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American Bar Association

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RADIO BROADCASTS AND JUDICIAL ETHICS

*An Excerpt from the Office of the President, American Bar Association,
Minneapolis, Minn., December 2, 1936*

The report of the ethics committee is as follows:

JUDICIAL ETHICS—RADIO BROADCASTS—The participation by a judge, or the use of his name in a commercially sponsored radio program purporting to be for the benefit of the public through the giving of legal advice to indigent persons is contrary to the standards of behavior prescribed by the Canons of Judicial Ethics.

PROFESSIONAL ETHICS—DUTIES OF ATTORNEYS—It is improper for a former judge or an attorney to participate in, or permit the use of his name in a commercially sponsored radio program purporting to be for the benefit of the public through the giving of legal advice by a judge to indigent persons.

OUR attention has been directed recently to the radio program sponsored by a national advertiser, broadcast weekly over the national network of a large broadcasting company, entitled "Good Will Court." The announced purpose of the "Good Will Court" is to afford to indigent persons, unable to pay for the services of attorneys, means of securing advice with respect to their legal problems from judges of courts which are an integral part of the judicial system of the state, and to "inform the public." The obvious purpose is to promote the sales of the advertiser's product. Other programs of like nature are broadcast by individual radio stations elsewhere in the country.

The essential features of these programs are the appearance of the anonymous "clients," the assistance of an interlocutor who may or may not be an attorney, the stating of their "cases" to the judge, whose name is always prominently mentioned, and finally the advice and comments of the judge. In an hour's program ten or more "cases" may be thus disposed of, the proceedings being interspersed with the usual station announcements, reference to the name of the sponsoring advertiser and to the product which he sells. In many instances there is a proffer of further advice or assistance to

the "clients." Quite often the programs are marked by discussions between the judge and the interlocutor, both as to the facts and the law, and by emotional outbursts of the "clients." The case is conducted so as to create the impression that usual court procedure is being followed, but the simulation is poor indeed and tends to create false impressions in the minds of the lay public respecting court procedure.

We are asked to state our views as to the propriety of the participation therein by judges, former judges, and attorneys.

At the outset we deprecate the simulation of an actual judicial proceeding by a group of lawyers or judges, and especially one having for its primary purpose the advertising of an article of commerce. It is an affront to the dignity of judicial tribunals and should not be tolerated. It is the unqualified opinion of this committee that no judge or former judge nor any other member of the bar should participate in any such commercial program. "Patience and gravity of bearing is an essential part of justice; and an overspeaking judge is no well-tuned cymbal." Another vice of such programs is the tendency to give to the public a distorted idea of the way in which judicial proceedings should be conducted and of the judicial function.

While the question here presented is of paramount importance, the matter is plain. The most important character in these programs is the judge. The judicial office circumscribes the personal conduct of the judge. Canon 1, Canons of Judicial Ethics. The personal behavior of the judge, "not only upon the bench and in the performance of his judicial duties, but also in his everyday life, should be above reproach," and he should not use "the influence of his name to promote the business of others." Canons 4, 25 and 34. The American Bar Association adopted these canons in 1924 as a proper guide and reminder for judges "and as indicating what the people have a right to expect from them."

The judge who participates in, or lends his name to, radio programs such as we are here considering obviously violates these canons.

Moreover, the commercial character of the program, the absence of any opportunity to hear the other side of the case, and the patent exploitation of the intimate and distressing problems of the anonymous "clients," can only be viewed as an effort "to change what should be the most serious of human institutions either into an enterprise for the entertainment of the public or one of promoting publicity for the judge." Opinion 67. Because of the divergence in the laws of the several states, the advice given by the judge is apt to be misleading to listeners in states other than in the state of origin.

These objections are no less real although the proceedings are not conducted in open court, since the "clients" and those who listen to these programs may think they are getting advice of a duly constituted court. In fact, authentic information has come to the committee that such has been the result. Obviously, the "clients" have no recourse when they have been wrongly advised. The whole affair is manifestly prejudicial to the due administration of justice. The fact that the judge gives the money he receives for his part in the performance to some worthy charity does not condone the improper practice.

In a large measure, the same injurious results follow even though the role of the court in such programs is assumed by one who is a former judge or an attorney. We are therefore of the opinion that it is not proper for an attorney or former judge to participate in such radio programs, nor permit the use of his name. The part he takes is calculated to lower the esteem of the profession, and to stir up legal strife, and may be considered a subtle method of seeking employment. Opinion 121. Our present economic structure justifies the maintenance by the organized bar of the modern legal aid clinic to aid the individual lawyer in the discharge of his obligation, but cannot justify its alleged counterpart in the commercial field of radio entertainment.

We refrain from expressing any opinion on the question of whether these programs involve the unlawful practice of the law. That question is not within the jurisdiction of this committee.

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The committee in its review, analysis and consideration of the subject had before it the reports of a number of local bar association committees and other information.

At the conclusion of its consideration it adopted the following resolution:

WHEREAS, the public interest and the safeguarding of the public welfare require the observance of well recognized, long continued and fundamental principles in the giving of legal advice, and especially that such advice be given only by one who is competent and qualified to do so as has been required by the judicial department of the government and by the legislatures representing the great mass of the body politic and that the appropriate giving of such advice requires a careful, a personal and exhaustive inquiry into every phase of the facts and the legal principles applicable thereto, which cannot be accomplished by a mere statement by an interested party who usually is biased and interested in presenting only the circumstances most favorable to him, and

WHEREAS, a fair, full and accurate statement by an interested party as a preliminary to securing competent and skillful legal advice requires the observance of a strictly confidential relationship so that facts and statements, which the party fears will embarrass, degrade and humiliate him, will not be withheld or suppressed by him, and

WHEREAS, the general body of law and especially the statutory law differs so greatly in the several states that correct advice based upon the law of one state oftentimes is incorrect and misleading advice in another state and there is no means by which this fact can either be fully known to, appreciated by, or guarded against by those participating in a broadcast of legal advice, and

WHEREAS, the rules and regulations of the broadcasting station frequently make it improper or undesirable that all of the facts be stated in the program, and hence part thereof are shut off the air and censored because the broadcaster considers them improper and whereas this results in a garbled, incomplete, one-sided and biased presentation of the facts involved in these cases, and

WHEREAS, any needy or indigent person may obtain competent and skilled legal advice in all proper cases from the

numerous legal aid societies operating at easily accessible and convenient places throughout the nation and there therefore is no need for any competing or similar agency in order to afford suitable advice to such persons, and

WHEREAS, the whole setup on which such broadcasts are conducted is commercial in its objective, for the purpose of promoting private industry and private gain as distinguished from public interest and public welfare, and

WHEREAS, the conditions surrounding the questions presented and the staging and other artificial "window dressing" used tends to distort and degrade in the public mind the nature and character of the processes by which justice is administered and to hamper, obstruct and interfere with the creation of a proper and true picture and impression thereof in the public mind, and

WHEREAS, some of those seeking to present their problems for broadcast are persons who have submitted their cases with unsatisfactory results to our courts and are seeking to obtain a conflicting opinion or result by submitting an incomplete statement of the problem for consideration on the broadcasting program, with the inevitable result that ill feeling, ill will and the impression that justice has not been done will be created.

NOW THEREFORE, be it resolved, that the committee on Unauthorized Practice of the Law of the American Bar Association unqualifiedly disapproves and condemns, as being contrary to the public interest, inimical to the public welfare and an obstruction and interference with the processes of justice, all radio broadcasts as a part of which attempts are made to give legal advice, to answer questions seeking legal advice, or to accomplish the equivalent thereof by means of fictitious and unreal court room scenes or simulated trial procedure, and urges that all suitable and proper efforts be made to prevent the continuance thereof or of anything substantially similar thereto.