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**LEGAL AID—Lay Control and Organizational Complexity  
Render OEO Legal Service Program Unacceptable  
to New York Court—*In re Community Action  
for Legal Services, Inc.*\***

The Office of Economic Opportunity (OEO) and the New York City Council Against Poverty approved the organization and the OEO funding of three legal service corporations as part of a comprehensive program to provide legal assistance to New York City's poor. According to the plan, the first corporation, Community Action for Legal Services, Inc. (CALS), was to approve proposed plans for setting up and operating neighborhood law offices with OEO funds and then to supervise and coordinate the agencies that sought to put those plans into operation.<sup>1</sup> These agencies, operating as delegates of CALS, and under subcontracts with it, were to hire attorneys to provide free legal services for indigents. One such delegate, the New York Legal Assistance Corporation (NYLAC), was to be created by the city for the purpose of establishing seven neighborhood law offices. Another, the Harlem Assertion of Rights, Inc. (HAR), was to be organized by a neighborhood group and planned to establish five law offices in Harlem.<sup>2</sup> In conformity with section 280 of the New York Penal Law<sup>3</sup> (recently reenacted as section 495 of the New York Judiciary Law) prohibiting the practice of law by a corporation in the absence of special approval from the proper appellate division, CALS, NYLAC, and HAR submitted applications to the court for the necessary authorization. The court rejected the applications without prejudice to the prompt submission of

\* 26 App. Div. 2d 354, 274 N.Y.S.2d 779 (1966) [hereinafter cited as principal case].

1. CALS was also to establish "guidelines" for its delegate agencies, render assistance and advice to them, audit their operations and finances, and develop research programs for the legal problems of the poor, legal education programs for indigents, and training programs for the lawyers and lay personnel of the delegate agencies.

2. The presently established New York Legal Aid Society and Mobilization for Youth, Inc., as well as other groups to be formed, were also to provide legal services as delegates of CALS.

3. This section was recently re-enacted as § 495 of the New York Judiciary Law and violation can lead to fines and conviction for misdemeanor. Section 280 of the old New York Penal Law read in part:

1. No corporation or voluntary association shall

(a) practice or appear as an attorney-at-law for any person in any court in the state or before any judicial body, nor

(b) make it a business to practice as an attorney-at-law, for any person in any of said courts, nor

(c) hold itself to the public as being entitled to practice law or to render legal services or advice.

5. [N]or shall it apply to organizations organized for benevolent or charitable purposes, or for the purpose of assisting persons without means in the pursuit of any civil remedy, whose existence, organization or incorporation may be approved by the appellate division of the supreme court of the department in which the principal office of such corporation or voluntary association may be located.

amended proposals, basing its decision primarily upon the fear that the organizational complexity of the plan and the "lay control" of the corporations would endanger the professional standards of those attorneys involved in the program.<sup>4</sup>

The court's concern with "lay control" stemmed from the plan to have representatives of the poor serve on the boards of the corporations.<sup>5</sup> Yet since lawyers were to comprise a *majority* of the membership of the boards of both CALS and NYLAC,<sup>6</sup> it is not clear exactly what the court meant by "lay control." The opinion can be interpreted as requiring the complete exclusion of laymen from the executive staffs and directorates of the corporations.<sup>7</sup> But such a requirement seems to conflict with other decisions regarding laymen and the charitable practice of law through a corporation,<sup>8</sup> and the appellate division cites nothing to counter this authority.<sup>9</sup>

Canon 35 of the Canons of Professional Ethics, which prohibits attorneys from submitting to outside lay interference in their client relationships,<sup>10</sup> and state statutes like section 280, which bar corpo-

4. Principal case at 364, 274 N.Y.S.2d at 791. In addition to these two problems, which were designated as "major matters," the court raises "other issues." These include: "undefined guidelines," "political, lobbying, and propagandistic activities," "referral or ineligible clients," "indiscriminate mingling of social goals and legitimate legal practice," "education," "group representation," "use of law students," and the court's own involvement. It is not clear from the opinion whether these "other issues" are merely gratuitous criticisms or underlying reasons for the rejection of the proposals. Principal case at 362-65, 274 N.Y.S.2d at 788-91.

5. Principal case at 360, 274 N.Y.S.2d at 787.

6. Twenty-three of the thirty-two member CALS board and thirteen of twenty on NYLAC's board were either required to be lawyers or were to be selected by courts, bar associations, or the bar controlled Legal Aid Society. HAR was required to have a minimum of six lawyers on its board of fifteen. Memorandum Submitted by the Association of the Bar of the City of New York at 16-17, 24, principal case.

7. Principal case at 360, 274 N.Y.S.2d at 787: "[T]he executive staff, and those with responsibility to hire and discharge staff from the very top to the lowest lay echelon must be lawyers." *In re Community Legal Services, Inc.*, No. 4969 (Pa. C.P. 4, June 30, 1966) (Second Opinion 1967), the court thoroughly criticized the principal case and apparently assumed that the appellate division had required the exclusion of all laymen. "[T]his court is unable to agree that professional standards must fail of enforcement simply because some members of a legal assistance corporation, or even a majority of the members, happen not to be lawyers." Note, *Neighborhood Law Offices: The New Wave in Legal Services for the Poor*, 80 HARV. L. REV. 805, 838-39 (1967).

8. *In re Ades*, 6 F. Supp. 467 (D. Md. 1934); *Gunnels v. Atlanta Bar Ass'n*, 191 Ga. 366, 12 S.E.2d 602 (1940); *Azzarello v. Legal Aid Soc'y*, 117 Ohio App. 471, 185 N.E.2d 566 (1962); *In re Community Legal Services, Inc.*, No. 4968 (Pa. C.P. 4, June 30, 1966).

9. The only case cited by the court is a one paragraph opinion which denied an application under § 280 to practice law as a corporation. *In re Gandhi Soc'y for Human Rights*, 17 App. Div. 2d 622 (1962). The court said the proposed corporation did not comply with the exception in § 280, and also quoted canon 35 of the Canons of Professional Ethics barring law intermediaries. Since both canon 35 and § 280 make exceptions for charitable or benevolent legal service groups for the poor, this authority does not seem compelling unless the court were to find that CALS, NYLAC, and HAR were not organized to help persons lacking means to pursue legal remedies without charge.

10. Canon 35 Intermediaries.

The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer.

rate practice of law, were originally aimed at businesses and associations that sought to increase their patronage by providing legal services for customers or members.<sup>11</sup> Underlying these prohibitions was the fear that when lawyers employed by lay associations work on projects other than those of general concern to the organization itself, they lose the independence which is traditionally a part of the attorney-client relationship. In dealing with the individual problems of client-members or customers the lawyer acts in the role of an employee dependent on the organization for which he works. Also, it was believed that involvement in the employer's organization would jeopardize the confidential relationship of lawyer and client, and that in serving two masters there would be a temptation to divide his allegiance when the interest in profits, power, or status of the lay intermediary paying him conflicted with the interests of the individual client. Finally, it was thought likely that lay organizations would degrade the legal profession by advertising lawyers' services and stirring up litigation.<sup>12</sup>

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A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be direct to the client. Charitable societies rendering aid to the indigents are not deemed such intermediaries.

A lawyer may accept employment from any organization, such as an association, club or trade organization, to render legal services in any matter in which the organization, as an entity, is interested, but this employment should not include the rendering of legal services to the members of such an organization in respect to their individual affairs.

11. Examples of corporations illegally *providing* legal service for profit are (1) banks engaging in estate planning or drafting of trusts, notes, or mortgages [State Bar Ass'n v. Connecticut Bank & Trust Co., 146 Conn. 556, 153 A.2d 453 (1959); *People ex rel. Ill. State Bar Ass'n v. People's Stock Yards State Bank*, 344 Ill. 462, 176 N.E. 901 (1931)]; (2) abstract and title insurance companies selling legal opinions on titles or drafting legal instruments [Klein v. Chicago Title & Trust Co., 295 Ill. App. 208, 14 N.E.2d 852 (1938); Hexter Title & Abstract Co. v. Grievance Comm., 142 Texas 506, 179 S.W.2d 946 (1944); *see* Annot., 85 A.L.R.2d 184 (1962)]; (3) credit agencies undertaking law suits to collect the debts due another [Richmond Ass'n of Credit Men, Inc. v. Bar Ass'n, 167 Va. 327, 189 S.E. 153 (1937)]. Examples of nonprofit group associations illegally *obtaining* legal service for its members are (1) motor clubs providing counsel for their members [People *ex rel. Chicago Bar Ass'n v. Chicago Motor Club*, 362 Ill. 50, 199 N.E. 1 (1935)]; (2) landowners or tenants organizing to protect their rights against a tax [People *ex rel. Courtney v. Association of Real Estate Taxpayers*, 354 Ill. 102, 187 N.E. 823 (1933)]; (3) unions hiring attorneys for their members [Illinois State Bar Ass'n v. United Mine Workers, 35 Ill. 2d 112, 219 N.E.2d 503 (Ill. 1966), *rev'd*, 36 U.S.L.W. 4048 (U.S. Dec. 5, 1967); *see* Hildebrand v. State Bar, 36 Cal. 2d 504, 225 P.2d 508 (1950); *In re Brotherhood of R. R. Trainmen*, 13 Ill. 2d 391, 150 N.E.2d 163 (1958). *See generally* H. DRINKER, LEGAL ETHICS 162 (1953); Annot., 157 A.L.R. 282 (1945)].

12. This would result in lay groups performing acts which a lawyer is forbidden to do under canons 27 and 28. Canon 27 provides in part:

Advertising, Direct or Indirect.

It is unprofessional to solicit professional employment by circulars, advertisements, through touters or by personal communications or interviews not warranted by personal relations. Indirect advertisements for professional employment such as furnishing or inspiring newspaper comments, or procuring his photograph to be published in connection with causes in which the lawyer has been or is engaged

In a charitable legal service organization these dangers are minimized or overcome altogether. The absence of pressure to produce a profit or expand membership precludes the danger of commercial exploitation. Moreover, the likeliest area of conflict—that of the pecuniary interests of the organization as opposed to those of the customer or member—is greatly limited,<sup>13</sup> with corresponding reductions in the dangers of interference with the attorney's independence and the confidential relationship between lawyer and client. In fact, one of the purposes of legal aid groups is to foster these very things and thereby upgrade the professional role. For these reasons, and because of the great public good accomplished by such groups, courts, ethics committees, and statutes have traditionally exempted such associations from bans on lay intermediaries and corporate practice of law. Even the customary prohibitions on advertising, solicitation, and stirring up litigation have been relaxed when the purpose of such activities is to represent the rights of the poor.<sup>14</sup>

Possibly the appellate division ignored this traditional approach because of the one obvious conflict of interest which is not precluded by the elimination of the profit motive: the long-range goals

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or concerning the manner of their conduct, the magnitude of the interest involved, the importance of the lawyer's position, and all other like self-laudation, offend the traditions and lower the tone of our profession and are reprehensible; but the customary use of simple professional cards is not improper.

Canon 28 provides in part:

*Stirring Up Litigation, Directly or Through Agents.*

It is unprofessional for a lawyer to volunteer advice to bring a lawsuit, except in rare cases where ties of blood, relationship or trust make it his duty to do so. Stirring up strife and litigation is not only unprofessional, but it is indictable at common law. It is disreputable to hunt up defects in titles or other causes of action and inform thereof in order to be employed to bring suit or collect judgment, or to breed litigation by seeking out those with claims for personal injuries or those having any other grounds of action in order to secure them as clients.

13. In *NAACP v. Button*, 371 U.S. 415, 438-43 (1963), Justice Brennan emphasized the element of private or pecuniary gain at which canons 27, 28, and 35 were aimed. He further stated that there was no serious danger of "professionally reprehensible conflicts of interests" with the activities undertaken by the NAACP, reasoning that "[t]his is so partly because no monetary stakes are involved, and so there is no danger that the attorney will desert or subvert the paramount interests of his client to enrich himself or an outside sponsor." 371 U.S. at 443.

Notwithstanding Justice Brennan's optimism for the NAACP, it must be admitted that in the legal aid context a removal of the profit motive will not completely eliminate the occasions for conflicts of interest, although it may greatly reduce them. Not only may the goals of the organization conflict with the immediate goals and interests of the client, but the interests of directors—or, in the case of lawyer directors, the interests of their clients—as well as the interests of representatives of the poor may also conflict with those of the person being served. The canons conceptually should guard against conflicts involving the lawyers, but they do not apply to lay directors. This may explain the appellate division's concern over only the lay directors and not the lawyer directors. Interview with Prof. James White, University of Michigan Law School, Ann Arbor, Oct. 20, 1967.

14. *American Bar Association, Opinions of the Committee on Professional Ethics and Grievances*, Nos. 148 (1935), 205 (1940), 227 (1941).

of the organization may still be opposed to the immediate interests of the individual client. This potential danger has generally been the reason advanced for prohibiting the practice of law by nonprofit organizations which do not serve charitable purposes.<sup>15</sup> Certainly it must be admitted that the plan under consideration in the principal case could have resulted in just this type of conflict, and that because of this conflict lay directors, ignorant of professional standards and not subject to judicial sanctions for misconduct, might have interfered with an attorney's handling of a particular case. However, if this is what troubled the court, it could have at least given the OEO and CALS an opportunity to show that the lawyer-dominated board had retained sufficient control to insure the maintenance of professional standards.<sup>16</sup> Moreover, if the plan submitted did prove unsatisfactory in this respect, alternatives far less drastic than the total exclusion of laymen were available. For example, the standards of legal ethics could be incorporated in the charters of the corporations and the boards given the necessary power to enforce them. If the court were still dissatisfied, the legislature could enact a statute requiring observance of professional standards by lay directors and expanding the jurisdiction of the appellate division to enable it to discipline violators.<sup>17</sup>

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15. See examples of nonprofit groups prohibited from practicing law in note 11 *supra*.

16. It seems that if each lawyer were acting professionally he would report and resist any adverse interference by a lay director or any other party. While canon 35 (quoted in note 10 *supra*) excludes charitable societies rendering legal aid from its condemnation of law intermediaries, any individual lay director not officially acting for the whole group would not be within this exception, and thus his interference would not be allowed under canon 35 and should be resisted. Canons 6 and 8 would seem to require complete disclosure to the client concerning the prospects and merits of his cause, the advisability of pursuing it, and any possible conflict between the goals and aims of the group as a whole and his immediate interest:

Canon 6. Adverse Influences and Conflicting interests.

It is the duty of a lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

It is unprofessional to represent conflicting interests, except by express consent of all concerned given after full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

Canon 8 provides in part:

Advising Upon the Merits of a Client's Cause.

A lawyer should endeavor to obtain full knowledge of his client's cause before advising thereon, and he is bound to give a candid opinion of the merits and probable result of pending or contemplated litigation. . . . Whenever the controversy will admit of fair adjustment, the client should be advised to avoid or to end the litigation.

17. Florida allows attorneys to form legal practice corporations, but any deviation

As a result of its excessive concern with the evils of lay participation, the court apparently failed to recognize the desirability of having the poor represented on the governing boards. The court did encourage the use of the poor on advisory committees,<sup>18</sup> and thus acknowledged the usefulness of seeking advice from those who best know the needs, aspirations, and limitations of the poor. However, no attention was given to the need for structuring the means of articulating such advice so as to insure reception and response by the policymakers. Arguably, this could best be done by representation of the poor on the governing boards. Relegation to a mere advisory capacity, as proposed by the court, creates the danger that the voice of the poor would be unsolicited, unheard, and eventually inaudible. In addition, a mere advisory status would probably hinder participation by the poor as a true and equal partner in working to overcome their problems and replace meaningful involvement with tokenism, thereby reducing those being aided to the resented and dependent status of passive donees.

Of course, effective representatives of the poor may be difficult to find: those who serve may not assert their views or attend meetings. For this and other reasons, it has been contended that participation by the poor on governing boards is unnecessary.<sup>19</sup> Yet, even assuming that the poor presently lack the ability to participate effectively, the concept seems at least worthy of a trial period. The presence of representatives of the poor cannot greatly impair a board's ability to act, and may in fact provide an opportunity and encouragement to such representatives to gain experience and become more active in advising and directing.<sup>20</sup> Indeed, Congress might well have recognized this possibility when it insisted on "maximum feasible participation of residents of the area and members of the group to be served"<sup>21</sup> in all OEO projects. Congress recently

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from the canons or any unfaithful or unethical conduct by the corporation or its members are still within the control and discipline of the court. *See In re Florida Bar*, 133 S.2d 554 (Fla. 1961).

18. Principal case at 361, 274 N.Y.S.2d at 787.

19. Prof. White stated that this experience on two legal aid boards and the experience of other boards with which he was familiar cast doubt on the idea that substantial lay representation of the poor was a necessary ingredient of an effective program. He suggested that the attitudes of the lawyer board members and the attitude and legal skill of the lawyer employees seemed to be much more important determinants of the program's quality. However, Prof. White stated that it was too early to conclude that lay representation was unnecessary or unimportant and that such representation should be continued at least until solid evidence shows that lay representation has no value.

20. *See In re Community Legal Services, Inc.*, No. 4968 (Pa. C.P. 4, June 30, 1966); Note, *supra* note 7, at 828-29 (1967); note 19 *supra*.

21. Economic Opportunity Act of 1964, 42 U.S.C. § 2782 (Supp. I, 1965), amending 42 U.S.C. § 2782 (1964).

interpreted "maximum feasible participation" as meaning a one-third representation of the poor on the boards of community action programs.<sup>22</sup> Although this requirement may bind only the primary community action board,<sup>23</sup> it can be read to apply to a delegate legal service board. Clearly, the rationale behind the requirement seems equally applicable to both.

In light of the "maximum feasible participation" requirement, the appellate division's apparent exclusion of all laymen from the delegate boards may have imperiled the OEO financing of the New York program for legal services. Possibly this threatened loss of funds, or consideration of the underlying reasons for lay participation, caused the appellate division recently to retreat from the strong language in its opinion; the court has recently approved a resubmitted proposal that includes one-third lay involvement on the boards.<sup>24</sup> Unfortunately, this approval is unlikely to result in a published opinion,<sup>25</sup> and thus nothing will appear in the reporter system that expressly overrules the position apparently taken in the principal case. Such a precedent against lay involvement by a most respected court has already served as a weapon for attacking participation by the poor on legal service boards.<sup>26</sup>

The court was also unconvincing in its other major objection, which was that the structure of the proposed program was so complex, interrelated, and overlapping as to render ineffective any professional or disciplinary supervision.<sup>27</sup> Since there are penal and

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22. Section 203, 42 U.S.C.A. § 2782 (Supp. Feb. 1967). One-third poor representation was the interpretation of "maximum feasible participation" on boards even before this amendment. See, e.g., Pye, *The Role of Legal Services in the Antipoverty Program*, 31 LAW & CONTEMP. PROB. 211, 225 (1966). In § 210, 42 U.S.C.A. § 2785 (Supp. Feb. 1967), Congress further encourages participation of the poor on directorates by providing allowances and expenses for their attending meetings.

23. Each city has a primary community action board which oversees all aspects of any OEO program in that city. Also, each area of the OEO program, such as the legal service division or the job training program, has its own board which generally operates under this primary board. The Congressional requirement may only apply to this primary board. Student writers in the *Harvard Law Review* point out that the legislative history of this amendment "indicates that this requirement applies only to the 'umbrella' agency and not to legal services. CONFERENCE REP. NO. 2298, 89th Cong., 2d Sess. 4 (1966), reprinted in 1966 U.S. CODE CONG. & AD. NEWS 6052, 6055." Note, *supra* note 7, at 829 n.134 (1967).

24. N.Y.L.J., Oct. 13, 1967, at 1, col. 6.

25. It is more likely that the appellate division will merely approve the applications without an opinion.

26. The opinion was presented to block a Philadelphia proposal, but was rejected and rebutted in an excellent opinion by Judge Alexander in *In re Community Legal Services, Inc.*, No. 4968 (Pa. C.P., second Opinion, 1967). The New York decision was also presented in an attempt by the Stanislaus County Bar Association to enjoin the activities of California Rural Legal Assistance, Inc., but this case has not, as of this writing, been decided. *Stanislaus County Bar Ass'n v. California Rural Legal Assistance, Inc.*, No. 93302 (Calif. Super. Ct., Jan. 20, 1967).

27. Principal case at 359-60, 274 N.Y.S.2d at 786-87.

civil sanctions applicable to lawyers on the boards or in neighborhood offices who might act unethically or submit to lay interference,<sup>28</sup> it is doubtful that the court's concern was with the lack of capacity to administer discipline. More likely, its criticism was focused on the practical problem of detecting and pinpointing unethical behavior in "such a diffusion of managerial responsibility."<sup>29</sup> Yet the court's demand for "directorates of sufficiently small size, palpable groups amenable to its discipline and sanction,"<sup>30</sup> and for only one legal assistance corporation for each area,<sup>31</sup> seems not to facilitate policing. Assuming that a given number of attorneys will be hired with OEO funds regardless of whether there are few or many organizations, or whether the boards are large or small, it should not be more difficult to determine the source of an ethical violation if there are two organizations in the area rather than one, or if the boards are large rather than small. In fact, it might be harder for the guilty to camouflage their transgressions from a large board, since more innocent parties would have to be deceived, or at least persuaded to countenance the deviant act. Of course, if limiting the number of associations per area or the size of the boards reduces the number of lawyers in the program, and thus the occasions for violations, easier policing would probably be assured. However, it is doubtful that this uncertain gain is worth the resulting loss to the program as a whole. Smaller boards would lack the diversity of talent, specialties, and perspective, as well as the balance and autonomy that a larger board can provide.<sup>32</sup> Moreover, there may be an advantage in having more than one organization in an area that is populated by various ethnic groups.<sup>33</sup> Also, it is conceivable that the competition between groups to provide the best service in the area might not be wasteful, as the court assumes, but rather might generate efficiency. Thus, the action of the appellate division, based as it was on mere speculation, seems to have been somewhat premature.

A lack of empirical data often induces a court to resort to generalities, such as maintaining the sanctity of legal ethics, as the grounds for its decision. A recent survey by Professor Jerome Carlin of the New York Bar, concerning lawyers' ethics, seems to indicate that in the principal case that approach resulted in an opinion which does not reflect social reality.<sup>34</sup> The survey confirms the view that in

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28. N.Y. JUDICIARY LAW § 90 (McKinney 1948); N.Y. PEN. LAW §§ 270-71, 273 (McKinney 1944).

29. Principal case at 361, 274 N.Y.S.2d at 787.

30. *Id.*

31. *Id.* at 360, 274 N.Y.S.2d at 786.

32. Pye, *supra* note 22, at 228.

33. *In re* Community Legal Services, No. 4968, (Pa. C.P., second opinion, June 30, 1966).

34. J. CARLIN, *LAWYERS' ETHICS* (1966).

the lower echelons of the bar, where many ill-trained and financially insecure attorneys serve, professional violations are commonplace.<sup>35</sup> The highly competitive nature of the practice of law at this level provides an inducement to lawyers to commit ethical violations in order to obtain clients.<sup>36</sup> Lawyers not only solicit but often yield to client pressures to represent their causes in unethical ways.<sup>37</sup> Also, the uninformed client, if he is not a prospect for future business, is an easy target for exploitation.<sup>38</sup> Additionally, the courts and agencies before which these marginal lawyers practice have informal procedures and are at times susceptible to a bribe or political favor.<sup>39</sup> Finally, Carlin asserts that the marginal lawyer, unlike his counterpart in the big firm, rarely receives the support and encouragement of colleagues who are committed to higher standards.<sup>40</sup> Indeed, any collegueship he may have is likely to reinforce his illicit behavior.

To correct this intolerable situation Professor Carlin recommends the establishment of group legal services.<sup>41</sup> Legal aid corpora-

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35. *Id.* at 11-37, 41-61. In a review of Carlin's book, John A. Young criticizes the means by which Carlin selected his questions for determining what was ethical. 76 YALE L.J. 1247 (1967). Thus, the questions asked concerned ethical violations that less secure attorneys were more likely to encounter and transgress and did not relate to unethical conduct in which secure, large-firm attorneys would be likely to engage—namely, that resulting from conflicts of interest, suppression or destruction of evidence, use of political influence to name a judge, or even giving advice for the commission of a fraud. Nevertheless, Erwin O. Smigel, author of *THE WALL STREET LAWYER* (1964), affirms Carlin's findings that the large-law-firm lawyers were more likely to act ethically since many of their clients would tolerate nothing less. Book Review, 76 YALE L.J. 1253, 1254 (1967).

The results of studies concerning both the quality and quantity of attorneys that are available to serve the middle class and the poor are appalling. It has been estimated that only 10% of the poor needing legal help are presently receiving it. Carlin & Howard, *Legal Representation and Class Justice*, 12 U.C.L.A.L. REV. 381 410 (1965). In addition to questionable dependability, the inaccessibility and high cost of attorneys, plus the layman's ignorance of his own legal problems, are the primary reasons that these classes get inadequate legal services. Free legal services for the poor as a matter of right and group legal services for the middle class are being recommended to improve this situation by both Carlin and others. See generally J. CARLIN, *LAWYERS ON THEIR OWN* (1962); E. CHEATHAM, *A LAWYER WHEN NEEDED* (1963); E. SMIGEL, *supra* note 35; Carlin & Howard, *Legal Representation and Class Justice*, 12 U.C.L.A.L. REV. 381 (1965); Cheatham, *Availability of Legal Services; The Responsibility of the Individual Law and of the Organized Bar*, 12 U.C.L.A.L. REV. 438 (1965); Cheatham, *A Lawyer When Needed; Legal Services for the Middle Classes*, 63 COLUM. L. REV. 973 (1965); Llewellyn, *The Bar's Troubles, and Poultices and Cures*, 5 LAW & CONTEMP. PROB. 104 (1938); Pye, *supra* note 22; Schwartz, *Foreword: Group Legal Services in Prospective*, 12 U.C.L.A.L. REV. 279 (1965); Note, *The Indigent's Right to Counsel in Civil Cases*, 76 YALE L.J. 545 (1967). For an author who feels the situation is not as others have urged, see Simpson, *Group Legal Services: The Case for Caution*, 12 U.C.L.A.L. REV. 327 (1965).

36. J. CARLIN, *LAWYERS' ETHICS* 66-71 (1966).

37. *Id.* at 73-76.

38. *Id.* at 71-73.

39. *Id.* at 84-94.

40. *Id.* at 110-15.

41. *Id.* at 176-82.

tions such as CALS, NYLAC, and HAR, rather than acting as a hindrance, can be helpful in upgrading the professional conduct of many members of the bar. First, the market for legal services is expanded by bringing in the many poor not being served today, and this should reduce the competition for clients.<sup>42</sup> In addition, OEO financing would remove the major cause of ethical violations by providing some measure of economic security, and the better salaries should also attract some more responsible and skilled attorneys into this type of legal practice.<sup>43</sup> Through the intermingling of a few relatively qualified attorneys in each legal aid office, and the appointment by the bar of principled practitioners to the directorates, higher standards of performance could be set and the big firm collegueship that reinforces professional conduct provided. Finally, ethically committed attorneys, subject to fewer temptations and no longer dependent on local politicians or businessmen for support, could more readily resist and challenge the deviant acts of other practitioners, lower courts, and agencies, and thereby improve practice and procedure at this level.<sup>44</sup> Thus, instead of presenting a threat to professional standards as the appellate division suggested, legal aid offers the possibility of improving the profes-

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42. *Id.* at 180. Not only would many poor persons, who without legal aid could not afford an attorney, now use one, but there would also be a corresponding increase in the need for legal services on the other side since matters previously settled by default would now be contested. Moreover, those attorneys representing the other side may find that their retainers set for uncontested legal services are now inadequate in light of the greater amount of work required.

43. *Id.* at 180-81.

44. *Id.* at 181. Numerous alternative plans have been suggested in dealing with the problem of legal services for the poor. The traditional bar-controlled legal aid society, with its central location and service orientation, has often proved too inaccessible and narrow in scope for many indigents, and today the neighborhood law office represents an attempt to bring legal services into geographical proximity to the poor. See generally Abrahams, *Twenty-Five Years of Service: Philadelphia Neighborhood Law Office Plan*, 50 A.B.A.J. 728 (1964); Grosser, *The Need for a Neighborhood Legal Service and the New York Experience*, 15 BUFFALO L. REV. 146 (1965). OEO funds have made great expansion of these programs possible. The potential of the neighborhood law office to go beyond the mere service function and seek reforms and social progress was explored by the present Special Assistant to the Director of the OEO, Edgar S. Cahn, and his wife in *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317 (1964). Recently, after several hundred neighborhood offices have been operating or funded, the Cahns have expressed great dismay that these offices are becoming mere service agencies, and fail to seek reform and attack the roots of poverty. After a brilliant attack upon our outdated and ineffective "Justice Industry," they suggest further alternatives such as: the use of non-lawyers to perform many functions now limited to attorneys; the neighborhood court system; interdisciplinary, crisis-orientated teams; and neighborhood law corporations owned by the people. Cahn & Cahn, *What Price Justice: The Civilian Perspective Revisited*, 41 NOTRE DAME LAW 927 (1966). Lawyer referral and group legal services are other means of making legal service more readily available to the middle class, but this fails to help the poor. See generally Christensen, *Lawyer Referral Service: An Alternative to Lay-Group Legal Service?*, 12 U.C.L.A.L. REV. 341 (1966); Comment, *The Unauthorized Practice of Law by Laymen and Lay Associations*, 54 CALIF. L. REV. 1331 (1966). For a prediction of the legal changes in our system, see Schwartz, *supra* note 35, at 298-305.

sional performance of lawyers in an area where it has been embarrassingly poor.

It is rather ironic that the court was even concerned with the detection of ethical violations, since Professor Carlin indicated that neither the bar nor the appellate division makes a significant attempt to police and prosecute such occurrences anyway.<sup>45</sup> Only 25% of all individual practitioners polled in his survey (many of whom make up the lower echelon of the bar) were deemed strict conformers to ethical standards.<sup>46</sup> On the other hand, 47% fluctuated in their conformance and 30% were habitual violators.<sup>47</sup> Yet of the estimated 4,500 serious violations which occur in New York each year only an average of 85, or less than 2%, are submitted to any official disciplinary machinery, and of these only 0.02% are sanctioned by disbarment, suspension, or censure.<sup>48</sup> Moreover, between 1951 and 1962 the Grievance Committee of the New York City Bar handled a yearly average of 1,450 complaints against lawyers, but of these only 4% ever reached a formal hearing before the Grievance Committee and only 19 per year, on the average, were recommended for court prosecution.<sup>49</sup> Thus, the survey shows that those entrusted with maintaining professional standards have all but abdicated their responsibility except in those instances where a case receives much notoriety or publicity.<sup>50</sup> These results indicated to Carlin that disciplinary controls and formal sanctions have in the past been aimed less at scrutinizing moral integrity and ethical conformity, as the opinion in the principal case would suggest, than at forestalling public criticism which might endanger the legal profession's monopoly in the market for legal services.<sup>51</sup>

The appellate division's use of its power under section 280 to second guess the New York City Council Against Poverty and the OEO and to attempt to exclude laymen from the governing boards and to limit the number of directorates and agencies per area is thus open to criticism. The decision appears especially unreasonable in light of the availability of other remedies which would have been less impeding to the total effectiveness of the program while still

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45. J. CARLIN, *LAWYERS' ETHICS* 150-62 (1966).

46. *Id.* at 55.

47. *Id.*

48. *Id.* at 160.

49. *Id.* at 151. Canon 29 makes it a lawyer's duty to expose unprofessional conduct. The last major book on legal ethics also revealed that much justified criticism should be directed at the reluctant portion of the bar and judges who fail to expose abuses or to demand reprimand, suspension, or disbarment. H. DRINKER, *LEGAL ETHICS* 59 (1953).

50. *Id.* at 151.

51. *Id.* at 180. For other criticism of the legal profession's monopoly, see Cahn & Cahn, *supra* note 44, at 927-40; Johnstone, *The Unauthorized Practice Controversy, A Struggle Among Power Groups*, 4 *KAN. L. REV.* 1, 5 (1955).

providing adequate safeguards against the dangers apparently troubling the court. However, a new proposal has been accepted,<sup>52</sup> and thus, although the power exercised by the court has resulted in a delay in furnishing the poor with needed legal services, a partial loss of OEO funds, and possibly an atmosphere of apprehension that could limit the effectiveness of the program, the needed services will soon be provided. But what of another court that is unsympathetic to the concept of a legal aid program? It could use similar statutory power as a weapon against such programs, continually refusing to approve applications on the basis of general references to unspecified dangers to the legal profession. In view of recent Supreme Court decisions casting the halo of first amendment guarantees about certain group activities relating to litigation, it is arguable that this sort of judicial action might be unconstitutional.

In *National Association for the Advancement of Colored People v. Button*,<sup>53</sup> the Supreme Court held that the application of a Virginia anti-solicitation statute to the National Association for the Advancement of Colored People (NAACP), which was seeking out individuals and representing them in desegregation suits, was an unconstitutional interference with first and fourteenth amendment rights of expression and association. The Court emphasized the fact that the NAACP used law suits not merely to vindicate individual claims, but to foster the principle of desegregation and Negro equality.<sup>54</sup> The Court viewed this type of litigation as a form of political expression and association which was a more effective political tool for the Negro minority under certain circumstances than attempting to influence the outcome of elections.<sup>55</sup> While the majority of the Court recognized that solicitation was subject to state regulation, it found no compelling state interest in the contested situation that justified prohibiting the NAACP's actions since they were not of the malicious, profit-seeking, or oppressive nature against which solicitation bars were directed.<sup>56</sup> Thus, the decision made it clear that the first amendment protects litigation that serves a political purpose from interference by references to vague and unspecified fears about professional misconduct.

More recently, in *Brotherhood of Railroad Trainmen v. Virginia ex rel Virginia State Bar*,<sup>57</sup> the Court upheld the constitutional right of a union to refer its members to attorneys of known competence so that they might pursue Federal Employees Liability Act and Safety Appliance Act claims. The majority reasoned that a statute

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52. N.Y.L.J., Oct. 13, 1967, at 1, col. 6.

53. 371 U.S. 415 (1963).

54. *Id.* at 428-31.

55. *Id.* at 429.

56. *Id.* at 438-43.

57. 377 U.S. 1 (1964).

against solicitation could not be invoked to prevent union members from exercising their constitutional freedoms of "speech, petition and assembly"<sup>58</sup> to join together in the form of a union and choose officers who thereafter may advise them or their families on prospective litigation and the selection of an able attorney. The union's activities, though in no way political, fostered rights concerning personal injuries which were created by Congress. The majority again found no compelling state interest that warranted limiting the first amendment rights involved in the union's activities, since the referral system of the union did not entail the traditional dangers of commercialization or "ambulance chasing."<sup>59</sup>

In light of the *Button* and *Brotherhood* decisions, legal aid organizations, such as those set up by CALS, NYLAC, or HAR, might be in a position to argue that their activities also fall within first amendment protections.<sup>60</sup> Congress has stated that its goal in all programs set up under the Economic Opportunity Act is not merely to provide services for the poor, but to attack the problems and causes of poverty.<sup>61</sup> As a result, the OEO legal services program has been justified and interpreted as being organized not simply to redress separate individual grievances, but also to use legal services as a means of combating poverty and its causes.<sup>62</sup> In fact, the OEO Guidelines require each legal service program to adopt the goal of legal reform.<sup>63</sup> To this end legal aid groups have undertaken test cases and legislative work, including research, drafting, testifying, and even lobbying in some instances.<sup>64</sup> In addition, legal service organizations have engaged in community education by means of information cards and speeches, the training of legal and nonprofessional personnel, and the gathering of statistics to evaluate the program's effect in countering poverty problems.<sup>65</sup> If the NAACP's use of some of these procedures, including the institution of litigation, to free Negroes from the restraints of segregation can be considered

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58. *Id.* at 5-6.

59. *Id.* at 6.

60. Other writers have also indicated that the *Button* and *Brotherhood* cases have opened the way to first amendment protections for legal aid groups and other group legal services. See Bodle, *Group Legal Services: The Case for the BRT*, 12 U.C.L.A.L. REV. 306, 322-25 (1965); Cheatham, *Availability of Legal Services: The Responsibility of the Individual Lawyer and of the Organized Bar*, 12 U.C.L.A.L. REV. 438, 453 (1965); Schwartz, *supra* note 35, at 305; Zimroth, *Group Legal Services and the Constitution*, 76 YALE L.J. 966 (1967); Note, 41 NOTRE DAME LAW. 961, 970 (1966).

61. Economic Opportunity Act of 1964, 42 U.S.C. § 2701 (1964).

62. See, e.g., Cahn & Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317 (1964); Grosser, *supra* note 44; Pye, *supra* note 22; Note, *supra* note 7. See also § 215, 80 Stat. 1462 (1966), quoted in part in note 72 *infra*.

63. OEO, GUIDELINES FOR LEGAL SERVICES PROGRAMS 23 (1966).

64. Note, *supra* note 7, at 813-22.

65. *Id.*

political activity that aids a racial minority group, it seems that the activities performed by the neighborhood legal service organizations could similarly be deemed political since their ultimate goal is to free an economic minority group from the restraints of landlord oppression, merchant exploitation, and governmental injustices.<sup>66</sup>

Assuming a court would accept this argument, those persons incorporating the legal aid group, or those who direct it, could seemingly claim first amendment protections similar to those of the NAACP. In *Button*, it was not the members and nonmembers of the NAACP receiving legal services whose rights were violated, but rather the violation was of the rights of those members who sought to provide these services.<sup>67</sup> And, these persons, like the incorporators and board of a legal service corporation, were not necessarily of the same social or economic background as those being served.<sup>68</sup>

Even if a court ruled that OEO legal aid corporations, because they are primarily service organizations, are not sufficiently political<sup>69</sup> to be analogous to the NAACP in *Button*, first amendment guarantees may nevertheless be available to these groups. An argument to this effect can be based upon a factual analogy to *Brotherhood*, with its nonpolitical personal injury claims. Such an analogy is, of course, less direct than the political analogy to *Button*, since the union in *Brotherhood*, unlike a legal service corporation, did not hire attorneys directly. However, in *UMW v. Illinois State Bar Association*,<sup>70</sup> the Supreme Court has recently authorized the direct hiring of attorneys by a union to handle workmen's compensation suits for the union members.<sup>71</sup> Whether attorneys could also be hired for suits less related to the functions of the organization, such as divorce or criminal suits, as legal aid attorneys would undertake, was not stated, but in light of the decision it seems likely that these too would be authorized. This decision also made it clear that the fact that the rights enforced in *Brotherhood* were congressionally created was irrelevant.<sup>72</sup> Therefore, first amendment guarantees cover litigation over both state and federal claims.

66. Note, 41 NOTRE DAME LAW. 961, 970 (1966). See note 60 *supra*.

67. 371 U.S. 415, 418, 420 (1963).

68. It could be argued that unlike the *Button* and *Brotherhood* situation, most OEO legal service groups operate under a grant of authority from the state government with federal financing and would be in no position to argue that the same state government is unconstitutionally limiting its authority to provide services.

69. Section 202, 42 U.S.C.A. § 2782 (Supp. Feb. 1967), declares that OEO programs cannot be used for partisan political activity or for election of any candidate for public office. The problem is whether the over-all activities are sufficiently political in a non-partisan sense for first amendment protections.

70. 36 U.S.L.W. 4048 (U.S. Dec. 5, 1967). This opinion was handed down after this Note had gone to publication and is an expansion of the *Brotherhood* decision.

71. *Id.*

72. *Id.* at 4050 n.5. § 215, 42 U.S.C.A. § 2792 (Supp. Feb. 1967), states in part:

In carrying out sections 204 and 205, the Director shall carry out programs eligible for assistance under such sections, which provide legal advice and legal representa-

The most troublesome difficulty with the analogy to *Brotherhood* concerns whose first amendment rights are being violated. In that case the workers receiving the advice and the elected representatives providing it were all union members<sup>73</sup> who voluntarily chose to join a union so that they could function as a unit. The act of associating in this form in turn engendered the constitutional right of the elected "wisest counsel" to advise as to the most effective way of petitioning the government through the courts.<sup>74</sup> Although the poor of a neighborhood are members of a group defined by a geographical locus and economic status, rather than by a job and bargaining unit, the fact remains that they usually have made no attempt to assemble, confer, or seek advice on petitioning the courts. They, therefore, have performed no act protected under the Constitution.<sup>75</sup> However, it might still be arguable that the incorporators and those who will participate on the boards of legal aid groups, a portion of whom will be representatives or "wisest counsel" of the poor, are performing constitutionally protected acts. They do assemble to advise and petition the government through the courts; and they are the representatives of a group which has proved ineffective in asserting its own rights.<sup>76</sup>

If a court also rejects the factual analogy to *Brotherhood*, there might be yet another approach to the first amendment question. It

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tion to persons when they are unable to afford the services of a private attorney, together with legal research and information as appropriate to mobilize the assistance of lawyers and legal institutions, or combinations thereof, to further the cause of justice among persons living in poverty.

73. 377 U.S. 1, 4-6 (1964). The advice was given to the union member if alive, or his widow and children. *Id.* at 4.

74. *Id.* at 5-7.

75. The court in *Illinois State Bar Ass'n v. UMW*, 35 Ill. 2d 112, 219 N.E.2d 503, 508, 510 (Ill. 1966), *rev'd*, 36 U.S.L.W. 4048 (U.S. Dec. 5, 1967), indicates in dicta that there might be a constitutional violation if indigents' rights were being represented. Judge Alexander in his second opinion in *In re Community Legal Services, Inc.*, No. 4968 (Pa. C.P. 4, June 30, 1966), (Second Opinion, 1967), at 123, also suggests that the poor may have constitutional rights to petition the courts, and that these are at stake:

While the present case concerns the incorporation of Community Legal Services to provide services to those who live in the area of "poverty" and to low income citizens, the right of those citizens to petition the courts and otherwise to speak and associate thus to secure redress of grievances are, of course, at stake here. The incorporators of Community Legal Services may properly raise the constitutional rights of these citizens: *Griswold v. Connecticut*, 318 U.S. 479, 481 (1965); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

Zimroth argues that in *Button* not only the legal service program of the NAACP was protected, but that the opinion can be read as either giving any person the right to be a plaintiff in a suit or recognizing a constitutionally protected right to litigate. Zimroth, *Group Legal Services and the Constitution*, 76 YALE L.J. 966 (1967).

76. When litigation itself is not a form of political expression as it was in *Button*, the question remains as to whether the lawyers have a constitutional right to petition government for redress of the separate grievances of others. Some authorities believe that the poor may have a special right to litigation. See authorities cited in note 75 *supra*. Although there are no cases upholding such a right, the same deference given to the poor might allow attorneys to claim first amendment protections when representing this group.

seems that *Button* and *Brotherhood* together have created a novel and presently undelineated area of first amendment protections concerning litigation, and that the penumbra of this protection may extend to include charitable legal service organizations.<sup>77</sup> That is, regardless of factual similarities to the legal aid context, the two cases may indicate a trend which will culminate in the recognition of legal service corporations as another group that exercises first amendment rights when it assembles to assert either political or non-political claims for others who are unable meaningfully to assert their own rights.<sup>78</sup>

Assuming, *arguendo*, that the activities of neighborhood law offices are protected by the first amendment, the next question is whether the application of a New York type statute would be an unconstitutional interference with these activities. This question seemingly should be answered in the affirmative, at least in the context of the principal case. There is a clear parallel between the appellate division's denial of the petitions because of vaguely defined potential dangers to professional standards which might result from the organizational structure of the legal services program and the Virginia court's prohibiting the activities of the NAACP and the union on the basis of similar fears as to the effect of solicitation on professional standards. Moreover, in the principal case, as in the two Virginia cases, the traditional threats to professional standards caused by profit seeking were absent and there was no mention of any other compelling interest which would justify interference with rights protected by the first amendment.

There are two additional problems with the constitutional argument. The first stems from the fact that the appellate division's refusal to approve the plan would not prohibit poor individuals from bringing their own suits nor would it prevent lawyers from joining together in partnership form to give free services to the poor. Therefore, such court action would not theoretically prevent the adjudication of the rights of the poor or association to encourage the assertion of those rights. In *Button* and *Brotherhood*, however, although the Virginia antisolicitation statute similarly did not expressly prohibit individuals from bringing desegregation or personal injury suits, it was nevertheless held unconstitutional as applied. The Court recognized the impact of the *effective* practical restraints created by a dearth of lawyers willing to represent Negroes in *Button*<sup>79</sup> and the experiences of union members with incompetent or dishonest attorneys in *Brotherhood*.<sup>80</sup> A similar practical

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77. See notes 60 & 75 *supra*.

78. See notes 60, 75 & 76 *supra*.

79. 371 U.S. 415, 435-36 (1963).

80. 377 U.S. 1, 3-4 (1964).

restraint would seemingly result from prohibiting groups seeking to provide free legal services from using the corporate form or that of a voluntary association, so that such a prohibition could also be declared unconstitutional, assuming first amendment protections are applicable.<sup>81</sup>

This analysis, however, reveals the second problem: statutory provisions such as section 280 do not prohibit all free legal service associations, whereas the Virginia statute barred all solicitation. Section 280 merely prohibits corporate practice of law for the poor which is carried on without obtaining a court authorization to do so. Yet this, in effect, amounts to the imposition of a licensing requirement, and it has been established that whenever licensing is a prerequisite to the exercise of first amendment rights there must be explicitly defined standards if condemnation as an unconstitutional prior restraint is to be avoided.<sup>82</sup> A case in point is *Cantwell v. Connecticut*,<sup>83</sup> where the Supreme Court declared unconstitutional as a prior restraint on the freedom of religion a statute requiring any person soliciting money for a religious cause to procure first a certificate from an official who had the power to determine whether the cause was actually religious. There was an admitted state interest in the prevention of fraud, but the statute was nevertheless held unconstitutional as applied because of the lack of specific standards and the danger of arbitrary and discriminatory application.<sup>84</sup> The appellate division's discretion under section 280 to determine what is professionally acceptable is no more limited by specific guidelines than that of the official in *Cantwell* and is equally susceptible to arbitrary application. Moreover, the fact that a court is exercising

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81. Even if the group could use the unique form of a nonprofit law partnership, such an organization presents a number of problems. First, it would probably be difficult to find qualified program directors. Few lawyers would be willing to join a partnership with persons they might not even know, face unlimited personal liability, and yet receive no compensation for their services. While it is true that malpractice insurance could reduce the risk of liability by affording protection against suits for misrepresentation, it would not provide a shield against actions for debt or for other torts. Second, a law partnership would face grave ethical problems if it sought to include laymen as the OEO seems to require. Canon 33 provides in part:

In the formation of partnerships for the practice of law, no person should be admitted or held out as a practitioner or member who is not a member of the legal profession duly authorized to practice, and amenable to professional discipline.

Third, a law partnership might lose the favorable tax treatment of a charitable corporation, although it is possible that such tax advantages might nevertheless be obtained through the use of charitable trusts. Finally, a partnership, lacking the perpetual existence and ease of executive-management control of a corporation, would seem a cumbersome means of managing the kind of vast legal service contemplated by the New York program.

82. See *Thornhill v. Alabama*, 310 U.S. 88 (1940); *Lovell v. Griffin*, 303 U.S. 444 (1938); *Near v. Minnesota*, 283 U.S. 697 (1931).

83. 310 U.S. 296 (1940).

84. *Id.* at 303-07.

this discretion rather than an administrative official would not free it from the condemnation of being a prior restraint.<sup>85</sup>

Although not exhaustive, the above discussion at least suggests that in light of the facts and possible implications of the *Button* and *Brotherhood* decisions legal service programs under the OEO may be within the scope of the first amendment, and that statutory provisions like section 280, because they lack clearly defined standards, may be unconstitutional prior restraints. On the other hand, statutes of this type, if narrowly drawn, are a proper exercise of the state's police power, since maintaining and fostering standards of competence and professional ethics in the practice of law are legitimate state concerns. Thus, if states wish to retain such restrictions,<sup>86</sup> clear and specific criteria enunciating what is necessary to obtain a license should be established.<sup>87</sup> This would be wise not only to avoid any possible first amendment problems, but also because it would necessitate a thorough investigation of today's social realities and of what is needed to preserve professional competence and integrity in legal aid work as well as in other types of practices. It is to be hoped that the criteria enacted would eliminate the opportunities for discretionary abuse and exclude only those groups actually posing a threat to ethical standards. While this will be a difficult task, it is better to undertake it through legislative reform after a complete and searching analysis, than by means of constitutional litigation which seldom leaves a court the time or the resources for deep study and unhurried reflection.

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85. "A statute authorizing previous restraint upon that exercise of the guaranteed freedom by judicial decision after trial is as obnoxious to the Constitution as one providing for like restraint by administrative action." *Id.* at 306. See also *Near v. Minnesota*, 283 U.S. 697 (1931).

86. See ILL. ANN. STAT. ch. 32, § 415 (1954); W. VA. CODE ANN. § 30-2-5 (1966) (allowing charitable corporations to practice law for indigents without a special court approval); R.I. GEN. LAWS ANN. § 11-27-18 (1956); WASH. REV. CODE §§ 2.50.010-.150 (1959) (making special provision allowing legal aid to operate).

87. In setting these standards, the need for close association with other professional and nonprofessional services, realistic and flexible standards of indigency, the use of law students and laymen in investigating and interviewing, the extent of social and political involvement, the representation of groups and unpopular causes, and the position of research, drafting, and lobbying for legislative reforms are all aspects that should be considered and given ample opportunity for growth and development. Finally, several of the canons, such as those concerning advertising, fomenting litigation, and lay intermediaries will require a critical evaluation in order to determine whether they protect professional standards in legal services for indigents or instead act as impediments to the legal profession's provision of legal services for the poor. J. CARLIN, *LAWYERS' ETHICS* 180-81 (1966); H. DRINKER, *LEGAL ETHICS* 161-67 (1953); Cheatham, *A Lawyer When Needed: Legal Services for the Middle Class*, 63 COLUM. L. REV. 973, 979 (1965); McCracken, *Report on Observances of the Bar of Stated Professional Standards*, 37 VA. L. REV. 399 (1951); Powell, *The Response of the Bar*, 51 A.B.A.J. 751, 781 (1965). A Special Committee on Evaluation of Ethical Standards was authorized by the House of Delegates in 1964, 50 A.B.A.J. 970 (1965).