



1965

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Recommended Citation

Howell, Carl Jr. (1965) "The Unauthorized Practice of Law: A Public Relations Problem," *Kentucky Law Journal*: Vol. 54 : Iss. 1 , Article 8.

Available at: <https://uknowledge.uky.edu/klj/vol54/iss1/8>

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Student Notes on Legal Ethics

THE UNAUTHORIZED PRACTICE OF LAW A PUBLIC RELATIONS PROBLEM

INTRODUCTION

Under our system of jurisprudence, the "practice of law" definition must necessarily change with the everchanging social order. It is traditionally agreed that the practice of law involves the essential personal relationship existing between the lawyer and his client, and is not limited to conducting litigation. It also includes giving legal advice and counsel, rendering a service that requires the use of legal knowledge and skill, and preparing instruments and contracts by which legal rights are secured, whether or not the matter is pending in court.

In recent years laymen have been performing certain of the services once considered, and by some courts still considered, included in the "practice of law." In some instances, an attorney may not be readily available. In many transactions, principally including the preparation of contracts of sale, deeds, and mortgages by real estate brokers and by bankers, the parties involved either do not recognize the need for an attorney's services, or sincerely believe that such services would unduly delay the transaction and increase the cost thereof. And always in the background is the feeling of many that the legal profession is only trying to increase its economic position by insisting that these matters require an attorney.

The legal profession has sought to curtail the activity of certain groups, contending that there is no such thing as a simple legal instrument in the hands of a layman, and that the public should be protected from incompetent advice. In many states, including Kentucky, a strict compliance with the statutes and the rules of practice is demanded in the cases that have been brought to the attention of the courts. Isolated instances of activity have been held permissible, if no compensation is involved, if the matter is one in which the party has an interest, or if a mere clerical duty is performed.

This paper is concerned with the matter of public relations involved in the practical problem of the "unauthorized practice of law." The changing theories as to what is the practice of law will be developed, and the attitudes of the public will be noted. Views as to the public welfare in this regard are involved and are balanced against the traditional views of the profession. Recent cases

and surveys will be considered, with conclusions drawn as to the possible actions that might be taken, and as to those actions that should be avoided.

THE PUBLIC RELATIONS PROBLEM PRESENTED

In our complex society, with its increasing urbanization, specialization of labor and services, what can effectively be done to convince the public that the services of an attorney are necessary in transactions involving the use of legal knowledge and skill, where legal rights are involved, even though the transaction appears to be a matter of form, and of minor consequence?

It is agreed that this problem is becoming more difficult. Along with the medical profession, the lawyers recognize the decrease in personal contact and rapport with the client. Legal aid groups in the larger cities are a recognition of this fact. And always there must be an awareness by the profession that the cry may be raised by the public, or by the real estate brokers and the bankers, that lawyers are primarily interested in raising their income by forcing parties to transactions to employ them.

The problem is perhaps increased by the seeming lack of interest by individual lawyers. Few if any of the lawyers in the towns of central Kentucky with which the writer is familiar appear concerned by the fact that every day real estate brokers draw contracts of sale, leases and deeds, and that bankers regularly fill in real estate and chattel mortgage forms; that in every county seat town there are several laymen preparing tax returns. In fact, many lawyers do not want to do tax work, and have lost this business by willing default. Voices are sometimes raised at the Bar Association meetings about these matters, but not too seriously. So, an important question emerges: Are the lawyers really concerned whether or not the work done by the laymen, real estate brokers, bankers, tax consultants, is brought back to the law offices?

The Supreme Court of Pennsylvania reminds us that what we have considered the province of lawyers from time immemorial might not be entirely correct, when it said:

From the earliest days of this Commonwealth, justices of the peace, aldermen and local magistrates have drawn and still continue to draw leases, deeds and mortgages without holding themselves out as lawyers or engaging in the practice of law in the sense condemned by the statute. Real estate brokers perform the same acts as incidents of their business.¹

¹ *La Brum v. Commonwealth Title Co.*, 358 Pa. 239, 56 A.2d 246, 248 (1948).

And was the Supreme Court of Minnesota one of the first to recognize changing conditions, when in 1940 it said:

The line between what is and what is not the practice of law cannot be drawn with precision. Lawyers should be the first to recognize that between the two there is a region wherein much of what lawyers do every day in their practice may also be done by others without wrongful invasion of the lawyers' field. We think that ordinary conveyancing, part of the every day business of the realtor, is within that region and consequently something of which the legal profession cannot under present circumstances claim that the public welfare requires restraint by judicial decree. It is the duty of this court so to regulate the practice of law and to restrain such practice by laymen in a common sense way in order to protect primarily the interest of the public and not to hamper and burden such interest with impractical technical restraints no matter how well supported such restraints may be from the standpoint of pure logic. Viewing the problem in that light, we do not think it would be in the interest of public welfare to restrain brokers from drafting ordinary instruments necessary to effectuate the closing of the ordinary real estate transaction in which they are acting. We do not think the possible harm which might come to the public from the rare instances of defective conveyances in such transactions is sufficient to outweigh the great public inconvenience which would follow if it were necessary to call in a lawyer to draft these simple instruments.²

Attention is invited to the importance the Minnesota court gives to the public welfare, public interest, and convenience.

Seven years later, in *Auerbacher v. Wood*, the Supreme Court of New Jersey, said:

The court should be very cautious about declaring that a widespread, well-established method of conducting business is unlawful, or that the considerable class of men who customarily perform a certain function have no right to do so, or that the technical education given by our schools cannot be used by graduates in their business.³

Also, in *Rinderknecht v. Toledo Association of Credit Men*, the court stated:

We are in full sympathy with the efforts of the bar, but it seems highly inadvisable to draw the line too finely, especially when, as here, to be technical may add to the expense of the law's administration, tending to discourage at least small creditors from asserting their rights, or to enter into proper controversies. The profession is not so strongly entrenched in public confidence that it may safely insist on exclusive right to apply, in simple matters, knowledge of the law which is equally the equipment of business men.⁴

In a case involving the bar association's attempt to enjoin the operators of a tax service from conducting the business of preparing

² *Cowen v. Nelson*, 207 Minn. 642, 290 N.W. 795, 797 (1940).

³ 139 N.J. Eq. 599, 53 A.2d 800, 802 (1947).

⁴ 13 F. Supp. 555, 560 (D.C. 1935).

income tax returns for others, the court denied the injunction using the following language:

There are instruments that no one but a well trained lawyer should ever undertake to draw. But there are others, common in the commercial world, and fraught with substantial legal consequences, that lawyers seldom are employed to draw, and that in the course of recognized occupations other than the practice of law are often drawn by laymen for other laymen.⁵

In a recent Nevada case, the court, after stating that the circumstances calling for the creation of the attorney-client relationship are subject to continuing change, said:

As civilization becomes more complex we find that counselling becomes important in more and more new fields involving legal rights. Conversely, we find that the public becomes accustomed to certain areas of transaction and that as transactions in those areas become standardized, legal counselling is no longer generally regarded as a practical necessity or a reasonable precaution.

Contracts of insurance and of purchase and sale, the borrowing of money and the extension of credit all are now a familiar every-day experience to thousands of laymen. The nature of the rights and obligations thereby created have become familiar lay concepts. Furthermore, as the public in standardized areas of transaction, becomes familiar with the nature of the rights and obligations which are created, it becomes accustomed to the standardized form of the instruments involved. Custom serves to standardize both the rights and obligations and the form of instruments by which they are created.⁶

In 1962, the Oregon Supreme Court stated:

One of the facts of modern life is that most routine conveyancing, as a practical matter, has been allowed to drift away from lawyers and into the hands of stationers, notaries, and others. This phenomenon may be the result of a default by the legal profession. It also may be the result of a diffusion of superficial knowledge in such matters. Whatever the cause, it is now too late to raise the cry of 'unauthorized practice of law' each time a lay conveyancer fills in the names, dates, and description on the simple form of warranty deed by which one husband-and-wife combination ordinarily conveys a city lot to another husband and wife as tenants by the entirety. Granting that the drafting of such a conveyance historically was within the practice of law, we hold that the filling-in of forms as directed by customers under modern business conditions is not the practice of law.⁷

The Louisiana court in a recent case, in an action by a surgeon to collect a fee, stated that should professional fees continue to increase and become a burden to the public, governmental regula-

⁵ Lowell Bar Ass'n. v. Loeb, 315 Mass. 176, 52 N.E.2d 27, 34 (1944).

⁶ Pioneer Title Insurance & Trust Co. v. State Bar of Nevada, 74 Nev. 186, 326 P.2d 408, 410 (1958).

⁷ Oregon State Bar v. Security Escrows, Inc., 233 Ore. 80, 377 P.2d 334, 340 (1962).

tion will be urged as a correction, even though many consider socialized medicine detrimental to our system of government.⁸

This case presents an interesting sidelight and is a reminder to our profession of one aspect of the problem.

THE NEGATIVE APPROACH

The negative approach involves the suppression of unauthorized practice of law by injunction, punishment for contempt of court, criminal prosecution, judgment of ouster in a quo warranto proceeding, and declaratory judgment entered at the instance of the grievance committee of the state bar, or at the request of a corporation seeking a determination of its rights.⁹

Perhaps the leading Kentucky case in this field is *Hobson v. Kentucky Trust Co.*,¹⁰ an action involving the right of trust companies to engage in certain acts alleged to constitute the practice of law. The action was brought by the plaintiff for himself as an attorney at law, as a member of the local and state Bar Association, and on behalf of all other attorneys and members of the Association, against the defendants to enjoin the acts. The court held that the attorney had the right to maintain the action, that injunction was the proper remedy to prevent the unlawful practice of law, and held:

[I]t [the lower court] should have sustained the prayer of the petition by permanently enjoining the defendants from engaging in, or performing regularly and as a business or advertising or soliciting and holding itself out to the public as qualified to so act (with or without compensation, directly or indirectly) any of the following acts in the circumstances indicated, to wit: writing deeds, wills, conveyances and other legal documents requiring expert knowledge and equipment in their phraseology so as to comport with the law relating to such matters; or engaging in preparing any instrument wherein it is designated as fiduciary to enforce and administer the provisions in same, or to hold itself out as possessing the requisite knowledge so to do.

In a later case the Kentucky court stated:

The charge is that Lake, a notary public, has been engaged in preparing deeds to which he is not a party. Under RCA 3.020 this constitutes the practice of law. Lake has not responded to the rule issued against him to show cause why he should not be held in contempt. Accordingly, the rule hereby is made absolute and he is adjudged guilty of contempt. Also, he is permanently enjoined from engaging in the practice of law.¹¹

⁸ *Loomis v. Travelers Insurance Co.*, 169 So. 2d 544 (La. 1964).

⁹ 7 Am. Jur. 2d *Attorneys At Law* § 90 (1963)..

¹⁰ 303 Ky. 493, 197 S.W.2d 454 (1946).

¹¹ *Hargett v. Lake*, 305 S.W.2d 523 (Ky. 1957).

Most courts hold that a corporation may not perform legal services for others, and that a corporation may not indirectly practice law through the employment of qualified lawyers to perform services for others.¹² Drafting and supervising the execution of wills is clearly practicing law, and this principle has been applied in regard to the practice of drawing wills by the trust department of a bank.¹³

The examination of titles and rendering opinion thereon is the practice of law.¹⁴ Practice before administrative bodies requiring knowledge and application of legal principles is practice of law.¹⁵

Innocence is no defense, as the court said in *Carter v. Trevathan*:

Where a bank president who was not a lawyer wrote deeds for various persons, but acted innocently, made no charge for services and exhibited spirit of cooperation, he would be punished for contempt only by \$1 fine and costs in court, and would not be charged with expense of Bar Association investigation. RCA 3.020.¹⁶

County officials may not practice law as evidenced by the opinion of the Kentucky court:

When Brien was acting upon the advice or under the direction of the county attorney, county judge, or any other duly licensed lawyer, his position is sound that he was serving only in the capacity of an amicus and was not practicing law. However, when he was acting purely on his own volition for some friend, political supporter or business associate in drawing probate papers to be filed in his office, even though they were to be signed by the applicant, he was engaged in the unauthorized practice of law.¹⁷

Rule 3.020 of the Court of Appeals of Kentucky defines the practice of law and is very specific in outlining just what is the practice:

The practice of law is any service rendered involving legal knowledge, or legal advice, whether of representation, counsel, or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services. But nothing herein shall prevent any person not holding himself out as a practicing attorney from drawing any instrument to which he is a party without consideration unto himself therefor.¹⁸

Under this rule it has been held that one engaged in the insurance business, who prepared and filed final settlement in county court for his cousin, and prepared deeds and legal documents for

¹² *Wayne v. Murphy-Favre Co.*, 56 Idaho 788, 59 P.2d 721 (1936).

³ *People ex rel. Committee on Grievances v. Denver Clearing House Banks*, 99 Colo. 50, 59 P.2d 468 (1936).

¹⁴ *Grievance Committee of Bar v. Payne*, 128 Conn. 325, 22 A.2d 623 (1941).

¹⁵ *Shortz v. Farrell*, 327 Pa. 81, 193 A. 20 (1937).

¹⁶ 309 S.W.2d 746 (Ky. 1956).

¹⁷ *Carter v. Brien*, 309 S.W.2d 748, 749 (Ky. 1956).

¹⁸ Rule of the Kentucky Court of Appeals 3.020.

other persons, without charge, even though in good faith belief that his activities were not illegal, was in contempt of court for the unauthorized practice of law.¹⁹

From the foregoing, it is obvious that the courts of Kentucky and of many other states will strictly prohibit the unauthorized practice of law, as traditionally understood. But the question remains, is this good public relations and good common sense? Should every notary public who draws a deed be cited for contempt? Should every real estate broker who fills in a form for a sales contract be prosecuted? Should the cashier of a small country bank who completes a mortgage form be brought before the authorities and fined? It is submitted that if the profession engaged in an organized drive to cite these people and cause fines to be levied, or injunctions to be issued the ensuing uproar in the press and in the state would destroy completely the image of the lawyer in his community, and replace it with the image of greed. This is not to say that action should not be taken in selective cases, where the abuse is flagrant. The insurance companies, building and loan associations, corporations, and county officials should be kept under control in these matters, and this should not be too difficult.

It is submitted that negative action such as recommending injunctions and other processes of litigation to stop the unauthorized practice of law, generally irritates the public and garners little if any public respect for the profession.

THE POSITIVE APPROACH

In considering what action should be taken on the part of the legal profession in order to better achieve a more satisfactory professional stature and raise its standard of legal services, the following recommendation is set forth:

The legal profession must devise effective means of educating the public on the traditional services which may be properly performed *only* by lawyers. This obviously demands great insight because efforts to do so are suspect of being solely for financial gain of lawyers. Also, this effort must keep foremost the public relations aspect so that a long-range *negative* effect will not result. . . . The profession must, by highly competent service at reasonable fees, *convince* the public of the value of seeking *first* the services of a lawyer.²⁰

Affirmative action can be taken by bar associations and by individual lawyers to correct the widespread misconceptions which exist

¹⁹ Winkenhof v. Chaney, 369 S.W.2d 113 (Ky. 1963).

²⁰ Missouri Bar Prentice Hall Survey 138 (1963).

regarding the profession, and improve the channels of communication between lawyers and clients and between the Bar and the public.

Bar Associations of the various states have taken sporadic action in placing advertisements in the press about the need for legal services, and urging the public to consult their lawyer. This appears to be about all that has been done. The meeting of bar associations are not well attended, and perhaps as a result of the seeming lack of interest by the lawyers, the associations have done all that could be done in this regard.

An interesting article in the February, 1965, issue of the American Bar Association Journal discusses this matter as a challenge to the profession. This discussion is based on the Missouri Bar Prentice Hall Survey in 1963, a motivational study of public attitudes, and stresses four principal areas of concern:

1. The general reputation of the profession.

In professional competency the individual lawyer was rated as high as or higher than other professionals, but in general reputation the legal profession ranked below clergymen, bankers, doctors, and teachers. While users of legal services were satisfied with their own lawyers, it appears that nonusers had a better opinion of the profession than users. This is a disconcerting paradox.²¹

2. The attitudes of laymen and lawyers about lawyers' ethics and discipline.

27 per cent of Missouri lawyers think that perhaps half of their fellow lawyers fail to live up to the canons. The other (fact) is that of laymen who have gone to lawyers for legal services, 34 per cent thought about half of the lawyers were not entirely ethical, and among nonusers the figure was 29 per cent.²²

3. The failure of the public to utilize legal services.

In Missouri, 36 per cent of the population never had been to a lawyer for legal advice. Of these, 80 per cent said they had never recognized the need for counsel. It appeared that even when the need was recognized, unauthorized persons frequently were relied on rather than lawyers.²³

4. The public attitude toward the courts.

More than 30 per cent of the laymen questioned expressed doubt that they would have better than a fifty-fifty chance of obtaining a just verdict if accused of a crime. Even more disquieting, 74 per cent of the lawyers questioned believed that wealth, social position and race may affect standards of justice.²⁴

The lawyers themselves share the blame in these results. These findings come as a shock and present a challenge, for the results of

²¹ Powell, *The Challenge to the Profession, in the Missouri Bar-Pren-Hall Survey*, 51 A.B.A.J. 148 (1965).

²² *Id.* at 149.

²³ *Ibid.*

²⁴ *Ibid.*

educational efforts have certainly failed. Is the fault in the methods used, or in the degree of effort, or both?

A recent article sets forth the problem and suggests a solution:

Typically, the residential transaction is one in which an inexperienced buyer purchases under an inadequate purchase agreement from an uninformed seller, and very little discussion is had as to exactly what their relationship or duties will be with respect to the mortgage.

If the conveyance in compliance with this typical transaction is drawn by laymen such as realtor, banker, or insurance man, I doubt that adequate explanation, oral or written, is given.²⁵

This points out the need for lawyers to make every possible effort to educate their realtor, mortgagee, and other clients on the importance of first having a clear understanding among the parties, and then showing that intent clearly in the instruments used.

[T]he Iowa Bar Association has done work in trying to avoid some of these problems. It has been devising, through Committee action and then formal bar approval, many printed forms covering transactions involving real estate. It copyrights, prints, and sells these to the lawyers only.²⁶

This article tacitly concedes that the laymen are going to continue to draft the instruments and does not belabor that point. It does, however, stress the importance of educating the realtors and others of the importance of the work that is being done. It is further concerned with education of the lawyers themselves in the use of the instruments to be used.

The general feeling reflected by the article as to the positive approach to the problem of the unauthorized practice of law and to the practice of the profession in general, may be summarized as follows:

1. The organized profession has an obligation to take action designed to improve the performance of individual lawyers in their relations with clients, both through education and through disciplinary action.

2. We must remember, however, that we should not strive necessarily to win a popularity poll, and that perhaps we stress too much improving our economic situation. The primary concern should be whether lawyers are failing to serve the clients. Public relations are measured by how well lawyers are able to accomplish what the public expects of them. The best way to convince the public of our sincerity is to clean our own house whenever it is necessary. A professional man is not an ordinary business man or citizen. He has taken an oath to assume greater responsibilities than the average citizen. When he does so his standing is measured by how he carries

²⁵ Tesdell, "Assumption" and "Subject To" Clauses with Reference to Mortgages, 20 Bus. Law. 447 (1965).

²⁶ *Id.* at 453-54.

out that obligation and meets those responsibilities. Another writer puts it as follows:

It is believed that the voice of lawyers, locally and nationally, must be one which inspires the complete confidence of the public. The programs of our bar associations should be undertaken to insure the goals that lawyers live up to their responsibilities and that the public be made aware of this effort.²⁷

THE PUBLIC RESPONSE

Only recently has there been occasion for the profession to learn how the public views lawyers individually and collectively. This expression of the public has come as a great surprise to many, and is disquieting to all. The negative approach to the problem and its results are demonstrated in the following subsection.

(1) *Expression by Vote*

In 1962, there arose in Arizona a heated debate on the question of the right of a real estate broker or salesman to draft instruments incident to the sale of real estate. The background was this:

For many years real estate brokers in Arizona had prepared instruments incident to real estate sales; the conventional deposit receipt and agreement, serving as the preliminary agreement between the parties; the deed, and the note and mortgage or contract for the sale of real estate; and sundry other documents. Title insurance is used extensively in the state, and the title companies, when employed as escrow agents by the parties, have often prepared the instruments of conveyance. Finally, the integrated State Bar of Arizona, certain attorneys individually and as members of the State Bar Committee on Unauthorized Practice, brought action against five land title and trust companies, and a real estate firm, as defendants. The actions sought to enjoin the activities here mentioned.²⁸

The court held that the relationship between title company employees and customers bears none of the characteristics of a lawyer's duties to his client as envisioned by Canon 15 of the Canons of Professional Ethics of the American Bar Association. A corporation cannot practice law. Regardless of the competence and integrity of the attorneys employed by the title companies, these attorneys owe their primary allegiance to their employer and cannot serve the interests of the parties to the transaction without violating the "con-

²⁷ Fuller, *Focal Points for Future Relations Action, in The Missouri Bar-Pren-Hall Survey*, 51 A.B.A.J. 151, 152 (1965).

²⁸ Marks, *The Lawyers and the Realtors: Arizona's Experience*, 49 A.B.A.J. 139 (1963).

flict of interests" proscription of Canon 6. The holding out to the public by the title companies that they have lawyers on their staffs brings into play with respect to title company attorneys who retain their identities as members of the State Bar, the provisions of Canons 27, 35, and 47, which prohibit a lawyer from advertising, allowing exploitation of his professional services by a lay agency as intermediary between him and a client, and use of an attorney's name to make possible the unauthorized practice of law. Concluding, the court held that title companies and real estate brokers are engaged in the unauthorized practice of law when they do any of the approximately forty-five different acts enumerated in the decision.²⁹

As a result of this decision the realtors obtained an initiative petition to place on the ballot in November 1964 a proposed amendment to the Constitution of the State of Arizona, to the effect that any person holding a valid license as a real estate broker or salesman could, when acting as such, have the right to draft or fill out and complete, without charge, any and all instruments, incident thereto, including but not limited thereto, preliminary purchase agreements, earnest money receipts, deeds, mortgages, leases, assignments, releases, contracts for sale of realty, and bills of sale.³⁰

The main arguments of the real estate brokers, in the press, on television, and on radio, were:

1. Brokers have done these acts for years.
2. Lawyers are interested most in raising their incomes.
3. This is the beginning of actions by the Bar against insurance companies, banks, accountants, architects.
4. The Bar seeks to deprive parties to a transaction of their freedom of choice to employ attorneys or not, according to their wishes.
5. The cost of real estate transactions would be unnecessarily increased to benefit lawyers, at the public's expense.

The Bar Association argued by the same media:

1. The state constitution should not be corrupted by turning it into a vehicle for promoting special interests.
2. Realtors are untrained and therefore incompetent to prepare instruments of conveyance. The public interest is paramount.
3. The real motive of realtors is to enact into law a system which will make it less likely that a sale might be lost because of the intervention of an attorney's advice.
4. Lawyers earn relatively small fees in connection with the typical residential or small business transaction. If the brokers are really interested in saving the public money, let them reduce their huge commissions.

²⁹ State Bar of Arizona v. Arizona Land Title & Trust Co.; Lobse v. Hoffman (companion cases), 90 Ariz. 76, 366 P.2d 1 (1961).

³⁰ Marks, *op. cit. supra* note 28 at 141.

5. Conversely, the larger professional fees are to be earned as a result of litigation due to improperly prepared instruments.

The amendment passed, 224,177 to 61,316, or a margin of nearly four to one.³¹

These basic issues emerge from the foregoing:

What is the image of the attorney in his community? What does the public know or want to know about the lawyer's economic position? What is the Bar doing or what can it do to improve that position? Are efforts of the Bar to educate the public succeeding?³²

It should be noted that the arguments presented by both sides in the controversy are the arguments that have been used before, and will be used again. The margin of defeat for the position of the Bar is indeed alarming, and indicates that the message did not get across to the public, or that if the message was recognized, it was deliberately rejected.

(2) *Expression Shown by Survey.*

The Missouri Bar in 1960 conceived and launched a comprehensive study program directed toward the public relations of the Bar. The questions to be answered were:

1. Is something radically wrong with the public relations?
2. How wide is the 'client gap'—the breach between lawyers and the various individuals and groups they serve?
3. Why does a large segment of the population fail to use legal services?
4. Just what is the public attitude toward the Bar with its members?

The survey is said to have achieved the broadest coverage and deepest depth of any motivational study undertaken for a professional group. The ultimate objective of the study was to provide ways and means to help the lawyers serve the public better and thereby to improve the status of the profession and the economic position of its members.³³

The survey of motivational forces affecting the demand for legal services included: Failure to recognize the need for legal counsel; reluctance to consult a lawyer after need is recognized; methods effective in motivating the public to recognize the need for legal counsel and to overcome its reluctance to seek such legal aid when the need is recognized; effectiveness of law schools in giving students the necessary practical knowledge for the practice of law.

One of the surprises to the writer and it is believed to the profession in general is set forth in the finding:

³¹ *Ibid.*

³² *Ibid.*

³³ *The Missouri Bar—Pren-Hall Survey*, 51 A.B.A.J. 148 (1965).

It was found that the layman user and non-user have similar impressions as to the main services performed by lawyers. Both list accident and damage suits as the most common service performed by an attorney; next in line are civil suits and litigation generally, domestic relations, and wills and estates all obtaining approximately the same percentage of mention by user and non-user. Of lesser importance to both user and non-user are criminal cases and business advice. Real estate transactions rank seventh in the minds of both the user and non-user. In much smaller percentages, indicating that to both the user and non-user these are not really important services of the attorney, are taxes and general legal services.³⁴

The educational level of the layman does have an effect on his attitude toward the profession; the more highly educated groups rate the general reputation and professional ability of the lawyer higher than the less educated groups. Economic position does not affect attitude as much as does occupation or education. The reputation of lawyers in non-urban areas is better than in cities, and the lawyers themselves recognize this.³⁵

The response from laymen, in depth interviews and questionnaires, reveal that although at least one-third have never used a lawyer, most apparently needed legal advice on several occasions. Many who engage in transactions involving need for legal advice do not seek such advice, but frequently utilize free advice or services of a non-lawyer in completing the transaction. An interesting conclusion is set forth in the report:

In the purchase and sale of real estate, laymen do not seek the advice of a lawyer among other reasons because of positive inducements of real estate agents that, as a part of their services, contracts and deed will be drawn without charge to the customer. It is apparent laymen either are not adequately advised of the inherent danger of not having the services of his own counsel, or laymen choose to ignore the danger in order to save lawyer's fees. These conclusions may be drawn from the high percentage (58%) of real estate purchases and sales that are completely without the services of a lawyer, and from the substantial percentage (28%) of written leases and contracts prepared by realtors.³⁶

It appears from this study in depth, that direct contact with, and use of, a lawyer does not help to educate the general public concerning the variety of services offered by the lawyer. Further, that most laymen, users and non-users, are either ignorant of the many important services an attorney offers, or they do not place enough importance on the need of an attorney in obtaining these services. The report stresses again and again the importance of the lawyer's

³⁴ *Op. cit. supra note 20*, at 36.

³⁵ *Id.* at 40.

³⁶ *Id.* at 136.

contact with his own client, and more examination of the client's general legal needs.

In the discussions, the thought reappears again and again, that too many lawyers unwillingly accept responsibility to serve the public in all types of matters. If the particular lawyer does not engage in certain types of practice, he allows the individual to wander down the street to a non-lawyer.

After discussing the purpose of the survey, to separate facts from assumption, these words are used:

The problem of public attitudes toward the courts and the legal profession is very complex. Not only does it deal with the services of the lawyer to the client; the satisfaction of the client with the service; the general and professional reputation of lawyers and judges; and other areas of personal contact covered in this survey but it also, and perhaps more keenly, is concerned with such things as public understanding of and attitude toward the Constitution and the Bill of Rights. Does the person really understand the Bill of Rights? Does he actually believe in rights such as 'innocent until proven guilty', 'the Fifth Amendment' and others as set forth in the Bill of Rights. If he does not, then how can he be expected to fully understand and appreciate the role of the lawyer and the function of the legal profession.³⁷

The survey further delineates the findings and places responsibility. Lawyers themselves are in many instances responsible for particular services being performed by non-lawyers. Examples are the failure of lawyers to be available for particular legal services being performed by non-lawyers, as when a real estate agent has a sale ready for consummation, and a contract of purchase is needed on Sunday or a holiday; lack of interest of lawyers in certain types of business such as handling tax returns; failure of the Bar to impress upon laymen the dangers of using the services of an untrained, unregulated and unqualified person; unwillingness in some instances to accept cases simply because the fee that can be charged does not justify the time involved.³⁸

Suggestions are made for the education of the public by certain specific means. These include most of the accepted forms and are set forth:

1. Development and distribution of pamphlets.
2. The development and promotion of well organized Speakers Bureaus by local bar associations in every part of the state.
3. The development and promotion of Public Forums on legal subjects to be conducted by local bar associations.

³⁷ *Id.* at 192.

³⁸ *Id.* at 137.

4. Continuing efforts to educate the public through the use of informational media such as radio, television and newspapers.
5. Close cooperation with educational institutions so that the citizens of tomorrow will be correctly informed concerning the role of the legal profession and its importance to our American System of Government.
6. Continuing efforts through every means, including those listed above, to develop in the public a greater appreciation for the rights and freedoms guaranteed by the Constitution and protected by our courts.³⁹

In addition to these listed steps, some rather new suggestions appear in the report. Recommendations are:

That personal legal check-ups be encouraged by *every* lawyer as he handles a matter for a client. In this respect, it is recommended that the Bar devise *uniform check lists* which may ethically be handed out to clients to assist them in analyzing their needs for legal advice. Further, that the legal profession must gather and publish information on fees, so that some degree of uniformity may be achieved on a statewide basis. The public obviously is poorly informed about fees. This causes the public to be suspicious, and to avoid the use of a lawyer because of the uncertainty about what the fee may be.⁴⁰

A general summary of the survey might, in addition to the detailed matter presented, be that the first step on the road to better public relations for the legal profession is the lawyer's office through the client-attorney relationship. A deluge of publicity concerning the services, qualifications, ethical standards and public responsibilities of the legal profession will be worthless so long as the lawyer himself, in his contact with the client, fails to lay the groundwork for a better public image of the profession.⁴¹

And all through the report is the stress on the *continuing* efforts of the individual lawyer and of the profession.

CONCLUSION

As is clearly shown by the survey, and by the cases, the problem is indeed a complex one. Negative action, by injunction or punishment for contempt, is definitely not the answer. The writer fully agrees that whatever action is taken, it should be continuing, and every effort should be made to enlist every attorney in the state. Certainly the use of pamphlets, of speakers by the local bar associations, the development of legal subjects in public forums, use of all media of

³⁹ *Id.* at 51.

⁴⁰ *Id.* at 138.

⁴¹ *Id.* at 52.

mass communications, all are important and should be used, and their use should be continuing, over periods of years.

Perhaps the suggestions made regarding uniform check lists and publishing information on fees are of more importance than might appear on the surface. And is not the suggestion made as to close cooperation with educational institutions so that the citizens of tomorrow will be correctly informed concerning the role of the legal profession and its importance to our American system of government, one that might be of paramount importance to the problem under discussion? The organized bar in the various states must take the action, and take the necessary corrective measures to improve the client-attorney relationship. Certainly the need for a public relations program is evident, and action must be taken to improve the image of the individual lawyer and of the profession in the mind of the general public. So, first the lawyers must realize the complexity of the problem, then take the necessary continuing action to get the message across to the public, for the benefit of the public as well as for the benefit of the profession.

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