar was the radical Jacobin, Robespierre, who said of it:

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1 See Roceette, *L'assistance judiciaire en France* 1 (unpublished report presented to United Kingdom Nat'l Comm. for Comparative Law, Oxford Colloquium on Comparative Legal Aid 1959); FROTIER DE LA MESSELIÈRE, *L'ASSISTANCE JUDICIAIRE — ÉTUDE HISTORIQUE ET PRATIQUE* (1941).

2 YOUNG, *AN HISTORICAL SKETCH OF THE FRENCH BAR* 42 (1869). An even earlier report of legal aid by the bar concerns the renowned St. Yves of Trégüier, born in 1253, who was an ecclesiastical magistrate and in addition was known as a pleader for the poor. Siré, *The Legal Profession and the Law: The Bar in France*, 1 J. INT'L COMM'N JURISTS 244, 253 (1958). The fact that St. Yves was an ecclesiastical magistrate is significant, for legal aid in France is known to have been developed under the influence of the ecclesiastical courts. CUCHE ET VINCENT, *PROCÉDURE CIVILE* § 593 (13th ed. 1963) [hereinafter cited as CUCHE ET VINCENT]; I SOLUS ET PERROT, *DRIT JUDICIAIRE PRIVÉ* § 1195 (1961) [hereinafter cited as SOLUS ET PERROT]. See also note 1 *supra*.

3 As late as 1885 the head (*bâtonnier*) of the Paris Bar stated: "The fee (called *honoraire*) in its amount and payment must be essentially voluntary and spontaneous. The advocate does not discuss any money question with his client. He requests nothing from him either before or after the case." Quoted in Lepaulle, *Law Practice in France*, 50 COLUM. L. REV. 945, 949-50 (1950). It was not until 1889 that the Paris Bar finally gave the *avocat* the right to receive compensation. *Id.* at 950.

This charitable aspect of the French and English bars is said to be of Roman origin. See POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES* 51-55, 104-05 (1953).

4 For a study of the lawyers who served as advisers to Philip the Fair (1268-1314) and their strenuous defense of the sovereign power, see PEGUES, *THE LAWYERS OF THE LAST CAPETIANS* (1962).

5 BRISSAUD, *HISTORY OF FRENCH PUBLIC LAW* 463 (Garner trans. 1915).

The Bar . . . seems still to display liberty exiled from the rest of the world; it is there that we still find the courage of truth, which dares to proclaim the rights of the weak and oppressed against the powerful oppressor. . . . [If you do away with the Bar] you will no longer behold in the sanctuary of justice those men of deep feeling capable of rising to enthusiasm in behalf of the cause of the unfortunate, those independent and eloquent men, the support of innocence and the scourge of crime.⁶

Upon the abolition of the bar in 1790, a litigant could argue his own case, hire any agent he wished, or rely on the services of a public defender—an institution established in 1791.⁷ The services of the public defender were free, for it was believed that the equality of all men in the eyes of the law—one of the guiding principles of the Declaration of the Rights of Man and of the Citizen⁸—was only possible if justice was free. The result was unsatisfactory (as was a similar experiment by the Bolsheviks after their revolution in the twentieth century); and Napoleon, although he disliked the bar, was forced to reestablish it in 1810.⁹ It soon became apparent, however, that the voluntary, charitable basis on which legal aid was being given was not adequate. Thus, in 1851 came the law on legal aid (*assistance judiciaire*), which forms the basis for France's present legal aid system. Significant amendments to this law have occurred throughout the succeeding years, especially in 1901, 1903, 1907, 1950, 1956, 1958, and 1960.¹⁰

6 Quoted in YOUNG, *op. cit. supra* note 2, at 80. Also see Lepaulle, *supra* note 3, at 946, for a translation of the spirit of these remarks.

7 BRISAUD, *op. cit. supra* note 5, at 463.

8 The principle of equality is set forth in article VI of the Declaration of the Rights of Man and of the Citizen.

9 YOUNG, *op. cit. supra* note 2, at 120; Lepaulle, *supra* note 3, at 946.

10 The text of this law can be found in CODE DE PROCÉDURE CIVILE 673-83 (62d ed. Dalloz [hereinafter cited as D.] 1966). This is Law of Jan. 22, 1851 (D.P. 51.4.25) as amended by Laws of July 10, 1901 (D.P. 1902.4.9); March 31, 1903 (D.P. 1903.4.17); Dec. 4, 1907 (D.P. 1908.4.1); July 13, 1911 (D.P. 1911.4.132); March 26, 1927 (D.P. 1928.4.65-69); July 9, 1956 (D. 1956.249); Decree No. 58-1289 of Dec. 22, 1958 (D. 1959.45 Rect. 304); Decree No. 60-1520 of Dec. 30, 1960 (D. 1961.41); Oct. 13, 1965 (D. 1965.318) [hereinafter referred to as the Legal Aid Act]. In addition, a number of rules are found in articles 1032-40 of the General Tax Code (*Code Général des Impôts*) enacted April 6, 1950 (D. 1950. 104, Rect. 204). On legal aid in criminal matters, see FRENCH CODE OF PENAL PROCEDURE arts. 114, 274, 417.

Most of the administrative procedures for implementation of the Legal Aid Act are contained in various circulars of the Chancellery of the Ministry of Justice issued in the early 1900's. The Ministry of Justice, having the responsibility for the administration of justice, is charged with the supervision of the various legal aid bureaus administering the act.

Many French texts on the Code of Civil Procedure, the Code of Penal Procedure, and the legal profession contain discussion of *assistance judiciaire*. See especially CRÉMIEU, TRAITÉ DE LA PROFESSION D'AVOCAT §§ 79-87 (2d ed. 1954); CUCHE ET VINCENT § 592-604; I SOLUS ET PERROT §§ 1195-1212; STEFANI, PROCÉDURE PÉNALE §§ 262-63 (2d ed. 1962). For earlier studies of this law, see BRIÈRE-VALIGNY, CODE DE L'ASSISTANCE JUDICIAIRE (1866); COLLIER, L'ASSISTANCE JUDICIAIRE DEVANT TOUTES LES JURISDICTIONS (1909); SIMON, TRAITÉ THÉORIQUE ET PRATIQUE DE L'ASSISTANCE JUDICIAIRE (2d ed. 1911).

Very little has been written in English about the French legal aid system, and what has been written is very sketchy. See EGERTON, LEGAL AID 161-68 (1945); Report to the League of Nations on Legal Aid in France, published as LEGAL AID FOR THE POOR (V. Legal, 1927, V. 27) 131-33; Cohn, *Legal Aid for the Poor: A Study in Comparative Law and Legal Reform*, 59 L.Q. REV. 250, 359 (1943); Jacoby, *Legal Aid to the Poor*, 53 HARV. L. REV. 940 (1940); Lepaulle, *supra* note 3, at 956-57; Pugh, *Cross-Observations on the Administration of Civil Justice in the United States and France*, 19 U. MIAMI L. REV. 345, 355-56 (1965); Schweinburg, *Legal Assistance Abroad*, 17 U. CHI. L. REV. 270-76 (1950); Snee & Pye, *Due*

All these amendments to the 1851 law broadened its scope and increased its coverage, so that France can now boast of one of the finest legal aid systems in the world, one that is probably second only to that of England.¹¹

II. Legal Aid in Civil Cases

A. Scope of Coverage

Article one of the French Legal Aid Act provides in part:

Legal assistance may be given in every kind of case to all persons, and also to all organizations whether public or useful to the public, and to all private associations having service for their purpose and enjoying legal existence, when, because of the lack of means, such persons, organizations, and associations find themselves unable to exercise their rights in court whether as plaintiff or defendant.

This provision grants legal aid to anyone, whether plaintiff or defendant, individual or association, who is incapable of exercising his legal rights. Its coverage extends to litigation, legal advice, negotiation to effect a settlement, and even to drafting of contracts by a notary.¹² There are, however, certain limitations on the application of the act. It has been held that an applicant could not be granted legal aid to exonerate himself from the costs of a trial where he had a final and executed judgment.¹³ Nor does the act cover matters that are *res judicata*,¹⁴ applications and requests made to the various ministries,¹⁵ the trustee in bankruptcy,¹⁶ or the bankrupt.¹⁷

The legal aid granted by the act is available to foreigners whose country has signed a convention providing free access to its courts or containing a provision for equal treatment of nationals.¹⁸ In 1959 the United States and France

Process in Criminal Procedure: A Comparison of Two Systems, 21 OHIO ST. L.J. 467, 482-85 (1960).

11 See JACKSON, *THE ADMINISTRATION OF JUSTICE IN ENGLAND* 305-17 (4th ed. 1964); Dworkin, *The Progress and Future of Legal Aid in Civil Litigation*, 28 MODERN L. REV. 432 (1965).

12 Legal Aid Act arts. 1, 2. See CUCHE ET VINCENT §§ 592, 549-97, especially where the authors state:

Today legal aid is operative without exception in all jurisdictions (*i.e.*, for all causes of action) in civil matters as well as administrative matters; it can also be evoked when one is a civil party before a criminal court. *Id.* § 595.

Legal aid is operative for all proceedings. Since the law of 1901, it is no longer restricted to litigious or disputable proceedings; it can also be obtained for amiable (uncontested) proceedings, as well as acts of execution. *Id.* § 596.

13 Bureau supérieur d'assistance judiciaire, July 31, 1950 (D. 1951, Somm. 41).

14 Décis. Chanc. April 29, 1853.

15 Bureau d'assistance judiciaire (Aix), July 17, 1902 (D.P. 1903.2.503).

16 Bureau d'assistance judiciaire (Rennes), Oct. 7, 1958 (D. 1958.666). In this case the trustee in bankruptcy as the representative of the creditors requested legal aid in order to appeal a judgment that ordered the sale of the bankrupt's business. In denying the request, the bureau stated that the trustee as the representative of the creditors as a body did not come within the definition of persons and legal bodies entitled to legal aid under article one of the act. The court in addition stated that even if the creditors could qualify as a proper subject for legal aid, their indigence was doubtful. Law of May 20, 1955, (Rec. D. 1958.237 et Rec. Sirey 1955.237.) in art. 169 does provide for legal aid for the trustee when he is being sued to account for his actions.

17 Bureau d'assistance judiciaire (Bordeaux), Dec. 1, 1881 (D.P. 82. 3. 72).

18 BATIFFOL, *TRAITÉ ÉLÉMENTAIRE DE DROIT INTERNATIONAL PRIVÉ* § 732 (3d ed. 1959); I SOLUS ET PERROT § 1199. One of the applicable treaties is the Hague Convention of July 17,

signed an agreement under which the nationals of each in the territory of the other are entitled to the same legal aid as the nationals of the forum country,¹⁹ but the absence of an appropriate agreement with a country does not prevent the grant of legal aid to nationals of that country in France. Legal aid can still be given on a discretionary basis, and this is frequently done since the legal aid bureaus are very generous in this regard.²⁰

There is a considerable demand for legal aid, although it has been decreasing due, as one author put it, to the increasing standard of living.²¹ There have been other factors in this decrease, however, such as the rise of workmen's compensation courts where legal representation is not permitted²² and the increased use of arbitration and legal aid services provided by mutual aid societies.²³ Even so, as chart no. 1 shows, the number of requests for legal aid still remains high. In 1963 (the latest reporting year), there were 58,952 requests for legal aid; 27,982 were granted legal aid, and the remainder were either rejected or resolved (usually by conciliation) before the grant of legal aid became necessary.²⁴ These figures compare with 112,260 requests and 50,756 grants in 1910.²⁵

1905, which has been ratified by Austria, Belgium, Czechoslovakia, Denmark, Finland, France, Germany, Hungary, Luxembourg, the Netherlands, Norway, Portugal, Rumania, Spain, and Switzerland. See generally 1 *ENCYCLOPÉDIE DALLOZ PROCÉDURE* [hereinafter cited as E.D.P.] *Assistance Judiciaire* §§ 193-202, at 284-85 (1955, Supp. 1965).

19 Convention of Establishment with France, art. 3, Aug. 29, 1960 [1960] 2 U.S.T. & O.I.A. 2398, T.I.A.S. No. 4625; published by decree of Dec. 7, 1960 (D.P. 1961.3).

20 See Bureau d'assistance judiciaire (Riom), March 1, 1921 (D.P. 1922.2.11).

21 Marcelle Kraemer-Bach, *Avocat à la Cour de Paris, Legal Aid in France* (1962), found in the collection of materials on legal aid in various countries gathered by the International Legal Aid Association, Oslo, Norway.

22 The *Conseils de Prud'Hommes* are the courts that handle workmen compensation claims. See generally 1 *SOLUS ET PERROT* §§ 638-57. In 1925 these courts handled a total of 74,479 cases (total cases in the bureaus of conciliation and judgment); in 1950 there were 74,399 cases, followed by 77,196 in 1960 and 83,279 in 1963. Figures taken from the Annual Reports to the President of the Republic on the Administration of Civil and Commercial Justice and on the Administration of Criminal Justice by the Ministry of Justice.

23 It is estimated that at the present time some 80% of the commercial contracts in France are written with a clause providing for compulsory arbitration of disputes. At the turn of the century these clauses were virtually unknown. Gronier, *Organisation Judiciaire*, 1 *LE PARTICULIER — GUIDE DE LA DÉFENSE COURANT* 955, 956 (October 1965).

Unfortunately, the writer was unable to secure any statistics on the legal aid granted by mutual aid societies although this aid was said to be substantial. See, however, FRIEDLANDER, *INDIVIDUALISM AND SOCIAL WELFARE* 34-35 (1962), for a brief discussion of these mutual aid societies.

24 Figures taken from Annual Reports *op. cit. supra* note 22.

25 *Ibid.*

Chart No. 1

Legal Aid in the Civil Courts of France¹

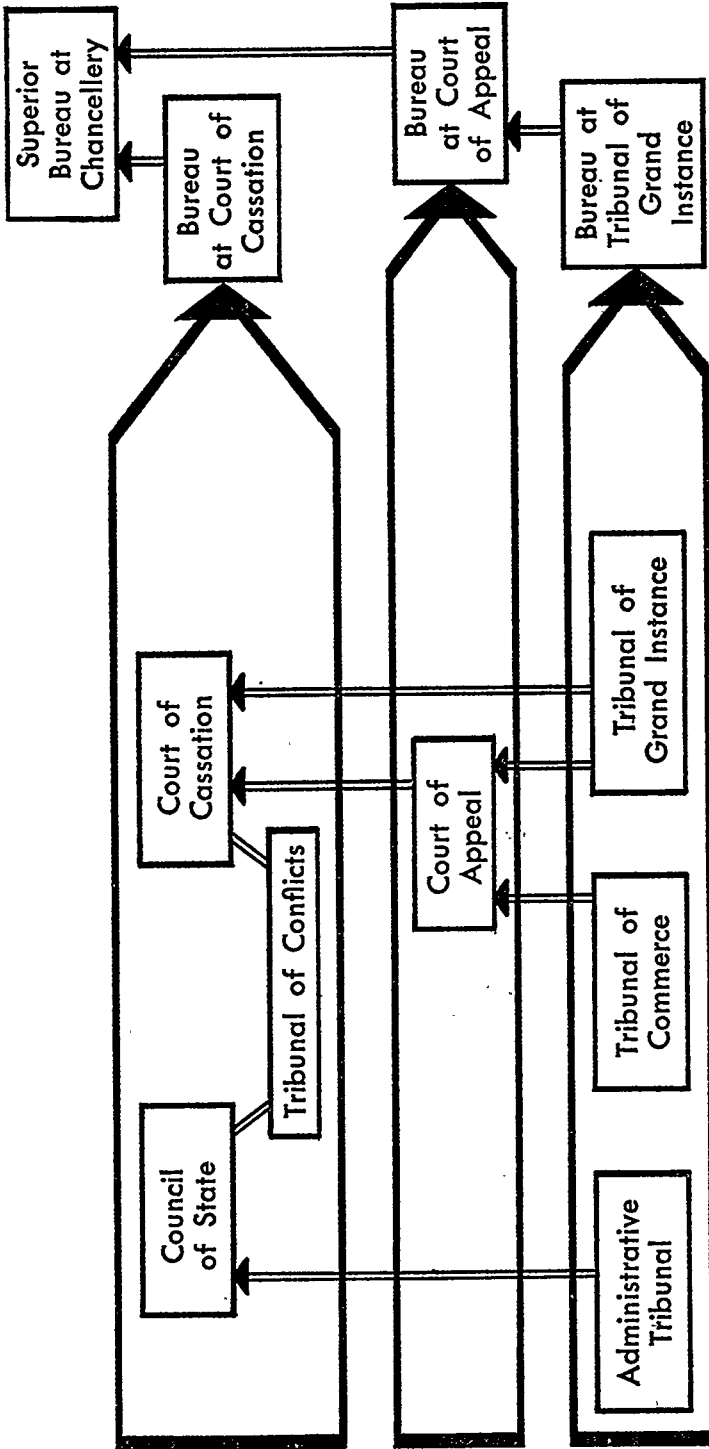
| Tribunal of Grand Instance (Prior to 1958 it was known as the Tribunal of First Instance.) | Cases Before the Court for Consideration | Requests for Judicial Assistance at Corresponding Bureau | Cases in Which Judicial Assistance was Granted | Percent of Requests Accepted |
|---|--|--|--|------------------------------|
| 1900 | 134,961 | 83,781 | 36,469 | 43.5 |
| 1910 | 126,100 | 104,414 ² | 47,670 ² | 45.7 ² |
| 1925 | 213,799 | 83,706 | 36,774 | 43.9 |
| 1930 | 232,668 | 87,294 | 39,024 | 44.9 |
| 1937 | 216,391 | 114,011 | 48,900 | 42.9 |
| 1940 | 137,021 | 76,313 | 32,763 | 42.9 |
| 1957 | 255,386 ³ | 67,378 | 32,005 | 44.2 |
| 1961 | 240,027 ³ | 60,053 | 27,697 | 46.1 |
| 1963 | 255,314 ³ | 53,454 | 25,127 | 47.0 |
| Courts of Appeal | | | | |
| 1900 | 12,611 | 4,913 | 2,205 | 44.9 |
| 1910 | 17,073 | 7,015 ² | 2,943 ² | 41.9 ² |
| 1925 | 58,374 | 4,975 | 2,462 | 49.5 |
| 1930 | 70,950 | 5,728 | 3,055 | 53.3 |
| 1937 | 55,967 | 8,421 | 3,761 | 44.7 |
| 1940 | 36,551 | 4,180 | 2,038 | 48.8 |
| 1957 | 72,262 | 4,282 | 2,460 | 57.4 |
| 1961 | 92,129 | 4,675 | 2,905 | 62.1 |
| 1963 | 94,837 | 4,252 | 2,654 | 62.4 |
| Court of Cassation | | | | |
| 1900 | 1,630 | 506 | 94 | 18.6 |
| 1910 | 1,375 | 831 ² | 143 ² | 17.2 ² |
| 1925 | 4,210 | 416 | 110 | 26.4 |
| 1930 | 4,962 | 601 | 158 | 26.3 |
| 1937 | 7,755 | 1,008 | 296 | 29.4 |
| 1940 | 6,588 | 372 | 75 | 20.2 |
| 1957 | 23,091 | 1,085 | 210 | 19.4 |
| 1961 | 17,481 | 1,273 | 219 | 17.2 |
| 1963 | 15,830 | 1,246 | 201 | 16.1 |

1 Compiled from Annual Reports to the President of the Republic on the Administration of Civil and Commercial Justice and on the Administration of Criminal Justice by the Ministry of Justice.

2 Annual average, 1906 - 1910.

3 In 1953 the regional administrative tribunals of original jurisdiction were established and began referring their applications for legal aid to the bureaus at the various tribunals of grand instance. Also, the commercial courts have always had the right to refer cases to this bureau. Thus, the total number of cases that could have applied for legal aid in the bureaus at this level is actually much larger.

Chart No. 2
Relation of French Legal Aid Bureaus to the Civil Court Structure



In this chart the horizontal arrows indicate which courts are concerned with which legal aid bureaus. The vertical arrows represent the course of appeals, both from the decisions of the courts and from the decisions of the bureaus. There are neither appeals to nor from the Tribunal of Conflicts, which resolves jurisdictional conflicts between the Council of State and the Court of Cassation.

B. Granting Legal Aid: The Legal Aid Bureaus

1. Types

To manage the legal aid system, the 1901 amendments to the Legal Aid Act established a system of legal aid bureaus, which with a few exceptions are attached to each of the principal courts (see chart no. 2).²⁶ The two trial courts in the French judicial system, the tribunal of instance (the lowest trial court, somewhat equivalent to a small claims court) and the tribunal of grand instance (a trial court for more important cases), both use the same legal aid bureau attached to the local tribunal of grand instance.²⁷ This bureau is also used by the commercial courts, which are organized as separate courts at the level of the tribunal of grand instance, and the twenty-three administrative tribunals.²⁸ The volume of cases in these courts is great; thus, the bureaus at this level handle the bulk of the requests for legal aid.

The remaining courts in the regular hierarchy, the courts of appeal and the Court of Cassation (the French supreme court), each have a legal aid bureau.²⁹ In addition to hearing requests for legal aid in these courts, these bureaus also pass on appeals from the bureaus at the next lower level. There are also legal aid bureaus for the judicial chamber of the Council of State (*Conseil d'Etat*), the court that hears appeals from the local administrative courts, and for the Tribunal for Conflicts (*Tribunal des Conflits*), which is a special court that decides conflicts in jurisdiction between the civil and administrative court systems.³⁰ Finally, since 1907 there has been a superior bureau at the Chancellery, which handles special appeals from the legal aid bureaus at the Court of Cassation, the Council of State, and the courts of appeal.³¹

2. Composition

Each of the bureaus is composed of from five to seven members.³² For the most part they are persons familiar with the judicial process or its finances, and thus it is said that they evince a rather practical atmosphere for the business they must transact.³³ This is particularly important for the members of the legal profession, because they seldom receive any compensation for the legal

26 Legal Aid Act arts. 3-13; see generally I SOLUS ET PERROT §§ 1202-05.

27 Legal Aid Act art. 3(1). This bureau also handles requests for legal aid by civil claimants in original criminal actions being tried in the criminal chambers of the tribunal of instance and the tribunal of grand instance, and also at the court of assizes, which is a criminal court of original jurisdiction for serious crimes at the level of the court of appeal.

28 Legal Aid Act art. 3(1). There has been criticism over the lack of a separate legal aid bureau at each of the twenty-three administrative courts of original jurisdiction. See Gabolde, *L'assistance judiciaire devant le tribunal administratif* (D. 1954, Chron. 153). The separation between public and private law is much more pronounced in the civil law; especially in France, than it is in Anglo-American law. The complaint is that those who administer the private side lack adequate knowledge of administrative claims and should not be given the responsibility of granting legal aid in these matters.

29 Legal Aid Act art. 3(2), (3).

30 Legal Aid Act art. 3(3).

31 Legal Aid Act art. 12.

32 Legal Aid Act arts. 3, 12. One more than half the membership is required for a quorum. Decisions are taken by a majority vote. There is an exception for emergency grants of legal aid. These grants may even be made by just one member if no others are available. The legal aid bureau must subsequently review the emergency grant and may revoke it. Legal Aid Act art. 6.

33 CUCHE ET VINCENT § 601.

aid services the bureaus request of them. The judiciary was not assigned the responsibility of passing on legal aid requests because of the possibility that the judiciary would be unduly influenced in the later trial of the case by its earlier decision that the assisted had a sufficient case to warrant legal aid.³⁴

The bureau at a tribunal of grand instance is composed of the following: (1) the local director of registration and domains or his agent; (2) a representative of the local government (prefect); and (3) three members chosen from among the retired judiciary or from among the active or retired members of the various branches of the legal profession.³⁵ As to these latter three members, one is selected by the local bar association of *avocats* (roughly the equivalent of the English barristers), another by the local chamber of the *avoués* (roughly the equivalent of the English solicitors), and the third is chosen by the tribunal. The bureau at the court of appeals is similarly constituted, except that there are two additional members, one chosen by the court and one by the local bar association.³⁶ The bureaus at the level of the Court of Cassation, the Council of State, and the Tribunal of Conflicts also have seven members, but their composition is different, being representative of the interests involved.³⁷ The bureau at the Court of Cassation, for example, in addition to the *avocat* and *avoué*, has two representatives from the Ministry of Finance and three other members chosen by the court from among its retired members, the active or retired *avocats* of the court, or the active or retired law professors at the universities.³⁸ The superior bureau at the Chancellery, due to its very high position, is composed of ranking persons from the Ministries of Finance, Interior, and Justice; the Court of Cassation; the Council of State; and from among the *avocats* who practice before the Court of Cassation.³⁹

In addition, each bureau has a nonvoting secretary, usually the clerk of the court to which the bureau is attached, who organizes the meeting and arranges the cases for discussion.⁴⁰ Even though article six of the act states that the secretaries have no "consultative" voice in the bureaus' decisions, they actually exercise considerable power. The secretaries and their clerks must investigate each request prior to the hearing on the request, and their reports carry considerable influence. In actual practice the secretaries frequently do comment on the request at the hearing, which is to be expected by reason of their superior knowledge of each case.

3. Functions

The function of the bureau is twofold: (1) it investigates to see whether the person lacks the funds to assert his legal rights; and (2) it determines whether the person has a case worthy of receiving legal aid. As to this first function, the act in article one states that legal aid should be granted "when, because of lack

34 See 1 E.D.P. *Assistance Judiciaire* ¶ 40, at 275 (1955).

35 Legal Aid Act art. 3(1).

36 Legal Aid Act art. 3(2).

37 Legal Aid Act art. 3(3).

38 *Ibid.*

39 Legal Aid Act art. 12.

40 Legal Aid Act art. 6.

of means such persons . . . find themselves *unable to exercise their rights in court* . . .” (Emphasis added.) This provision would appear to establish a standard that is not strictly one of indigency, but rather a flexible one of “can this individual afford to bring this suit.” Under such an interpretation, even a wealthy man could secure legal aid provided he could show that a suit was going to be so expensive that he could not afford to bring it. This literal interpretation is not followed; rather, legal aid is spoken of as “a benefit accorded persons who as a result of indigence, practically speaking have no means of exercising their legal rights.”⁴¹ Thus, they must show that it is because of their indigency that they cannot exercise their legal rights.

Although the law has set no monetary standard, the writer has been told that the standard used in the average case is whether the person has an income or salary of 5,000 francs (about \$1,000) or less per year. Thus, practically speaking, an applicant must be an indigent before he will be granted legal aid.⁴² However, in spite of the possibility of prosecution, it has been noted that numerous claimants do falsely state that they are indigent.⁴³ In an attempt to avoid this problem, it has been suggested that the bureaux require more exact standards of financial proof.⁴⁴

The legal aid bureau's second function is to inquire into the merits of the case. Although the act nowhere states that the bureaux are to make such an inquiry, an early directive of the Chancery of the Ministry of Justice, which has administrative control over the bureaux, instructed them to examine the merits.⁴⁵ The scope of the inquiry into the merits of the case is limited to ascertaining if the alleged grievances “justify introduction of litigation before the courts,”⁴⁶ the purpose being to weed out unreasonable requests and instances where a litigant obviously has no case. To help the bureaux reach a proper decision on the merits, the act does provide that they may invite the parties to state their case in person.⁴⁷

4. Procedure

An applicant desiring legal aid must file an application with the public prosecutor or with the local mayor, who in turn will forward the request to the

41 CUCHE ET VINCENT § 592.

42 In 1964 the French national income (converted from francs to dollars) divided by the population showed an average per capita income of \$1,360. For the United States the comparable figure was \$2,602. Figures taken from UNITED NATIONS, STATISTICAL YEARBOOK (1964).

43 FROTIER DE LA MESSELIÈRE, *op. cit. supra* note 1, § 126 (1941); Larrivoire, *L'organisation de l'assistance judiciaire*, 35 BULLETIN—UNION DES JEUNES AVOCATS DE PARIS 93 (1933).

44 *Ibid.* At the present time seldom is any check of the applicant's resources made because the bureaux do not have sufficient personnel to perform such examinations.

45 See Circ. Chanc. Oct. 23, 1912; CUCHE ET VINCENT § 601; Gabolde, *supra* note 28.

46 Circ. Chanc., June 1, 1911.

47 Legal Aid Act art. 8. Article 11 further provides that the adverse party must be notified of a request for legal aid and he may appear before the bureau to “contest the lack of resources, or to furnish explanations on the merits of the case.”

The Legal Aid Act art. 11 gives the bureaux the additional role of trying to bring about an amicable settlement of the dispute which would seem to imply a further duty to examine the merits. This function of the bureaux is informal, and if it is unsuccessful, no mention of the conciliatory steps that were taken may be made in the decision of the bureau. Chanc. Circ., June 15, 1907, Oct. 23, 1912.

public prosecutor.⁴⁸ The application may be made at any stage of the proceedings, even during the trial. It may be written or oral, and the latter is not uncommon, since the applicant merely tells his story and describes his finances to a clerk who fills in the application. Although an applicant must provide information about the nature of his case and his finances, he need not complete any printed applications or forms.

After the application has been filed, the public prosecutor must refer the matter to the appropriate legal aid bureau for consideration.⁴⁹ If the applicant resides in another district, the bureau may have the bureau in that district investigate the case.⁵⁰ If the bureau receiving the request for legal aid is not attached to the court that is to decide the litigation, it must limit itself solely to collecting information on the applicant's lack of resources.⁵¹ The bureau attached to the competent court will then combine this information with its knowledge of the merits in rendering its decision. The investigating bureau may issue an opinion that an insufficiency of resources is not established by the evidence. Such an opinion is not, however, a refusal of legal aid; for the exclusive right to decide rests with the bureau attached to the court of litigation, which may independently appraise all the facts and information submitted.⁵²

The applicant must justify his request by submitting information on the nature of the litigation and, most important, his lack of the means to bring the action.⁵³ A lack of means can be shown in either of two ways. First, the applicant may produce an extract of the tax rolls showing taxes paid on income less than the qualifying sum or a certificate from the local tax collector showing no taxes were imposed. Second, he may produce a social welfare card from the Bureau of Social Aid (*Bureau d'aide sociale*), showing inadequate means, which is considered conclusive proof of poverty.⁵⁴ In addition, the applicant must submit a statement (1) attesting that it is impossible, because of his lack of resources, to exercise his legal rights and (2) detailing his means of subsistence.

The decision of the legal aid bureau contains a brief report of the facts and the means of the applicant, concluding with a statement that the assistance is either granted or denied. If the assistance is granted, no reasons are given. On the other hand, if assistance is denied, the bureau must set forth its reasons.⁵⁵

The parties themselves have no recourse or right of appeal from any of the decisions of the legal aid bureaus. The only person permitted to appeal is the public prosecutor, who may do so after he has received notice of the bureau's decision and the file in the case.⁵⁶ He need not conduct any further investiga-

48 Legal Aid Act art. 8.

49 *Ibid.*

50 See, e.g., Bureau d'assistance judiciaire (Paris), Jan. 12, 1912, (D.P. 1912.2.145, Dupich commentary).

51 Legal Aid Act art. 8.

52 *Ibid.*; see note 50 *supra*.

53 Legal Aid Act art. 11.

54 Law of Jan. 24, 1956, art. 162 (D. 1956.62). On the work of the Bureau of Social Aid see FRIEDLANDER, *INDIVIDUALISM AND SOCIAL WELFARE* 30-36 (1962).

55 Legal Aid Act art. 12. The reasons for the refusal must be communicated to the applicant. Circ. Chanc., May 29, 1953.

56 Legal Aid Act art. 12. At the level of the Council of State and the Tribunal of Conflicts, it is the Minister of Justice who has the power to appeal decisions. At the level of the Court of Cassation it is the Attorney General (*Procureur Général*) who is so empowered. All

tion, but can appeal the decision, regardless of whether it be a grant or denial of legal aid, to the appropriate higher bureau. The public prosecutor adds to the decision of the bureau all the information he has gathered to support the good faith of the bureau and, through the Attorney General, transmits the dossier to the president of the bureau at the court of appeal.⁵⁷

If the prosecutor is at the level of the tribunal of grand instance, he refers the case to the bureau at the court of appeal, from which there is no further appeal. The prosecutors or their equivalents at the level of the courts of appeal, Court of Cassation, Council of State, and Tribunal of Conflicts can appeal their cases (except from a lower bureau to the bureau at the court of appeal) to the superior bureau at the Chancery.⁵⁸ The prosecutor must also immediately notify the adversary of the applicant of his intention to appeal the decision denying aid and of the adversary's right to bring all relevant documents and information to the attention of the appeal bureau. Recital of such notice must be made in the report filed with the Chancery.⁵⁹

As an aside, it is not surprising that a civil law country would assign to the public prosecutor this duty of insuring that the indigent receives his day in court. The prosecutor under the civil law is a much more independent and forceful personage than is his American counterpart; it is, for example, not uncommon for him to take the side of the defense, or enter into a civil action as a sort of *amicus curiae*.⁶⁰

The decisions of the legal aid bureaus denying a request for aid resemble judicial opinions, and they are cited and reported as such. This is to be expected for such a decision is usually determinative of the litigation between the parties. Without legal aid, a requesting plaintiff will probably have to drop the suit, and such a defendant will be forced to abandon his defense and settle. On occasion parties have tried to use the decisions of the legal aid bureaus because of their quasi-judicial nature as *res judicata*. In one case where this was attempted, the court quickly struck down this defense saying that

res judicata attaches only to the decisions of those jurisdictions having the competence to decide law as against litigation; which is manifestly not the case in decisions of the legal aid bureaus which are not called upon to make a ruling over a litigation between two approving parties.⁶¹

Although the court did not mention it, the act actually forbids any production

these appeals, together with those of the public prosecutors at the courts of appeal, go to the special bureau in the Chancery. See generally I SOLUS ET PERROT § 1205 (Sirey 1961).

57 Circ. Chanc., Dec. 13, 1907. In a further circular of Oct. 8, 1925, the public prosecutors were urged to appeal all decisions granting legal aid, where the aid seems to have been too freely granted, especially where the claim was made in the course of the proceedings.

58 The Attorney General attaches to the file of the decision appealed a report containing a complete résumé of the affair, as well as a brief of the facts and law on which the appeal is based. Circ. Chanc., Dec. 13, 1907; March 6, 1908; July 29, 1912.

59 Circ. Chanc., May 21, 1910.

60 See Pugh, *Administration of Criminal Justice in France: An Introductory Analysis*, 23 LA. L. REV. 1, 7-8 (1962).

61 Judgment of June 13, 1956, Tribunal Civil (Strasbourg), June 13, 1956 (D. 1956. 731).

or discussion of the bureau's decision in court, except in the case of a criminal prosecution for having fraudulently obtained legal aid.⁶²

5. Provisional Grants and Mandatory Grants

The Legal Aid Act further establishes the machinery for the grant of provisional legal aid "in cases of extreme emergency."⁶³ It is silent, however, on exactly what is to be considered an extreme emergency, how long this aid shall last, and who is responsible for costs in case the aid is subsequently withdrawn. Practice has provided some answers. The principal goal of provisional assistance seems to be to avert forfeitures of rights that may occur due to short or oppressive time limits placed upon their exercise. In practice, provisional assistance has been limited both in grant and in duration to those actions. A decision of the full bureau is required for the grant of aid in other situations.⁶⁴ If the bureau ultimately denies the grant, the taxes, fees, and emoluments must be recovered from the assisted, who has benefited from them.⁶⁵

In a small but important number of civil cases requests for legal aid must be granted; the legal aid bureau has no discretion to grant or deny legal aid in these cases.⁶⁶ This statutory right to legal aid, which is like the legal aid accorded in criminal proceedings (section III *infra*), is applicable to cases involving: work accidents;⁶⁷ claims by miners against the Assistance and Pension Funds for Miners;⁶⁸ work claims of domestic laborers;⁶⁹ military pensions;⁷⁰ prisoners of war and political and military deportees and internees;⁷¹ the special security funds for French seamen;⁷² pensions of laborers and farmhands;⁷³ mutual aid societies;⁷⁴ work problems of expectant women;⁷⁵ and the infirm and the aged.⁷⁶

C. Effect of the Grant of Legal Aid

The grant of legal aid entitles the recipient to the following.

1. All court costs, including filing fees, witness fees, expert fees, fines, etc.,

62 Legal Aid Act art. 12. This refers only to "decisions" of the bureau and does not exclude evidence of an agreement the parties reached before the bureau, Bureau d'assistance judiciaire (Paris), Nov. 19, 1904 (D.P. 1909.2.167), or the record of an inquiry made by the *gendarmerie* on the applicant's request at the instance of the public prosecutor.

63 Legal Aid Act art. 6.

64 See generally 1 E.D.P. *Assistance Judiciaire*, ¶ 95, at 278 (1955).

65 *Id.* ¶ 190, at 284.

66 See GRÉMIEU, *TRAITÉ DE LA PROFESSION D'AVOCAT* § 80 (2d ed. 1954); I SOLUS ET PERROT § 1200.

67 Law of April 9, 1898, as modified and extended by Laws of March 27, 1902; April 12, 1906; and July 1, 1938.

68 Law of June 29, 1894.

69 Law of Nov. 27, 1909.

70 Law of March 31, 1919.

71 Law of March 18, 1946 (D.P. 1946.147). On the special welfare benefits accorded veterans and war victims, see generally FRIEDLANDER, *op. cit. supra* note 54, at 46-48.

72 Laws of Dec. 29, 1905; April 8, 1910.

73 Laws of April 5, 1910; Jan. 4, 1928.

74 Law of April 1, 1898, art. 13 (D.P. 99.4.27).

75 Law of Jan. 4, 1928. Art. 29 of the Labor Code (*Code de Travail*) provides that pregnant women must be granted leaves of absence from their jobs for an eight-week period, of which six must be after the birth. If the woman is fired during this period, she has the right to damages and interest, and the above law provides her with legal aid to enforce this right. See generally FRIEDLANDER, *op. cit. supra* note 54, at 163-64.

76 Law of July 14, 1905, art. 5.

are deferred until he is able to pay them.⁷⁷ The collection of such amounts is, however, a rare occurrence, for seldom will a legally aided person come into sufficient funds to pay this amount; and even if he does, the state will probably never know of it unless informed by the individual. If the assisted person receives a money judgment, the state will have first claim on the proceeds for the reimbursement of its expenses.

2. If the court is the tribunal of grand instance, the recipient, depending on the needs of his individual case, is entitled to the services of an *avocat*, an *avoué*, and a *huissier* (a process server who is a member of the legal profession).⁷⁸ Within three days after the grant of legal aid, the president of the legal aid bureau will send a decision and the file on the case through the public prosecutor to the president of the court that is sitting in judgment. The law then states that the president of the court

will invite the *bâtonnier* of the association of *avocats*, the president of the chamber of *avoués* and the syndic of the *huissiers* to designate an *avocat*, an *avoué* and a *huissier* who are to furnish their services to the legally assisted person.⁷⁹

The assisted person is completely absolved of any obligation, provisional or otherwise, to pay the fees of anyone so appointed to help him.

3. If the matter is one brought before an administrative tribunal, a commercial court, or before a judge of a tribunal of instance, the head of the court is permitted to ask only for the services of a *huissier*,⁸⁰ because legal representation in these courts is usually not necessary. The *huissier* has the power in these courts to do practically everything that an *avocat* and an *avoué* could do in any of the other courts.

4. If the matter is brought before the Court of Cassation, the Council of State, or the Tribunal for Conflicts, the president of the court will ask the president of the council of the association of *avocats* at the Council of State to assign a member of the association and will ask the syndic of the *huissiers* to designate a *huissier*, should his services be necessary.⁸¹

5. If the grant of legal aid is for purposes of negotiation or settlement rather than litigation, the file will still be sent to the president of the tribunal of grand instance. He will ask for a *huissier* or an *avoué*, whichever is appropriate.⁸²

6. An assisted person is also entitled to the services of a notary and the clerk of the court. Any service they render without charge, however, must be pursuant to the order of a local court, the tribunal of instance, or the president of the court having jurisdiction of the case.⁸³

⁷⁷ Legal Aid Act art. 14. See generally CUCHE ET VINCENT § 603; I SOLUS ET PERROT §§ 1206-11.

⁷⁸ Legal Aid Act art. 13.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ Legal Aid Act art. 16. The notary in France, as in most civil law countries, is a respected member of the legal profession who is primarily responsible for the drafting of legal documents. See generally Brown, *The Office of the Notary in France*, 2 INT'L & COMP. L.Q. 60 (1953).

7. The assisted person will have the continued right to legal aid if he becomes an involuntary appellee.⁸⁴ In such a case he need not even apply for further legal aid. If, however, he appeals the decision, he must apply to the bureau of the court appealed to. Requesting legal aid in an appellate court requires the services of a knowledgeable member of the legal profession, presumably one who practices in that court, to prepare a written application. If the request is approved, the draftsman will be reimbursed for his preliminary services.

Controlling the grant of legal aid is an important aspect of any organized system of legal aid, and in France this responsibility is imposed on the courts. The grant of legal aid by the bureau is usually an all-or-nothing affair; the bureau seldom attaches any restriction to the grant. In appropriate circumstances, however, a bureau may limit a grant of legal aid to just the right to negotiate, even though the right to bring suit was requested. Also, the bureau retains the right to revoke the grant if the assisted party comes into sufficient funds to prosecute the suit himself or is shown to have concealed assets in making his request for legal aid.⁸⁵ But for this element of bureau control, once the grant is given it is entirely up to the court having jurisdiction to supervise the case and the incurring of expenses. The hiring of expert witnesses and the expense of calling other witnesses are all within the discretion of the court, which must weigh the relative value of such testimony in comparison to its expense. It is also the court, the tribunal of grand instance, that supervises the grant of legal aid in a case not involving litigation, as in those cases where the grant is for negotiation or the drafting of settlement papers.

It is not inappropriate that the court in a civil law country performs this policing function, for their courts perform many more functions than do ours in the Anglo-American system. In France once an action has been filed, the court takes complete charge of the proceedings, including the collection of evidence and the presentation of evidence at trial. The evidence gathering function of the civil law courts in civil litigation is usually spread over a series of hearings, which makes it relatively easy for the judges to keep a continuous check on the legal aid aspects of the case.⁸⁶

Another significant aspect of the French grant of legal aid is that the grant is for all the expenses incurred, although court costs are theoretically advanced

⁸⁴ Legal Aid Act art. 9.

⁸⁵ Legal Aid Act art. 21. See I SOLUS ET PERROT § 1211. Failure by an applicant to disclose his resources adequately to the bureau in the request for legal aid has been inferred from the fact that the assisted person had an additional *avocat* from another bar, as well as the *avocat* appointed by the *bâtonnier* at the bar associated with the trial court. Bureau d'assistance judiciaire (Sables d'Olonne), Nov. 18, 1940 (D.A. 1941.127).

⁸⁶ The initiative does not rest in the parties, as in the Anglo-American system, but in the judge. It is the judge's duty, particularly in criminal cases, to see that the evidence is collected and the issues refined prior to trial, which he does in a series of hearings. This pretrial process of gathering and refining the evidence is no simple task; in criminal cases it is not uncommon for this preliminary investigation to last a year or more. At trial another judge, most usually a panel of judges, will direct the case, question the witnesses, and decide what evidence should be brought forth. See generally Pugh, *Cross-Observations on the Administration of Civil Justice in the United States and France*, 19 U. MIAMI L. REV. 345 (1965); Pugh, *Administration of Criminal Justice in France: An Introductory Analysis*, 23 LA. L. REV. 1 (1962). See also Cohn, *The German Attorney — Experiences With a Unified Profession*, 9 INT'L & COMP. L.Q. 580 (1960); 10 *id.* at 103 (1961).

to the litigant only until he is able to pay. This is indeed unfortunate; for, as has been pointed out by French writers,⁸⁷ many recipients of legal aid could well afford to contribute a part of the cost of the services rendered. This writer has been told by a secretary of a legal aid bureau that approximately fifty per cent of those receiving legal aid in France could afford to pay at least something toward the cost of the legal services they receive. If this were done, the funds received could be used to give at least partial payment to members of the legal profession, who in most instances now give their services gratuitously.

D. The Legal Profession

Legal aid is a heavy burden on the French legal profession, for it is required to give its services without compensation in both civil and criminal cases.⁸⁸ This system has resulted in numerous cases of personal hardship for the lawyers involved, just as in the United States system of appointed counsel who similarly receive little or no compensation.⁸⁹ A decree of December 22, 1958, has partially relieved this situation by permitting an *avocat* (or an *avoué* for his trial fees) to claim a fee from the assisted person if he recovers an award of a sufficient amount that if he had possessed it prior to his application for legal aid, his request would have been denied.⁹⁰ In addition, the treasury of the appropriate bar has always been permitted to sue the nonassisted losing party for the *avocat's* fee, but any recovery goes for the general charitable purposes of the bar and not for the personal benefit of the *avocat*.

The actual enforcement of this prohibition varies according to the bar involved. Article twenty-four of the Rules for the Paris Bar states: "In matters where legal aid has been granted, *all demanding or accepting of fees is strictly forbidden*."⁹¹ On the other hand, the Rules for the Lyon Bar state that the honorariums spontaneously offered by the aided person can be accepted only in exceptional circumstances and only with the authorization of the *bâtonnier*, the president of the local bar of *avocats*.⁹² An *avocat* who accepts a fee in violation of the rules is subject to suspension by the council of discipline of the bar on the first violation and expulsion for the next.⁹³ Regardless, the unauthorized giving and accepting of fees, while not common, is known to occur.

The assignment of lawyers is made by the respective heads of the various branches of the legal profession, *i.e.*, when an *avocat* is needed, the assignment is made by the *bâtonnier*. Due to the fragmentation of the legal profession, it is to be expected that more than one assignment must be made. This is par-

87 See, *e.g.*, Crémieu, *op. cit. supra* note 66, § 87; I SOLUS ET PERROT § 1212.

88 See generally Crémieu, *op. cit. supra* note 66, §§ 83-85; I SOLUS ET PERROT, §§ 1206-10.

89 In Siré, *The Legal Profession and the Law: The Bar in France*, 1 J. INT'L COMM'N JURISTS 244, 259 (1958), there is an example cited of two very important members of the Bordeaux bar who were appointed to defend an accused in a month-long case before a military tribunal. There are said to be many similar examples of personal hardship. On the American experience, see SILVERSTEIN, *DEFENSE OF THE POOR IN CRIMINAL CASES IN AMERICAN STATE COURTS* ch. 2 (1965).

90 Legal Aid Act art. 18.

91 Quoted in CRÉMIEU, *op. cit. supra* note 66, § 83.

92 *Ibid.*

93 *Id.* § 85.

ticularly true if an appeal is taken, for an assignment of an *avocat* or *avoué* is usually good only for that court. Take, for example, a case in a tribunal of grand instance in a small town. The assembly of the *avoués* for that court will be asked to appoint an *avoué* and probably the *bâtonnier* will be asked to provide an *avocat*. The *avoué* can practice only in the court he is attached to; thus, if the case is appealed, there must be a new *avoué* who is attached to the appellate court. (Remember, there must be an *avoué* in cases before the tribunal of grand instance and the court of appeal.) The *avocat* is a member of a local bar, not the bar of a particular court; but if the court of appeal is located in a different city, there will probably be another bar. It will be up to the *bâtonnier* of that bar whether the *avocat* who pleaded the case at the level of the tribunal of grand instance can continue, and this is only permissible if the *avocat* has also received the permission of the *bâtonnier* of his own local bar and has agreed to plead gratuitously.⁹⁴ If the case goes to the Court of Cassation, there are no *avoués*, but a new *avocat* will be required as there is a select group of sixty *avocats* whose sole job is to plead in the Court of Cassation and the Council of State. They, however, act as their own *avoués*. With such intensive specialization in the French legal profession, it is surprising that there are not more requests for legal aid.

In the legal aid system the services of the *avocats* are called upon more frequently than are those of any other branch of the legal profession, and they in turn usually assign a *stagiaire*, an apprentice lawyer, to handle the case.⁹⁵ In making the assignments, the *bâtonnier* must inquire into the nature of the matter and the aptitude of the various *stagiaires* in the particular *avocat's* charge. If it is a difficult or important matter, the *bâtonnier* will assign one of his most qualified *stagiaires*. In these important cases, he can also give the assignment to a regular *avocat*. In describing the reason for this use of apprentices one French text writer said, "The best method for the young lawyer to develop himself and to gain professional experience is to plead as much as possible";⁹⁶ and legal aid work, which he will be obligated to perform, will give him this opportunity. Upon graduation from law school (*Lycée* plus four years of law study), an aspiring *avocat* must serve at least three additional years as a *stagiaire*, and it is during his second year that he is usually first given legal aid cases.⁹⁷

Requests to a *bâtonnier* for a specific *avocat* are looked upon with suspicion, as collusion to obtain a percentage fee is suspected. Specific requests, therefore, are seldom approved. In addition, once an *avocat* is appointed, he can be relieved only for serious reasons. Furthermore, on his own he is strictly forbidden to substitute another *avocat* in his place; it is up to the *bâtonnier* whether an *avocat* or *stagiaire* can be excused or another substituted. At least one French legal writer has complained that there are many *stagiaires* who are lax in their

94 *Id.* § 81.

95 Lepaulle, *Law Practice in France*, 50 COLUM. L. REV. 945, 956-57 (1950).

96 CRÉMIEU, *op. cit. supra* note 66, § 79.

97 See generally Dainow, *Revision of Legal Education in France: A Four-Year Law Program*, 7 J. LEGAL ED. 495 (1955).

legal aid assignments and who often unload them on their more industrious colleagues.⁹⁸

III. Legal Aid in Criminal Cases

Legal aid for the accused in criminal trials is not dependent in any manner on the legal aid bureaus; in all but one of the criminal courts legal aid is a statutory right.⁹⁹ In the lowest criminal court, the police tribunal, which can impose minor fines and jail sentences of up to two months, there is no statutory authority for the appointment of counsel. It is customary, however, for the judge in his discretion to grant legal aid, based upon the circumstances of each case, by requesting the *bâtonnier* to appoint counsel for the accused. There is one possibility of a statutory appointment at this level; namely, where an investigating magistrate (*juge d'instruction*) had originally been assigned the investigation of the case, he is required to appoint counsel if the accused requests one.¹⁰⁰ Actually, the magistrate requests the *bâtonnier* to make the appointment. Such an appointment, however, would be quite rare since the investigating magistrate usually investigates only serious criminal matters.

At the level above the police tribunal is the court of correction, the criminal chamber of the tribunal of grant instance, which can impose fines and sentences of from two months to five years. In this court an accused has a statutory right to legal aid regardless of his means.¹⁰¹ If the accused requests legal aid or the judge considers counsel necessary, legal representation will be provided for him. The judge simply requests the *bâtonnier* to provide the necessary counsel. In the most serious criminal cases, those that involve a penalty of five years or more and are tried before the highest trial court, the court of assizes, the accused must be represented by counsel.¹⁰² Counsel will be provided even if the accused does not request one and even if he does not want it. In exceptional cases the judge in this court may permit the accused to have as his counsel a friend or relative, instead of a member of the bar. It was in this manner that Victor Hugo and Clemenceau served as defense counsel in several celebrated cases before the court of assizes.¹⁰³

98 CRÉMIEU, *op. cit. supra* note 66, § 82.

99 See generally STEFANI, *PROCÉDURE PÉNALE* §§ 262-63 (2d ed. 1962); Snee & Pye, *Due Process in Criminal Procedure: A Comparison of Two Systems* 21 OHIO ST. L.J. 467, 483-84 (1960).

100 The Code of Penal Procedure art. 114 requires the investigating magistrate in his first meeting with the accused to inform him of his right to counsel. If the accused requests counsel, the judge must provide it. Invariably it is at this stage that an accused receives counsel; seldom does the trial judge have to attend to this matter.

101 The Code of Penal Procedure art. 417 provides:

An accused who appears shall have the privilege of being assisted by defense counsel.

If he has not chosen defense counsel before the hearing and if he requests nonetheless that he be assisted, the president shall himself assign one.

The defense counsel may be chosen or designated only from among the barristers inscribed at a bar or from among the solicitors admitted to plead before the court.

The assistance of a defense counsel is obligatory when the accused is subject to such an infirmity as to compromise his defense or when he may incur the punishment of imprisonment in an overseas territory.

102 Code of Penal Procedure art. 274. See also Legal Aid Act art. 28. There is also a right to legal aid for suspects if their poverty is established. Legal Aid Act art. 29.

103 The most notable example in Clemenceau's unsuccessful defense of A. Perreux, the

If the prosecution should appeal the decision in the trial, which is not uncommon in France, the court would request that the bar and the syndic of *avoués* provide any additional aid required. On the other hand, should the accused wish to appeal, any further legal aid is a matter within the court's discretion.

The legal aid bureaus play no role whatever in the appointment of counsel in criminal cases. These appointments are either a matter of absolute right, as in the court of correction and the court of assizes, or they are dependent on the discretion of the judge, as in the police tribunal. These services are offered to the accused without charge, even if he should be wealthy. It would be unlikely, however, that the judge at the police tribunal would grant legal aid if the accused had sufficient funds. In the other courts there is no judicial discretion whatever to refuse legal aid.

As in civil legal aid, the services of the various members of the legal profession are provided gratuitously, a burden falling most heavily on the young *stagiaires*. In criminal cases, however, the appointed member of the bar (*avocat* or *stagiaire*) may accept payment for his services if the assisted person offers and the *bâtonnier* approves.¹⁰⁴ This changes the assignment of counsel to what is called a "designation" of counsel. In effect, this frequently used procedure allows an accused to avoid having to choose counsel; the bar does it for him. He can simply arrange to pay the counsel a fee for his services. Also, those who can afford to pay something toward their defense usually want to, for human nature is such that an accused will feel that by paying he will receive a better defense.

The provision for mandatory counsel in the court of assizes, regardless of the wishes of the accused, is also found in the criminal procedure code of several other European nations, most notably Germany.¹⁰⁵ The right-to-counsel provisions of the German Criminal Code were extended in December of 1964 to cover approximately one-half of all the criminal cases other than the most minor.¹⁰⁶ The German provisions differ from the French in that the German court has discretion to require an accused with funds to contribute payment for all or part of the legal aid that he received, whereas in France the court has no discretion to require any payment.

The simplicity of a system of mandatory defense counsel, at least in the more serious cases, does have a certain amount of appeal. It eliminates having to decide whether a person meets the "means" and "merits" tests. Also, it makes for a smoother administration of justice, because only lawyers are appearing before the court.

editor of *L'Aurore*, in a prosecution for libel before a Court of Assize in 1898 for the publication of the famous letter "*J'accuse*" by the Dreyfusard, Emile Zola. Clemenceau's defense was based on an impassioned plea for freedom of the press. BRUUN, CLEMENCEAU 57, 60 (1943); DREYFUS & DREYFUS, THE DREYFUS CASE (Yale U. Press ed. McKay transl. 1937); see also TUCHMAN, THE PROUD TOWER ch. 4, especially 196-200 (1966).

¹⁰⁴ See CRÉMIEU, *op. cit. supra* note 66, § 84.

¹⁰⁵ See GERMAN CODE OF CRIMINAL PROCEDURE arts. 140-42.

IV. Conclusion

Perhaps no system of legal aid can ever be so complete that one's need for a lawyer is never denied. The French system is a step in this direction and represents a greater step than has been taken in the United States. However, the original legal aid statute in France is now over one hundred years old; and although important amendments have been made over the years, many very significant deficiencies have either crept in or have become more apparent.

The most serious deficiency of the French legal aid system is that it calls upon the members of the legal profession to provide their services gratuitously in most legal aid cases. In civil cases they can receive compensation only if their client recovers a sufficient sum of money, and in criminal cases, only if the client volunteers to pay something toward his legal fees. This general lack of payment to the lawyers results in legal aid being a heavy burden on the legal profession, especially the inexperienced *stagiaires*, the apprentice lawyers who earn very little anyway and must bear the brunt of the assignments. If even a small percentage of the usual fee were to be given in payment, more members of the bar could be utilized. The payment of some modest fee would also provide incentive to the lawyers assigned legal aid cases.

France is one of only a few countries having a general system of legal aid that does not provide some kind of payment to the participating lawyers. Even the United States is coming to realize the need for paying for the lawyer's legal aid services. What little organized legal aid there is in the United States (bar and municipally supported legal aid offices, public defender offices, and the legal services program of the Office of Economic Opportunity) usually provides payment for the lawyers involved, be they in-house counsel or practicing members of the bar. The assigned counsel system, which is still the most prevalent form of legal aid in the United States, is similarly coming to accept the fact that paying counsel is necessary. Payment could come from the state, as in Germany¹⁰⁷ and as is usually the case in the United States;¹⁰⁸ or it could be a combination of state funds and partial payment by those who can afford to make a contribution, as under the English system.¹⁰⁹ The latter is by far the best solution, for it also takes into account the varying means of those requesting legal aid by basing the individual's contribution on his means.

The French act as it now stands neglects the needs of the middle income classes in civil cases. Although the standard for legal aid according to the act is not indigency, but whether the person can afford to bring the suit, legal aid is rarely granted if the applicant has an annual income in excess of 5,000 francs (\$1,000). This figure is relatively low; in effect it is a poverty standard. A person of small or medium income may be able to bring or defend a legal action, whereas the indigent could not even contemplate it without legal aid; but the

106 See Robinson, *Arrest, Prosecution and Police Power in the Federal Republic of Germany*, 4 DUQUESNE L. REV. 225, 263 (1965).

107 See generally Stohr, *The German System of Legal Aid: An Alternate Approach*, 54 CALIF. L. REV. 801 (1966).

108 See SILVERSTEIN, *op. cit. supra* note 89, at 16-17.

109 See note 11 *supra*.

likely end result of any contested action is that the cost of the suit will seriously injure the financial position of the middle income litigant. The suit may take his savings or force him to borrow, thus enhancing the possibility that he will become an object of some other form of state aid in the future. Only the English legal aid scheme has fully appreciated the extent of this problem and sought to give legal aid to those of intermediate means. The English system does not grant total legal aid to those of intermediate means; it requires them, depending on their means, to pay a part of the cost of the legal services they receive.

Of late there has been considerable debate in France in relation to judicial procedure and the organization of the legal profession, notably the artificial distinction between *avocats* and *avoués*.¹¹⁰ It was generally conceded among those members of the legal profession whom this writer had the opportunity to contact that the scope of the present legal aid provisions must be expanded beyond the needs of indigents and that when this is done, some provision would have to be made for paying the lawyers handling legal aid cases. One rather radical proposal that has been mentioned would be to put legal aid on a universal basis similar to the French system of health insurance.¹¹¹ Doctors in France, in treating those individuals covered by health insurance, which constitute the vast majority of the population, are loosely bound by a fee schedule set by the Government and the local medical association. The doctor can charge more than this fee if the patient agrees and the doctor has the permission of the local medical association. The doctor's fee is paid by the patient, who in turn is reimbursed by the Social Security Fund for eighty percent of the governmental fee even though the patient may have paid more than this amount. In this manner, the better doctors can charge more; yet there are always doctors who are willing to treat patients at the lower government fee, which in effect entitles the patient to receive medical treatment for twenty percent of the normal fee. Adoption of a similar plan for the legal profession may not be too far in the offing.

Looking back one cannot help but be impressed by even the present French legal aid scheme; it is a well-organized and well-administered system that provides complete legal services for the indigent in both civil and criminal cases. But even more significant for the American observer is that this system of organized legal aid has been in existence for over one hundred years. Legal aid in the United States, especially in the area of civil litigation, does not come close to equaling the present French system either in scope or in uniformity of coverage.¹¹²

110 See, e.g., Reports présentés à l'occasion du congrès de la chambre nationale des avoués près les tribunaux de grande instance, *Le débat judiciaire* (1964); I SOLUS ET PERROT § 903; Gronier, *Organisation Judiciaire*, 1 LE PARTICULAR—GUIDE DE LA DÉFENSE COURANT 955 (Oct. 1965).

111 For a description of the French health insurance, see FRIEDLANDER, *INDIVIDUALISM AND SOCIAL WELFARE* 177-83 (1962); RIDLEY & BLONDEL, *PUBLIC ADMINISTRATION IN FRANCE* 290-92 (1964).

112 For a critique of legal assistance in the United States in civil and criminal cases, see KAMISAR, *Equal Justice in the Gatehouses and Mansions of American Criminal Procedure*, in *CRIMINAL JUSTICE IN OUR TIME* 3 (Howard ed. 1965); WALD, *LAW AND POVERTY: 1965* (Report to the Nat'l Conference on Law and Poverty 1965); *Symposium: Justice and the Poor*, 41 NOTRE DAME LAWYER 843 (1966).