

THE BAR'S TROUBLES, AND POULTICES — AND CURES?*

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The problem of unauthorized practice of the law is a problem of using the processes of the law to define and protect a monopoly. It immediately raises a series of obvious questions: What are the precise subject-matters of the proposed monopoly? Or, where statutes have already been passed recapturing invaded areas or pushing the monopoly into non-traditional salients, what are the precise subject-matters of the actual legally protected monopoly?

Then: Why does our society need to entrust *any* of these subject-matters, examined one by one, to a monopoly? What is gained thereby for anyone but the monopolist? Is he for example so much better equipped to do this particular work than anyone else—that it pays to keep all others out? Or is this job so important to the public that minimum qualifications for embarking on it need public testing and certification?

*The American Bar Association has a Committee on Legal Aid Work, one on the Economic Condition of the Bar, one on Professional Ethics and Grievances, one on Unauthorized Practice, one on Legal Clinics, a section devoted to Legal Education and Admissions, a section devoted to Bar Organization and a Committee thereof on Coordination, and another on Public Relations. It is almost sure, shortly, to have one on Surveys of the Bar and of Legal Business. This paper attempts to make explicit some of what the Committees at work are discovering to vitally condition their work: to wit, that all such phases of the Problem of the Bar have a common line of cause, a common focus, a common line of cure. No less a part of the same picture is post-graduate education, on which see articles by Shafroth in 23 A. B. A. J. 777 (1937); 24 *id.* 11 (1938); and on which there is also a Committee.

An attempted sketch of the Whole must leave innumerable parts untouched, or suggested in a single sentence. It must risk unproved and locally inapplicable generalization. It must leave unnoted most of the documentation which exists. Its aim is perspective. It can hope to stimulate investigation—investigation seriously and carefully undertaken, with no light-hearted notion that finding facts is an off-hour job—investigation to determine whether the seeming general conclusions hold for any particular Bar, or any recognizable part of any particular Bar. If either gain in perspective or furtherance of real investigation is achieved, this paper has done all that it hopes to do.

The ideas involved are becoming common ground among the more careful thinkers in the field. My indebtedness to many of them I repeat: R. H. Smith, J. S. Bradway, R. Moley, Gisnet, A. A. Berle, P. J. Wickser, E. Cheatham, J. Michael (See my *The Bar Specializes* (1933) 167 *ANNALS* 177). Add I. Lazarus, C. E. Clark, L. K. Garrison, W. Rutledge, D. F. Cavers, F. Shea—and Emma Corstvet's singularly dispassionate and uncomfortable probing into which of the "known facts" are either fact, or if fact, are known; and into what the known facts *really* show, or do *not* suffice to show.

Some of the most recent available and at least moderately significant fact material and analyses of the underlying conditions may be better cited: Lazarus, *The Economic Crisis in The Legal Profession*, 1 NA-

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Or is it, as an administrative matter, perhaps necessary to add this or some other revenue-producing job (say notarization) to the monopoly subject-matters simply in order to support monopolists whose revenue from jobs for which we definitely need them will not alone eke out their existence?

Thirdly, why should these particular monopolists be given by law the monopoly-privilege?—again canvassing the subject-matters one by one. Is their service-record satisfactory? Are their charges reasonable? Do they serve all comers well and equally, and reliably, irrespective of person or pocketbook or position?

Fourthly: Who is worrying about unauthorized practice, and why? Is it the public, complaining of quacks? Is it the profession, concerned about the public welfare? Or who, and why? And do the proposed remedies fit the complaints made?

Such are the questions which underlie any discussion of unauthorized practice of the law, and any position taken on unauthorized practice of the law by anybody will either tacitly assume or openly posit as its base-lines some answers to such questions. Any position taken *must* do so.

The lines of my own approach to these underlying matters had therefore better be set out before I proceed.

AN AUTHOR'S APPROACH STATED

First, in a time of worry and crisis about anything the traditional ways of doing and thinking about that thing are on trial, even when tradition is unambiguous. But

TIONAL LAWYERS GUILD QUARTERLY 17 (December 1937) (reviewing the N. Y. City survey of lawyers); Committee for Cooperation between the Law Schools and the State Bar of California, *The Economic and Professional Status of California Lawyers during the First Five Years of Practice* (1937) 12 STATE BAR J. (Calif.) 259; Garrison, *A Survey of the Wisconsin Bar* (1935) 10 WIS. L. REV. 131; Stephens, *The Experienced Lawyers' Service* (1935) 23 ILL. BAR J. 5, also *id.* at 216; Brenner, *Survey of Employment Conditions among Young Attorneys in California* (1932) 12 STATE BAR J. (Calif.) 314; Am. Ass'n of Law Schools, *Report of Committee on Cooperation with the Bench and Bar* (Rutledge, Ch.) Program (1937) 42. Chicago Chapter, National Lawyers' Guild, *Report of Committee on Legal Service Bureaus* (1937). *Forthcoming*, with contents which I have in part either seen or heard discussed: American Bar Association, *Report of Committee on Economic Condition of the Bar*, 1938 (and see their Report for 1937, AM. BAR ASS'N, ADVANCE PROGRAM (1937) 247); *Report of Committee on Legal Clinics*, 1938; C. E. Clark and E. Corstvet, *Techniques for Exploring The Bar's Relation to The Community's Legal Needs: the Connecticut Study*. (Title subject to change); Am. Ass'n of Law Schools, Committee on Cooperation with Bench and Bar: *Manual for Objective Determination of The Bar's Economic Condition and the Bar's Relation to the Community's Needs for Legal Service*. (Title subject to change); Symposium in *Illinois Law Review* for February, 1938.

One hears, meanwhile, of projected studies in New Jersey and New York. Others must be in process. The hard thing is to keep the set-up of any study from either pre-determining questions, or from leaving questions ambiguous or even multiguous, or from relying on answers which cannot be wholly trusted to represent fact. *Figures* mean nothing unless the stuff which makes up the figures can be relied on. *E. g.*: Who knows how many lawyers are in practice, as lawyers, anywhere? No figures I have seen, with the possible exception of Garrison's Wisconsin study, give me any light on that, at all.

Does the Bar have to become a statistician? I fear even worse than that. I fear that the Bar may have to find folk among its members who can deal with *silly* statisticians as they have long done with *silly* "expert" witnesses generally, and who then look into the real meaning of the evidence. I have argued on p. 114 that the Bar is here the Bar's own client. A lawyer, in such a situation, masters the relevant extra-lawyer techniques, in the interests of his immediate client. He masters the techniques two different ways: first, to understand and build his own case; second, to understand the weaknesses in his opponent's. What he does *not* do, is to shun study, or to lose understanding in anticipatory advocacy.

today, this area of what is claimed to be unauthorized practice is one in which tradition speaks either with a forked tongue or not at all. Either the particular job in question has, by pure social growth, come to be performed *both* by lawyers *and* by others, (say notary's work or collections) or the job in question is a new job with very little tradition, open to occupancy by either lawyers or others (say income-tax counselling or representation before a labor board). Tradition therefore either of what has been or of what has not been regarded as the lawyer's exclusive prerogative (or as the lawyer's proper outside limits of action) affords no decisive answer to any demarcation of the field.

Second, mediation between the powerful Law and Legal Institutions which speak in the name of All-of-Us-at-Once and any lesser group of us, corporate, unincorporate or family—or even the occasional surviving lone individual—this I regard as an expert job, a necessary job, a permanent job. This equally whether the mediation take the form of advocacy or of counselling or of negotiation. It will always take skill to put a case well; specialization in that is a good thing to have, and it is well for the mouth-piece to be certified as competent. It will always take skill to steer away from dismissal of the complaint, to skirt the shoals of summary judgment, or to get the lines of sound appeal fitted to the procedure of the moment—or even to locate the effective office door among mazy administrative corridors. It will always take skill to tell a man in advance what action he may or can take, and show him how to take it, so as to have Law and Legal Institutions either neutral or active in his behalf. All these and others are matters in which a client's interests are invested in legal counsel. Other matters a-plenty occur in which the same holds true: investment counsel, insurance counsel, the friend who advises for or against that girl, or on whether to take that job, or on what surgeon or lawyer to consult. On such other matters skill is needed, too, and the need is permanent, too, and specialized and disinterested advice is most desirable. Perhaps the trouble there is that specialization has not developed far enough to enable us to organize a system of testing and certification.

Yet even with regard to the skills and tasks which have traditionally been entrusted to the lawyer one cannot wisely take as a base-line that as of course his monopoly must *or can* continue. The putting of a case, the negotiation of a settlement, the conduct of a trial of fact, representation before a tribunal or an administrator, to say nothing of debt collection or the handling of a trust fund—such “lawyer’s” jobs I have found again and again done in workmanlike fashion by laymen, wholly unlearned in the law, who simply had specialized in the particular job in question. Again and again I have seen each of them poorly done by lawyers. And many “lawyer’s jobs,” such as the conduct of a case before a labor mediator, I have seen counsel almost regularly handle less skilfully than his principal, on either side. Such facts of course settle nothing. They do give to think: If laymen can do certain jobs as well as lawyers, or better, can they be kept out at all, or permanently, by legislation? Lawyers are not too popular as things stand, though they do have so heavy a repre-

sentation in the legislatures. It is well to remember that man has seen not only legislation for lawyers' monopoly, but also legislation *throwing lawyers out* even of handling litigation before various specialized tribunals.¹ If laymen can do some jobs better or more cheaply and rapidly than lawyers, and they are specialized jobs, with articulate interests behind them, can a lawyer's monopoly—by law—stand up? Again, if there are some jobs, some central jobs, for which lawyers can with some safety be regarded as better equipped than any but exceptional laymen, and there are others where law-skills and lay-skills overlap, is a monopoly of more than the central jobs a wise one, a useful one, or one possible to be maintained? Yet again, if there be specialized jobs which require testing and certification for public protection, but in which law-skill is not the essential, is the public better served by lawyer's monopoly, or by allowing C.P.A.'s along with lawyers to counsel on tax matters, or approved technical experts, along with lawyers, to deal with patent matters? There are two base-lines in such matters: the public *will* be served; though the lawyer must be, as well. Two base-lines, not one.²

That is, if we can get the lawyer's central jobs performed, under any such conditions. Which brings me to my third main base-line, which is that no discussion of unauthorized practice can lead to really intelligent action until unauthorized practice is thought of not alone, but in conjunction with the economic condition of the Bar; with Bar organization and activities; with the well-done, ill-done and undone legal business of the community; and with admission requirements and quotas. Unauthorized practice problems, in terms of what to *do* about them in general, are inextricably interwoven with these other questions, to form a single pattern. The threads, one by one, are not only almost meaningless but are misleading unless

¹ Juvenile courts; many small claims courts; under the German Republic all labor courts, even on highest appeal; and in each case with results dismayingly satisfactory to the parties. In the small claims courts the theory is that the cases are simple, and that the recovery is too small to pay a fee. In the other two cases the goal was adjustment, which the advocate's over-partisan training hindered. In mediation and arbitration the cases of parties inarticulate or so bitter that they need to talk through an outsider seem to about equal those in which the lawyer bothers the case by his over-technicality, claim-puffing, and one-sided approach. *This last is not inherent in the lawyer.* There was a time when A and B, having agreed, agreed also to go down to Lawyer Jones to have the thing drawn up. Lawyer Jones then counselled *both*—a function as useful as, today, it seems queer.

² Moreover, if the drive of the times is what I believe it to be, these base-lines are coming into critical conjunction. First, to a degree which distresses, in the main, rather more than elsewhere, in the larger city the pressure for fees is tending to disrupt any clear coordination of interest between the lawyer and most of his clients. Frequent results run all the way from practical hijacking through mere overcharge into distortion of the lawyer's own judgment in advising and into the occasional ruination of a case by fuss-budgeting activity to justify a fee. In such circumstances monopoly carries with it portent of abuse. *Such abuse need not be general*, in order to garrote the Bar. Indeed, as clients get together in groups, they acquire less of a black-art approach, more of a show-me-results approach to matters legal; and acquire also enough repetitive experience in particular lines of matter to form their own judgments about what good law work is. The mark of this in business is the formation of a legal department which proceeds to handle one business unit's legal work on business principles. The mark of it in the accident field is the Automobile Owner's Ass'n. These are a beginning, only.

Lawyers are going, then to *have* to SERVE, or lose monopoly. And that is a prospect which every right lawyer will be glad to see moving out of the field of preaching into the field of professional necessity. He does not—if his Bar locks shields, in a fashion equally Roman and Icelandic—have any fear of net results.

examined in relation to the whole. This paper attempts a preliminary canvass of that whole and of the relation of its various parts. Details will of necessity be faulty. The generalizations will of course be inapplicable to many areas of the land or of the practice. The major emphasis here is on metropolitan conditions; the thesis is that these show in extreme and risingly crucial form maladjustments which have been making themselves felt in lesser but increasing degree most of the country over; and which, unless something is done about it *skilfully*, and along coordinated and sustained lines, will grow worse instead of better.

Lastly, let me make certain things as clear as words can make them, as to the presuppositions and objectives of this inquiry. I am a lawyer, and a teacher of law. I am proud of the profession. I am jealous for its standing and its growth. I believe in it. Nothing that I have to say is in fact, or is *intended* as, or can *fairly be read* as, an attack or an accusation or an Utterance of Grievance. The attempt here is single: to *describe a situation*: its What, its Why, its Whither. Since, like my brethren, I fail to enjoy the facts we see, I have proceeded to wonder about What to Do, and How.

But I am *not* here advocating any type or line of reform. This paper advocates not any solution, but an *approach* to a problem. The approach is the medical approach. There is an ache, within a body. What is it? Why is it? What can be done about it? What will this proposed course of treatment produce? What will this other? A Bar is in this like a body. There are tooth-ache packets at the drug-store which are useful until dentists' offices open in the morning. There are other "palliatives" and "cures" which are definitively vicious in themselves, and doubly, in blind application. There are procedures which tend toward cure, although they hurt. But all really curative procedures, for baby or for Bar, are alike in this: they must look to causes, and wrestle with what has to follow on what has gone before. In this light I express occasional opinion on occasional possibilities of action. But I am *not* saying that in the present condition of Bar organization and Bar opinion any particular curative measure mentioned will be or even can be put into effect. I am *not* saying that, if successfully begun, such a measure will be or can be continued without deflection from its purpose by politics or jealousy or greed or blindness or inertia. Knowing the difficulties, I here advocate nothing. This paper looks to one thing only: to set out a little horse-sense about a situation which when viewed little piece by little piece has not thus far made too much sense for horse or man. Horse-sense about matters where emotions stir, where both vanity and interest and worry and a profession are involved—horse-sense about such matters commonly makes unpleasant reading. The reason is simple: when we human beings are worried we do and say silly things; when we are both worried about being crowded out and vain of our own work, we are in a jam, and act accordingly. When we look back on it, we mostly wish we hadn't. That is why it may be worth using hindsight ahead of time, this time. Unpleasant though this fellow Mr. Horse-sense Hindsight may be.

The scene to be surveyed is the Bar and the work the Bar seeks to do—always with an eye on the unauthorized practice of the law.

The first observation is that something must be seriously out of joint about the working relation between the Bar and that work which the Bar seeks to do. The evidence will not be denied. It piles up daily.

THE BAR'S BOTHER

Let us put on one side laymen's complaints about greed and high fees, for such complaints have been the lot of any priesthood of a mystery since man was man. Such complaints prove nothing because they are heard equally when the job of the profession is done well and when it is ill-done. Let us put on one side also laymen's yowling about technicality, trickery, red-tape, delay, for even if business should be done with the utmost directness and despatch, it would still be complex enough to elicit such complaints a-plenty—especially a business in which every case means a minimum of one client foredoomed to disappointment. Let us turn rather to the Bar's own aches and groans. There we find unambiguous evidence that the Bar's work is out of comfortable cogging.

The Bar complains of "over-crowding." This means, in horse-sense terms, "not enough income to go around comfortably." For though the practice of law be a profession, the practitioner must eat. A profession is an activity in which service rates ahead of gain; but even in a profession, existence is a precondition to service. "Over-crowding" means that some practicing lawyers are having trouble staying alive. *They also serve who only stand and wait* is one of the noblest lines written in our tongue; but it presupposes, most unpoetically, rations for those who stand.

To these observations the cynic Caviller suggests doubt along a number of lines. Let us listen to him for a moment; let us, however, be as skeptical of his ideas as he may be of ours. "Is it gross income to the Bar that you are talking of," says he, "because on that I have seen no figures. If the Bar's gross income were not reduced by the mahogany front and the oriental rug, and the unnecessary but impressive extra square feet of office space and window; and moreover, if the Bar's *then* net income were equably divided among the Bar's members; and, further, if the Bar did not indulge a standard of living which is really the prerogative of *business* executives and financiers³ and is essentially *unprofessional*, provided 'profession' means 'service-before-gain.' . . ."

It is time to withdraw the floor from this Caviller. He is distracting attention. Let us hear further from the Bar.

³ The Caviller may have been reading the Wisconsin survey, cited *supra* note to title. It there appears that by almost all the "tests" which an ingenious mind could devise, *available legal business* has in Wisconsin increased since 1880 almost outrageously beyond the increase of lawyers. Of course, incursions on the doing of such business are not covered, but many of the "tests" tried had to do with strictly lawyers' business; others sought to measure the community's *needs* for legal business. Either maladjustment in reaching those needs or maladjustment of income-distribution within the Bar, or and more probably the combination of the two, could reconcile the Wisconsin results with those from New York City. Perhaps a rising standard of living, and of professional outlay, needs its attention, too.

It complains of illicit solicitation of "business" by some of its members, and urges investigation and, on proper showing after hearing, disbarment.⁴ The wiser speakers for the Bar link such illicit solicitation with over-crowding, they see economic pressure as a thing which breaks down legal ethics in some, and strains legal ethics in more. As one listens to them, one becomes aware of two undercurrents of emotion. The member who has "arrived," and is safe, feels real disgust at business-chasing. The member who has struggled with temptation, and won the wrestle at the cost of his body, is bitter at having others chisel and prosper.

But the Bar, when it takes the floor, rarely draws the issue cleanly on this point. The Bar mainly attacks illicit solicitation by way of lumping it with outrageous action. The testimony is directed not in clear terms of "illicit solicitation of business," but to a wide and ill-defined offense dubbed "ambulance-chasing." Illicit solicitation gets somehow, rather implicitly, smuggled into that offense.⁵ The cases cited do not run so heavily to the sin of getting business by use of runners, they run to fraudulent claims, to perjured testimony, to abuse of clients' trust and funds. For this there are two reasons. The first is that unethical practice has its own touch of the rot in an apple: once the rot sets in, it tends to spread. The second is that the Bar is the Bar, and has learned to argue cases, and prefers to characterize an undesired whole by some unchallengeably undesirable particular instance.

However, we are in the hypothetical chair, and we propose to force clarification of the issue. We rule that fraud, perjury, extortion and embezzlement be discussed first. We know that psychologically and sociologically they do not happen first, in any but a psychopathic lawyer. They are things which some few normal lawyers slide or slip into, over months and years; not evil ways initially planned, nor deliberately embraced from the outset. We know that. But we conceive that we can view the lesser slips more clearly when they are seen unconfused with major criminal acts.

The Bar proceeds, then, making reference to its own disbarment proceedings for its facts. It has occasionally found clients' funds withheld, mishandled, embezzled. Suggestions have even been made in bar associations of a small guild-tax to be laid on every complaint and every answer, to build a fund out of which the Bar's general

⁴ "Disbarment" is a word highly interesting in its implications. It presupposes a Bar as a living, working *organism* from which an excision is to be made.

⁵ Illicit solicitation *per se* is even more important as a symptom than as an evil. If adequate and reasonably-priced service were really and readily available to the bulk of the Bar's public, and that public knew where to find same, illicit solicitation would not too greatly bother. It would lose most of its gouging aspect, at once; and for the rest, would acquire a flavor which at present writing is moderately respectable: that licit semi-solicitation which all of us can document *ad lib*. When a president of the A. B. A., some years back, explained to the students of a famous law school how a practice can still be built, he was to my mind performing a double-public service. He was instructing the young in facts they very badly need to know; and he was bringing out for observation and discussion going techniques so familiar in lawyers' living that the speaker wisely thought instruction in them proper. Instead of being reprinted and circulated, the speech was allowed to drop out of sight. "And many a childing mother then And newborn bady died." Of course, folk who don't like to face fact didn't like it. But accurate presentation of facts is the first condition to cure of conditions. That lost speech would be worth much that has been printed.

reputation in such matters may be made good against the terrific adverse publicity to the whole Bar of one silly outrage by one single member. Apart from embezzlement, the Bar has occasionally, too, uncovered perjury-mills which grind out false accident-claims, or uncovered corrupt and lasting conspiracies of lawyers, doctors and witnesses which swell claims for workmen's compensation. Such mills, though sometimes large, are few. Exposure of them, as fast as discovered, has been a vindication of the honor of the Bar.—“And who provided the impetus to exposure, and the evidence?” cries the Caviller. The Bar, now just a trifle shame-faced, acknowledges that perhaps the insurance companies, who are not lawyers, but whose specialized business was involved, may have had at least some little share in that.

But fraud-in-essence goes far beyond perjured claims or mishandling of funds. It hooks up intimately with solicitation. Solicitation indeed engenders fraud in the claim, as when real injuries, though little, are made huge in court. And solicitation is frequently itself a semi-fraud, as when routine-payments already in process from some government office are made to appear needful of expert advice—on contracts for half of the payment as a fee.

At this point—where not claims in court, but claims outside of court, come into focus—the Bar tends to attack less its own delinquent members than outside folk who have not been admitted to the practice of the law: unauthorized practice.⁶ The chair does not quite understand this. The chair's accidental experience runs to finding lawyers and non-lawyers in about equal degree chiselling in between governmental payment of a routine claim and the prospective recipient. But the chair has no business interfering in debate. And what difference does it make? The abuse, whoever may be the abuser, is patent. Something is out of joint, whoever skims off the third or the half for no real service.

The Bar, however, has now swung into a favorite melody, well and skilfully played, and frequently: Outsiders never admitted to the practice of the law are cutting everywhere into the lawyer's traditional fields of work. Title companies are monopolizing title-search; trust companies are monopolizing the handling of estates and trusts, are even poaching on the drawing of wills; collection agencies are collecting; automobile owners' associations break in upon the Bar's duty and prerogative of representing automobile owners; C.P.A.'s are absorbing as much of modern tax business as does the Bar; little “bars” of non-lawyer specialists move into each government department before which it pays to practice; interpreters and notaries and consuls and social workers move in to absorb what would be the legal business of foreign language groups; political fixers fix—and all of this is but the beginning. It is crawling with abuses. These people are not skilled lawyers. (How many lawyers are skilled lawyers, in the particular matter they are handling?) These people advertise, while lawyers are not permitted to—a terrifically unfair advantage; also, they serve as runners for unethical lawyers—even a trust company will retain a lawyer

⁶ See almost any unreported discussion of unauthorized practice; and see the shrewd and skilful paper by Clarence Case (1937) 23 A. B. A. J. 941.

at a hundred a month to draft a thousand dollars' worth of wills, or more. These people solicit business in vile ways, and overcharge, and some are dishonest, and more make legal blobs.—At which point one hears little of the troubles which afflict grievance committees, and little of the need for raising standards of admission to the Bar. These are not really forgotten; they merely slip out of attention when Unauthorized Practice is the theme.

Again, as one reads and listens, one grows conscious of two quite different notes in the complaints: danger to the Bar's needed service being rendered; then, danger to the Bar's needed living being earned. This time, therefore, one feels that the notes come from a deeper level, a level much deeper. Not mere personal disgust with indelicate or unlovely ways of competition, nor mere personal bitterness at the success of such. The level here goes to the more nearly fundamental: a whole profession, a needed profession, is fighting in some alarm for its very continued life.

For it takes no Cynical Caviller to make us see that some of these encroachments on the practitioner's ancient fields are like the encroachments of the white man on the Indian: neither right nor law, neither tradition nor stubborn fighting by the gathered tribe, will over long hold up the dispossession. A title company simply can more effectively gather records than the ordinary lawyer can; and over the years it *can* therefore organize to do a job both more quickly, more effectively and more cheaply; it can issue insurance which the ordinary lawyer cannot, against its own error or negligence. It offers a better social machinery for the job. In such a case, over the long haul, there is only one answer: acceptance of the better machinery, and revamping and regulating it to get rid of its peculiar abuses and defects. Or else moving not to throw out the title company, *but to meet its competition*. It seems in Boston to have been possible for *specializing* lawyers, organized indeed into a conveyancers' association, to meet that competition.⁷ That helps "the Bar" at large in Boston only indirectly; yet every lawyer well placed in a specialty is a lawyer both earning a living and removed from competition with the general.

As one looks through the list of "encroachments," certain conclusions become hard to escape. (1) Old lines of business are certainly drifting or being sucked into non-Bar hands, but with real probability that this is because they are being done more adequately or more cheaply or both by outside agencies, first; and second, because those outside agencies are making their serviceability *known*, such as it is.

⁷R. R. B. Powell, now in process of studying the title insurance and Torrens situation, generously permits me here to use certain of his results on the facts. *But he is not responsible for my interpretations, which are my own, and which he has not been asked even to consider.* The insurance feature of title insurance appears (thus far) to engage in fact considerably less than 2% of title company income.—But even a 1% need for insurance hurts him whom it hits, and does not (on an insurance plan) turn on negligence. A competing *branch* of the profession, on the other hand, means singularly specialized and expert service. The Boston conveyancers seem to satisfy the Boston real estate trade.—Will this hold equally in a line in which the layman does not habitually consult a lawyer on every deal? That needs exploration.

Meantime title companies (as by the discount to lawyers of which my former students tell me) and trust companies (as by carefully avoiding the drafting of instruments) show willingness to conciliate the Bar, and to work toward a *modus vivendi*. In which lie hints in regard to other fields as well.

This holds importantly in the trust field, in the collection business, in the tax field, in the realm of political representation, to mention but a few. Abuses there are, on the side of lay "practitioners." But the steady drift of business is too steady, it recurs in too many fields, to permit the conclusion that the lay agencies, over the long haul, are not giving satisfaction.

(2) At the same time, and repeatedly overlapping, is a different phenomenon: much business which has never reached lawyers at all, such as petty claims in the metropolis, or estates and trusts based on life insurance and the trust company, much business which has only in the last decades come into existence at all, such as representation before government commissions of modern creation, has been *discovered* and has been *elicited* from "the public" by these other agencies. Lawyers operating by themselves along the old lines would certainly have been slow to know of its existence, and might never have discovered it at all. It is not business taken away by outsiders, but business whose presence and especially whose extent the Bar had never fully appreciated. It is business which the outsiders built. It is also business which suggests very strongly indeed that there is much legal work *still* lying around undone, untapped, waiting for some one. A need unfilled; a market ready.⁸—Yet the very lay organizations which have thus uncovered so much "legal" business are equipped to outcompete most of the Bar for some of the older legal business which the Bar *has* been attending to.

(3) The third conclusion is that the lay organizations thus far heavily noted in their "encroachment" show important common characteristics. They are *specialists*; each has worked out machinery for handling with maximum use of pattern, forms, routine, and concentration of expensive executive decision, a *semi-mass production of legal transactions or legal services* in a very limited field. Given the mass of roughly similar units of business, production can have its price cut in legal matters, as in others. It can be cheapened down into the region of petty business which most individual lawyers would shun as non-rent-paying. It will be strange if the Bar, once awake to the situation, cannot do legal service as well as can any lay organization.

(4) The fourth conclusion which emerges is that the Bar, through all of this development, has been very human. It is of the nature of any profession, when economically squeezed, to turn attention rather to income than to service; and any outsider or observer who feels disposed to make sport of that or to complain will do well to starve a little while he prepares his complaint, and to read some history while he starves. It is of the nature of any privileged class or group on whom a monopoly has been conferred by government to see the prerogatives of the monopoly quite as clearly as they see the duties whose performance is the reason for the monopoly's existence. The Bar is no exception. It is of the nature of man, when in

⁸ On this the very careful Connecticut investigation, canvassing a sample of residences and of businesses in residence districts, gave results whose possibilities amaze. See Clark and Corstvet, *supra* note to title. If those possibilities prove out, to even a third, whether in Connecticut, or elsewhere, action is long overdue.

trouble, to seek out a devil, and legislate against him, or incant, or burn. The teamsters did not examine the new pipe-line in terms of economics; they rioted against it. The dairy-farmers did not examine the nutritive or economic virtues of filled condensed milk; they used their votes to get the stuff prohibited.

The lawyers, likewise, have not at first inquired deeply into how these ills have come about, and what they mean. They have turned to the simplest ineffective human devices man has known, in the proper, primitive fashion of *homo sapiens* in pain: Whip the devils out of our midst by disbarment; legislate the competing devils out of the road by unlawful practice acts drawn so broadly that a legal aid society can feel forced to close down, lest it be transgressing; and, for the rest: shut down the output of lawyers (Did someone say "Philosophy of Scarcity?") and keep the young competitor under by longer training and by an apprenticeship during which he can be worked for his carfare.

It is all so very human, and understandable, and almost inevitable, that it would be tragic and pitiful and desperate if *homo sapiens* had not devised a better way. But he has. And the Bar—an intelligent body of men *when they are working for a client*—are recently beginning to discover that their own plight calls for the same resourceful and long-range sizing up of the situation which might be required of them in the interest of some *other* trade association whose motto was: *Service*. And whose continuance was conditioned on the motto's proving true. Today the Bar is counsel for a trade association in distress. Its full and most dispassionate skill is needed. *For its client is The Bar.*

HOW DID IT HAPPEN?

What, then, are some of the ideas which are beginning to come out of the Bar, and calling to be put together, that action may move in the direction of true cure, not of mere poulticing? They can be summed up in one single picture: with an automobile industry pouring cars and traffic accidents into the streets of the metropolis, with conveyor-belts at one end, one-way streets, traffic lights and express highways at the other, with national labor organizations, national markets, nationally organized finance, with "private" businesses and industries numbering their respective citizenry in figures that look like the population-figures of cities, the Bar, in modern dress but in a buggy, attempts to cross the Loop. *Its* organization is just about that of 1838—the most individually and individualistically organized activity in these United States. The very peanut vendor on the street will, for example, be found leasing his cart from Peanuts, Inc., returning it nightly to a central garage, or even working as a sales employee in a limited territory, his only independence being his commission. The farmer, the stronghold of individualism, joins a co-op, comes in under a federal government plan, crops for a landlord or a mortgagee. Only the lawyer—most of him—still ruggedly demonstrates the maxim: Divided We Fall.

For consider the conquest of America, well begun a short century ago, sweeping

and swirling through the latter nineteenth century decades: transportation, industry, capital and man power gathering, gathering, gathering together. Gathered into units, into corporate "persons," created by the lawyer's ingenuity. Consider the basic techniques employed: production techniques; specialize, subdivide and combine; standardize, standardize; cheapen by specialization, by standardization, by *mass*-production; use eyes and ingenuity to find and eliminate traditional waste. Marketing techniques; standardize transactions as well as goods (or services), cheapen by standardization, reach the market of the whole nation, build for repeat orders; and advertise, and advertise some more; use eyes and ingenuity to spot and overcome traditional inertia. Form-contracts, Taylorism even in the office. Financial techniques, subdivision again and standardization, with each new wrinkle of any security thoughtfully provided by a lawyer—to bring capital together into newer, huger units. This, with all its exploitation and its draining of men, with all its incidental politics and bone-crushing, is the picture through which the Bar drives over a century, changing its dress and its manners—but not its buggy.

Organization, cooperation, coordinated group-work, specialized work, mass-production, cheapened production, advertising and *selling*—finding the customer who does not know he wants it, and *making* him want it: these are the characteristics of the age. Not, yet, of the Bar.

These characteristics,—modified only to write *need* for *want*—are compatible with the highest and noblest professional service. They can be made to conduce to finer, fairer and more wide-spread service than the Bar now gives. But even more important (because eating does precede service) is that until the Bar *as a Bar*, not as an agglomeration of individuals, discards its buggy, the Bar will suffer much—and most of its individual metropolitan members will suffer more.

The canons of ethics on business-getting are still built in terms of a town of twenty-five thousand (or, much more dubiously, even fifty thousand)—a town where reputation speaks itself from mouth to mouth, even on the other side of the railroad track; and reputation not only of the oldster, but of the youngster. The youngster is watched when he hangs out his shingle; watched if he be a home-town boy, watched doubly if he be not. Word of law's work passes the time of day, along with side-taking as between the Mathematics teacher and the High School Principal. All the lawyers are known, and people who have legal work to do are moderately aware of it; and they have little difficulty in finding a lawyer of whose character, abilities, experience, yes, and fees, they can get some fair inkling ahead of time. And—no little item—where reputation works and counts, the overhead becomes materially less. "Front" that socially and personally is waste is peculiarly a privilege and an expense of the metropolitan lawyer.

Turn these same canons loose on a great city, and the results are devastating in proportion to its size. If a small client does not know to whom to go, he does his pondering with all the folk-lore about lawyers stalking blackly through his brain—

they over-reach, they over-charge, they are not even to be trusted. This means, in result, undone legal business. A-plenty. Or it means turning to some non-lawyer who undertakes to help out. Or it means chancing it. If the client chances it, he very truly chances it: the conditions of metropolitan legal business make it no simple thing to reach into the grab-bag and pull out a lawyer who is able, experienced in the case at hand, not too taken up with other matters, and also reasonable in fee. Here, therefore, one needs stress on one line of points too often overlooked:

(1) Whether the client is fairly charged or not, if he *thinks* he is overcharged, he is for twenty years a walking, talking, publicity agent against the Bar entire.

(2) Whether he is well represented or not, if he *thinks* he got inadequate service (and neither the Law nor the Jury nor the Judge affects too much his own view of his Rights—which Somebody must have Done Him Out of—for he, too, is a devil-chaser) he is again a walking, talking, stalking publicity agent against the Bar entire. Gratuitous. He needs only a chance to tell his story.

(3) But if he goes to a non-lawyer, and gets poor service, he will still hold that against The Law.

(4) And if he goes nowhere, and gets nothing or worse, he will still hold *that* against both Law and Lawyers.

It is a true picture, this, of prospective small clients who need service and help in great cities. It is meat for the political fixer. It is meat for the ward-boss. It is meat for the siren-singing of the ambulance-chaser's runner. It is meat for the jailor who is tipster for the bondsman and the criminal court hanger-on.

For there *are* jobs to do, and jobs to get. Needed done as badly as their doing is needed. There are also cures available. But let us push the diagnosis further, first.

I do not mean to suggest that there are not within the metropolitan bar groups of lawyers who have effectively made the adjustment to business-getting which they need. There are indeed such groups. Outstanding is the adjustment of the so-called law factory, with its typical specialization on the higher brackets of corporation law. Within the relatively small world served by such a legal plant, its product and reputation have the same chance of becoming known by mere performance, reputation of a senior partner, or personal contact, which holds in a smaller town for the general lawyer in relation to the general community. No less to the point, in regard to the law factory, is another feature to which I shall recur: the careful development of specialization within the plant, and the accumulation, by forms, files, and specialized experience, of something approaching a mass production technique. The smallness of the fee, for example, for putting out an important bond issue, when taken in relation to the skill, authority, responsibility, labor, and speed of the personnel involved on the legal side is almost startling when compared with the general run of less specialized legal business.^{8a}

Another type of adjustment lies in specialization on the business of business-getting. Here it is enough to mention the politically connected lawyer, with his road

^{8a} Fees arising out of reorganizations based on the same bond issues are, of course, another story.

into patronage;⁹ the solicitor of negligence suits, with his runners; the criminal lawyer who has built up his regular clientele. Indeed, in a broader sense, and with no suggestion of impropriety or even indelicacy in their building of a practice, there are, in every metropolis, the whole range of what we may think of as the middle and successful bar. But one point for us here is that such lawyers draw their clientele either from organizations (business, labor, philanthropic) or from persons of moderate means; and the further point that their almost necessary office appointments provide for any accidental visitor who has to watch his dollars a psychic handicap to consultation which is too often forgotten as the lawyer considers the need for impressing his prosperous clients as being himself among the prosperous. And, perhaps, a still further point. When clients who are steady clients have to be guarded; when lawyer's Service includes going up to the client's office; when fee-justifying seems to require putting on a show; when non-permanent juniors have to be kept from meeting the sources of business; when, in a word, *good* lawyers' thinking gets distracted from the lawyer's job—then, for some part even of the successful Bar, there is a most unwanted maladjustment—working itself out, as things human do, if left untended, by competitive disruption of the whole. In a word, while the upper reaches of political, of corporation, and of criminal practice find contact between client and counsel moderately simple, and while the person or group of moderate means has reasonable outlook of finding a lawyer to his liking and suited to his pocket, we are left with two thirds of the bar and eighty per cent of the public who lack either the contact or the means of making it.

THE HURDLE OF EXPENSE IN LEGAL SERVICE

The next matter which calls for attention is the cause of the exceedingly high price of legal services in this country. On the whole, the bar is unaware of the existence of the phenomenon—and perhaps for that reason uninterested in its causes. The bar has grown up with the causes as part of its natural environment, has adjusted to them as one adjusts to the pressure of the atmosphere, and would read with amazement that legal services could be performed at a level of charge materially lower than that with which they are familiar.

And, indeed, in these United States, certain of the causes may be regarded as permanent. These are the organization of our law itself, first, by forty-eight separate jurisdictions, alongside which run ten semi-independent federal circuits; and second,

⁹ Attempts either to control abuse or to allocate return in this connection have rarely moved with realistic hard-headedness. Perhaps too much is in the way. But when a Bar Association (as at least one has) taps off ten percent of every fee from patronage, to be administered for the relief of distressed lawyers, it moves toward combining sound engineering with group spirit. Substitute a graduated percentage scale for a flat one, and the road opens into a scholarship fund, as well (with a new problem, then, of a new kind of plum, best dealt with by letting law schools pick the scholarship men; they have both some expertness and a direct interest in students' quality). No less: no Association Committee could receive funds, over long, without acquiring some partial responsibility for holding down abuses in the patronage from which the funds flow. This means nothing at all, initially; but over the long haul it would mean a focus, both of criticism and of (possibly unwise) action. But a *focus* is a thing folk can deal with, as best they can, if they only get it.

the fact that our basic legal technique is that of case-law, on which is superimposed spasmodic, unsystematic, and inadequately indexed statutory amendment, with the statutes themselves operating only state by state. This is the legal system that we have, and this is the legal system that we shall be living with. But to understand its effects upon the economic condition of the Bar and upon the Bar's service in a metropolitan community, we shall have to examine into why it is an incredibly *expensive* system. It is expensive because law is only local; because law, even for the locality, is hard to find, and slow to find, and calls for a book-equipment whose price would turn gray a Continental lawyer's hair. It is expensive because the foregoing facts produce a Bar whose members can become specialists in only very limited fields, at best, and most of whom are specialists in none. In any matter in which a lawyer lacks experience, the organization of our law itself heaps on him time-burdens in equipping himself to do a right job. One road out is to charge the client for the lawyer's self-education; that may be necessary, but it does not make for economy of service. Worse, the education may be wasted for the future: too often such a case never turns up again. No one who has never seen a puzzled Continental lawyer turn to his little library and then turn out at least a workable understanding of his problem within half an hour will really grasp what the availability of the working leads packed into a systematic Code can do to cheapen the rendering of respectably adequate legal service.—Let me not be mistaken. I talk not of supremely expert advice. Few, in any nation, can afford that. I speak of the work of the rough-hewn electrician who at least can be trusted *on quick call* not to blow out fuses or give advice which short-circuits and sets the house ablaze. And again, let me not be mistaken. Few honor the virtues of case-law more than I do. But cheapness is not among those virtues. Neither for the society nor for the particular client. Whereas costly services are luxury services. Luxury services do not support a trade which verges on two hundred thousand strong. Unless, like 1938 auto-models, they are *in demand*. Or unless, like used cars, they have come to be thought necessary, to get to work.

It is against this background of necessary relative expense that the Bar's organization, peculiarly in the metropolis, but even in the smaller centers, turns up in less-than-1838 adequacy in getting the price range down *as far as it will go*. With no desire to idealize those good old times which are perhaps "good, because they are old," one can yet observe that a lawyer on circuit had a deal of opportunity to learn from or consult with his brethren, and that all reports indicate club-feeling to have been strong. One can observe that the youngster was almost forced into all-round learning, into learning from the whole group of his elders, at every circuit, and into learning about the very matters of most interest to him in his budding practice. One can observe that the tower of law books to be mastered, and even of those to be used, bulked more like a wood-shed than like the Empire State, and even that the law itself was then more fluid and more ready to yield to sense and "principle." One can observe that court and legislature put out about all the law there was to wrestle

with, that administrative commissions did not dot the landscape, that the ranging intricate specialization of economic and even of social life had not yet set in—while today a rich man's problems, say of income tax, have become an unsounded mystery to a lawyer who may have practiced in the next street for a generation. In a word: the whole game was simpler, the beginner understood more of it, and Bar and practice were organized in such fashion as to teach him faster than today, and to make it easier for him to find and get advice he needed. Less time needed means less need to change, and a greater portion of the public's business reached.

In the modern great city, this getting of advice by lawyers is not simple. We all understand and use the luncheon with the friend who knows—if we have and know a friend who knows: a practical, obvious, and wise device. It does not wholly solve the problem, but it tremendously reduces both the risk of error and the time required for the job in hand. We leave to chance, however, the knowing of the needed friend. And those who need him most are least likely to know him. So out of the idea of *group*-movement have we grown, indeed, that the "specialized lawyer consultation service" instituted by the Illinois State Bar Association—an excellent lead—is reported as hardly beginning to find the use it can. When one remembers what one blob by *any* lawyer, for lack of sizing up his problem, can do against the practice and reputation of the Bar entire, it becomes probable that the bulk of the Bar may be swapping the buggy for Shank's mare.¹⁰ In times of economic stress for the profession, this may be short-range individual wisdom for many, but it is not long-range wisdom for the whole.

More generally than by such innovations as the experienced lawyer's service, the Bar has moved against one feature of expense by the cooperative law library. Still more generally, it has once more—as with the trust and the collection and the landlords' protective association, the civil liberties union and the anti-boycott league—left laymen to show the road to organized and effective *legal* action along some specialized line. I have in mind the publication of law books, and especially of all the devices for speeding up the finding of the law: advance sheets, texts, encyclopedias, annotated leading cases, digests, citators—and last, swiftest, those aids in the current welter, the "services"—which are expensive. The Bar's own unwieldy effort, the Restatements, is no substitute for these. What remains in the way of aids is largely government work: semi-codification, the federal index to state statutes, the work of legislative reference bureaus or of a council of state governments, and the like.

Yet all of this only slows, it does not stem the tide. The pooling of practical experience is the only available immediate road to importantly reducing the costs of finding law and of learning how to use it. There are some books which help. Most

¹⁰ The smaller centers face the problem, too, in their own way. Though the legal problems arising are likely to be less complex, yet country and the small town are feeling the impact of law, as well as the market, of the industrial, national economy. And where court-jurisdiction is divided by counties, and Bar-courtesy dictates turning local business over to the local man, the experience-swapping of the old-time circuit wanes.

form-books are still unannotated hodgeporridge, but they show the way to better things. Many practice manuals are chockfull of good sense. I have even seen one moderately instructive book on how to prepare and try a case. And in a very few fields of law there are texts which do what *in a medical book is taken to be the author's duty as of course*: to wit, present along with the rules of law a description and critique of the best known procedures in doing something effective about it. A corporation trust company, on the other hand, makes profit out of specializing and routinizing the actual doing of something effective about it. So do all the various agencies, the useful ones, now so vigorously under attack for unlawful practice. So do the legal departments of banks and business outfits to whom enough transactions of a single kind come, to make experience cumulate, and to enable the building of routine. So do those government departments whose servicing is drawing off so many members of the Bar and negotiation with whom is affording so much new practice as well as so much new trouble in law-finding. Is, then, the individualistic Bar, familiar both with the value of the casual luncheon and with the efficiency of non-Bar legal work on every side of it, never to put two and four *together* and see that while $2-4$ is an unfortunate result, 2×4 can be one of real interest?

No one move is panacea, even if well and wisely made; nor will any cure come quickly. The metropolitan Bar suffers, for instance, also from unwieldy and unfortunate overhead—due in good part, as has been mentioned, to the double need for “front” when the mouth-to-mouth machinery of reputation-spreading is unavailable. Due partly, also, to a *need* for charging more than the traffic ought to bear, even when the service was in fact routine and quick. A need, I say. Uncertainty and irregularity of income force high charge. The law-factory must be equipped to handle sudden peak-loads; but the staff is always there. The small office moves on the same principle which its members rightly reprobate in bricklayer, plasterer and electrician: it insists on high wage per hour or per day, to cover the uncertainty about how many working hours there will be in the oncoming year. Both deal with the uncertainty as if it had to be. Whereas a retainer which can be counted on means not only a lower price for legal service (more regular flow of business; more business of one kind) but an easing of worry-tension, and a lengthening of the lawyer's active life.

Now how much serious attention has the Bar as a Bar yet given to the subject of retainers? To educating the small business man or small corporation in their value, and in the value of *consulting* service? To the possibility of developing, and on a moderately wide scale, *group*-retainers from persons whose legal needs are individually non-recurrent or infrequent, but who, taken in bloc, have like needs which *do* recur? Group-insurance, even group medical service, are today as familiar almost as the grouping of men in mine or factory to handle the recurrent tasks, and so to raise income while production rises. But the Bar considers the problem still no further than from the angle of unethical *individual* solicitation of practice—or the angle of jealousy, or of fear of politics and patronage.

Indeed, as one observes the use of front and overhead largely unnecessary to the work, one is forced to grieve that too many of the metropolitan Bar have drifted into learning from Business chiefly the less fortunate excrescences which Business has to teach: useless magnificence of furniture, cream-skimming of return by the senior with skim-milk to the junior, measurement of a man's worth in terms of business-getting power, methods of competition which verge too often on piracy, charge measured by what the *immediate* client can be made to bear. Whereas those things which give Business its excuse for existence are not yet learned: discovering markets for things people really need, but do not know they do; getting the consumer and the purveyor together, *distributing* what is wanted into the far corners; discovery of methods to unify service and to reduce unit-cost and price, and to purvey better, to more, for less.

The Bar has been largely a monopoly. It is busily engaged by legislation in seeking to become a monopoly again. Now of monopoly, and from the pure enterpriser's angle, we learn from most orthodox economists that "A monopoly which controls an article of very elastic purchase—a luxury or a costly convenience—must be careful not to put its price too high, lest its sales fall off and its gains decline or vanish. Wise selfishness may in such cases dictate a fairly reasonable price, not much above the cost of production."¹¹ Of course, wise selfishness always dictates also lowering the cost of production. Of course, the professional aspect of law dictates an attempt to spread law's service as far as effort can.—The three ideas, put together, speak for themselves. It would seem time for this particular monopoly to gather itself for concerted planning.¹² Only group planning, and group action, can help or cure.

POSSIBLE CURATIVE PROCEDURES

The first and obvious move is for the Bar, as a Bar, to apply business methods to the task of making contact with its customers. For long range work along this line there will be need for careful and skilful sampling studies to develop what kinds of matter come up frequently in the community on which legal assistance or counsel would be of value, and among what income groups, and what percentage of them get referred to anyone for such assistance, and among these, what percentage reach lawyers, and how the lawyers were found or why they were not found or not sought. Which would look like a large order, and a silly one, if a study in Connecticut had not already demonstrated that it can be done, and how to do it. But it does take

¹¹ I FAIRCHILD, FURNISS, AND BUCK, *ELEMENTARY ECONOMICS* (1926). In the Third Edition (1936) c. XIII, the precise language quoted is somewhat modified, but the point is made more at length and more cogently. "The ever-present possibility that 'something just as good' may appear puts a very real check upon the greed of many a monopolist." (286) Or: "... the price which brings in the greatest immediate return . . . may stifle future demands." (287). "The last thing desired by any monopoly which has thus far escaped it is unfavorable public attention and legal investigation and control." (289).

¹² The bearing, at this time, of certain phases of procedural reform, is patent. The prepared case which is ready but not reached, with personal presence required at calendar call, and the common absence of any preliminary procedure to straighten out what issues are really in dispute, are magnificent instances of matters which not only raise costs but deter any client from ever doing it again, or letting anyone else do it at all, if it can be avoided.

some money, and it does take some skill, both in setting the study up—on which material is now available—and in execution.¹³

There is, however, no need to wait upon such a study of the market—one such as sales managers and advertising counsel have been making for decades. There is another thing all ready for the doing: call it publicity, or public education, or advertising the Bar's service, as you will. It consists in the Bar, as a Bar, using the newspaper, the magazines, and the radio to make members of the public see who have never seen before what a lawyer can do for them, and why they need his service. A legal ache is not like a tooth-ache. The man who has it does not need to know he has it, until matters have progressed too far for remedy. A contract with lop-sided but enforceable catch-clauses needs to be caught before it is signed. Forfeiture conditions (which may be reasonable) still need to be known about in advance, warned about; at need some means must be devised for a client to tickle his memory by marks on the kitchen calendar—else the forfeiture is known only after it occurs. Such things few laymen realize, and most would be interested in knowing; and *sustained* publicity can not only inform them, but can slowly stir them out of inertia into action.

Provided, however, that there is a place to go which is convenient and which is made known. "Consult your neighborhood lawyer" will not work. Either he does not exist, or else too often he is hardly the man to consult. Perhaps, with such a campaign well under way, one could induce some good young men to open up in the neighborhoods, to save on rent and front, and to acquire a practice. But to date, they haven't.¹⁴ Hence, a publicity campaign, to be effective, entails some further steps.¹⁵

Beforehand, it is necessary to avoid a few misconceptions which lie close. There is no thought, of course, of any *individual* lawyer or firm advertising or being advertised in this fashion. It is "The Lawyer's Services," publicized by the organized Bar. But there are other misconceptions. Speeches, for instance, about law-and-not-

¹³ See Clark and Corstvet, and *Manual*, both *supra* note to title.

¹⁴ The down-town address appears to have peculiar prestige-power. Which sets a man wondering how far four youngsters in partnership could average down expense and yet build up a sound practice by having three of them running three "local offices" of "Perkins, Petrosky, Picarello and Patrick, 120 Broadway."

¹⁵ The kind of phonograph material one would have in mind would be such as this: "If you have a problem like this, or like the problems we have talked about, then see your lawyer. Tell him why you came. Tell us you went to him. [If you haven't a lawyer, see your neighborhood lawyer and tell us that]. If you don't know where to go, consult Bar Service, address. . . . They charge a dollar to look over your problem, and to advise you how to go about it. Law isn't much easier than living, and they may not be able to help you. But they will try, hard. They make no percentage or profit out of their advice. They are there to help you. If you have a problem like this or like the other problems we have talked about, then see a lawyer. If you don't know where to go, consult Bar Service, address. . . ."

David Diamond, reporting excellent radio work in Buffalo (1937) 23 A. B. A. J. 940, adds at 941: "We cannot and do not ever say 'go see your lawyer.'" If the procedure rests purely in publicity, such caution is not only wise, but necessary. And the Buffalo publicity techniques deserve study. But why do they have to be thus crippled?

men or about how the lawyer is the priest of justice, made by men of great name whose very reputation insures that they will never get down to brass tacks—such stuff in turn insures a flop. What is required is concrete, dramatic episode, worth waiting around to tune in on, or looking through the newspaper to find. If printed, the kind of occurrence which is news. With an arrangement with the editor whereby before the story is written up or published, the reporter contacts the Bar publicity man to make sure of the proper Bar angle coming out in the story; or, better, to give time for writing and more room for pointing the moral, and to achieve some independence of day by day occurrences, the institution of a specialty column on the subject. Conditions will vary from city to city. What will not vary is that a writer who knows his writing and his public will be needed; and that newspapers can be interested in the matter gratis, as human interest stuff which also serves their readers. What also will not vary is that a story for the laborer is not a story for the business man, nor, often, a story for the petty retailer one for the clerk and his family. Not shot-gun material, but successive rifle-shots (with dumdums for the mark and noise for the spectators) is what will function. The same type of thinking holds for radio work. Free time can be procured, but skit-writing and skit-acting are not jobs for well-meaning amateurs. Finally, it may be hoped that the cheapest type of enlightenment on what legal troubles and worries are lying around unattended to, will be found in fan mail from either a column or a weekly radio skit.

Fan-mail needs answering, and aroused interest gets nowhere unless there is machinery for bringing the prospective client to the man he seeks. Aroused interest which finds no attention goes sour. Any Bar which undertakes such a program must be prepared to furnish a consulting and sifting bureau. A charge of a dollar to get in will keep out cases which belong to the legal aid, and discourage a fair percentage of the cranks and psychopaths, and go some distance to meet the actual outlay of such a bureau. If advice is givable and given on the spot, a fee of a few more dollars will help further to meet expenses, and reinforce the notion that service costs something, and build up experience with *reactions to the charge*. Expectation of some charge must be prepared in the publicity. But reactions to the charge itself, in such a bureau, can put together what no single practitioner has ever dared to mention publicly—save over the confidential lunch or glass of beer—to wit: how to estimate what *this client* will bear. Such experience can then further put together what few single practitioners, in their most confidential moments, even think of, save in regard to some particular client, to wit, what will *its continuing* traffic bear? Whereas we need more. We need to know, in general, what *The Traffic* will bear, in terms of easing work in, rather than damming (or *damning*) work out. This is the problem of income to monopoly. I have no fear, as I state it thus, because the only conditions under which its income-features can be produced are conditions which *widen, strengthen and lower the price of service of Bar to People*.

Personnel for such a bureau can be secured, under a salaried permanent head,

either (and preferably) by donation of the services of a junior by each of a number of those leading firms to whom the cases will in no event be referred,¹⁰ or by hiring able young men on two-year contracts (to avoid any suspicion that they may build up their own contacts, and jump the job).

The major difficulty, even though these should all be solved, remains: the reference list and its use. As to a list, there is no escape from the dangers of politics and wangling; but one can feel that, throughout the initial stages, insistence should be laid on the fees in reference cases being materially lower than has been considered reasonable, and on the work going to competent men who have been having difficulty getting clients. Will this undercut the income of the other members of the Bar? I do not think so. I feel personal confidence that such a campaign, within a year, will not only leave unscathed or improve the income of the Upper Bar, but will be felt materially and gratefully throughout the lower income brackets. But some risk along this line must be taken. It must be taken because if the word ever gets around that this is just another gouge, the cause is lost—both free assistance in publicity and growing interest among the theretofore uninterested client-prospects. Complaints there must be; and open invitation to come in both concentrates and intensifies complaints. Yet in the first place, good work stands up; and in the second, a lawyer who has no eye on fat fees, and whose client's case comes to him already *prima facie* worth looking into, and with the client already responsibly assured that the lawyer is both competent and fair, comes under considerably less pressure than usual to hold out more than he will be able to deliver.

Two types of case are lumped together in the foregoing happy and light-hearted sketch. They will not stay together in any comfort. They are the case with some real money in it—the negligence claim, or the retainer, even small—and the case without. It is the former which will give color of peril to the project; not inside the list, where it would be easy to see to it that no man got two such lucky breaks in a single year or six months, but outside the list, for fear law services would follow Gresham's law, and the cheaper drive the dearer off the market. I pose the problem. To me, it seems a *political* problem, a problem of dealing with the votes of brethren who will fear ghosts that are not there; but brethren who have votes. The actual engineering is not hard. My space runs short, but I offer one of the easiest and least desirable of the various workable ways out: any case with as much as three or two hundred dollars actual, or three (or two) times that amount of contingent money in it, can be referred by the sifting bureau to the now existing Bar Association list. Not a noble solution. But surely one which would lay silly ghosts.

¹⁰ This is not speculation. An office built to carry peak loads has, repeatedly, men that can be spared. This provides the edge in. What is then necessary is to secure the firm's engagement that the man loaned is loaned for a long enough period to make his breaking in worthwhile, and is not subject to irresponsible recall. This, too, is doable, though definitely less welcome. But the general public spirit of leading lawyers can be made by moderately intelligent salesmanship to yield as much for the Bar as for a hospital campaign. They are slow to see, but when they do see, they see with a lawyer's acumen. They can even be got to underwrite overhead for a two year try-out.

But not only are two types of cases thus lumped, but two types of institution. A sifting and reference bureau is a necessary corollary of any intelligent publicity campaign. No less a corollary is a bureau which will pick up the legal burden of the little man to whom three to ten dollars for preventive advice means trouble with his butcher bill—or rather, since he pays cash, means two (or two more) meatless days for a number of ensuing weeks. He can pay something, and so does not belong in legal aid. He can mortgage the future, and pay more—but only pressing emergency makes any legal service seem to him worth that—as when his Jim has been arrested. Yet he too will be listening in on the radio, or reading; or will have heard from friends. To turn him away as overflow, because he cannot pay all his way, is neither pretty nor wise: on him, too, depends the goodwill which keeps a campaign going. One of him, you may be certain, will be an Inquiring Reporter with a tale to write. A legal service bureau, akin to legal aid, but with a charge, is needed to take care of this; so is the type of inquiry one can learn from legal aid and from the hospital clinics, to keep fakers and grafters from drifting in. But whether to merge the legal service with the sifting and reference is a problem of overhead and of administration. To me the idea appeals somewhat—it might save time, rent, and effort.

And how does all this bear upon the problem of unauthorized practice of the law? Directly and immediately, in two ways. It will relieve a substantial portion of the existent suffering among the Bar. A substantial portion only—for only *competent* lawyers can an association or the allied associations dare put and keep upon the reference list. By so much, however, it decreases the major bother of unauthorized practice; and decreases it not for the moment only, but into the future, more and more. The road to the lawyer once found, and found good, remains open to a family and their friends, or to a business man for his future needs. For the latter the found road plus persistent publicity opens the ultimate possibility of the retainer; indeed, should the Bar ever get around to countenancing such a thing, the way opens for petty business men and even families in groups to be moved into the retainer field. Utopian, at the moment; but along such lines of developing business—and service—*where there is no possible competition*, lies one defense against *any* unauthorized practice.

The second direct effect rests in the balancing of one heavy competitive advantage of the unauthorized laymen: Our Advertising set against Theirs. The layman retains the advantage of direct solicitation. But who of those who do not run a racket, (if they do, they ought to be suppressed for that reason alone,) have been thus far using this method in great measure? On the advertising side, I prefer again to speak bluntly. It is open to a Bar which is actually rendering service, even where service does not pay in the particular case, and which can utilize in its publicity that fact plus the whole finer tradition of a profession, to capitalize such frauds and grafts as occur in unlawful practice to a degree and with an effort which no lay outfit whose advertisement must be paid for, and which is seeking to draw business to

itself, could dare to do. Does this mean merely *balancing* the layman's prior advantage?

Important as such direct effects might seem to be, I am inclined to rate more highly an indirect effect which (as being only an hypothetical upon an hypothetical) it might seem idle to discuss. That indirect effect is the development of techniques for semi-standardizing, and so cheapening, and so making available to a vastly larger clientele, a hugish number of normal legal services. On which follows the institution of a Bar clearing house for such techniques, and Bar facilities for consultation of another lawyer on matters which as of any given moment may have proved incapable of semi-standardization. This, if it should happen, would mean a Bar which had moved in terms of American industry as well as of American business, of mass-production as well as of selling technique; and also in terms of adjusting its operations to the conditions both of our queer law and of the Bar's own highly individualistic outfit-organization.

The curious thing is that this is really no hypothetical upon an hypothetical. It is instead an almost inevitable upon an hypothetical. What is dubious of occurrence is a sane publicity campaign with its logically immediate corollaries. Given these, however, the indirect effects referred to follow almost as of course. For how can a legal service bureau do its work, without that work leading to standardization precisely in the fields where that is most needed, and to widening market by lower service charge? Not only are there recurrent types of matter, but there are, over relatively short periods, recurrent new men to be broken in, and without expectation that they may stay on indefinitely. The former provides the wherewithal to work out usable guidance materials; the latter, unless the bureau be understaffed to the point of destruction, forces that wherewithal into use. Once prepared, it should be available to any member of the Bar. It will have major gaps, which any lawyer working on his own may need; it can, for instance, by very definition provide no light on the routine things to do and the dangers to watch in such a moneyed procedure as, say, title-closing or mortgage-taking. What it can do is to show up for the whole Bar's meditation and use that many matters which occur also among clients who can pay their way are vastly more capable of *communicable* schooling and even routinizing, in print, than any but eight of ten single lawyers have even taken time off to *realize*.¹⁷ While the sifting service, unless it is so horribly understaffed in turn that it can neither keep records nor work up their meaning, will show what types of business are emerging in sufficient quantity to require putting a man to work to do the same job of gathering, digesting, and communicating experience with procedures and with difficulties to red-flag. Again, for the whole Bar's use. No divinity has decreed a buggy for the Bar.

¹⁷ At this point bows to Harold Seligson of New York—and to his collaborators. The courses he has organized in what one might sum up as Problems of the Younger Lawyer both do their own job and tend grandly toward doing the one I speak of. It is described (1937) 8 AM. L. S. REV. 926. The accompanying papers give a good picture of the present state of the matter.

With such things in prospect, but in prospect only, there is one matter on which the sifting service research crew can turn loose at once, and without waiting for any advertising campaign to bring any results: it can turn loose on any type of specialized matter which existing experience with unlawful practice has already shown to be a place where mass-production methods work and where the Bar needs better equipment for cheap and speedy service. No doubt about that need, nor about where it lies, nor about the feasibility of attack on it.

It is possible, however, in a number of such fields, that it may prove to be not economy of legal technique, but rather economy in *administration* due to the concentration of like cases, and delegation of most of the work to routine employees, which gives the lay organization the competitive edge. And no individualistically organized Bar can wholly meet that difficulty. Hence, where, after reducing the Bar's necessary costs so far as may be, such proves to be the case, I have wondered at times whether (in partial interest of a Bar's living) a compromise type of statute might not in the long run serve both Bar and public better than flat prohibition of the competing lay practitioner. I mean a statute which would allow the latter's service, but with a top limit on the value of the case or transaction concerned, a top limit measured high enough to pay him for continuing in his game to take the smaller cases. Whether or not there may be anything in such a vague idea, as to either commercial or cooperative lay lines of competition with the Bar, one thing stands clear: to use the criminal law to hog business *for* the Bar without making provision for reasonable attention *by* the Bar, at reasonable charge, to *all* that business, is to play not with fire, but with TNT. These lay competing agencies are not politically inert, nor have they served clients of that character. The agencies' life is at stake, and their customers have discovered how adequate and reasonable certain phases of legal service can be. Of course, certain statutes have passed, with no such preliminary precautions taken, and no explosion has occurred. Not yet. But I dislike to think, in an industrial state, of what is likely to happen to the Bar if such a statute is abused, when, e. g., (as is already in the definite offing) organized labor once wakes up to the possibilities of legal service not only for the union, but for members, and business men discover one point at least on which business and labor have a common interest. I dislike to meditate on what a good publicity man could do with lawyers, in an anti-Bar-monopoly campaign, if he set out to use the material from the records of the Bar itself, and the methods of exploiting it which the Bar, in its pro-monopoly campaign, is teaching him.¹⁸ Despite the record of the statutes passed without prior precaution and without apparent later row, the applicable word remains: Be ve-ry gentle with it!

There is another aspect of unauthorized practice which needs mention. Plainly, we need to distinguish, among our lay brethren, decent business men and cooperative outfits from lice and scroogers. Plainly we need suppression of these last. But, apart from economy, is there not a virtue in the former which is little mentioned, but

¹⁸ As, by Case, *supra* note 5.

which calls for the Bar's attention? I refer to *reckonability* of the *results* they get. In addition to standardizing the techniques for performance, they afford moderate assurance in advance that those techniques, so provided, will be *used* with average competence and good faith. Can we meet the competition there? We, supervised and knit together as leaves are in October?

Chanciness about result is tricky in its operation. When a lawyer feels his income chancy, he gambles on the worst, and zooms his fee for the case in hand. When a client feels his prospective service to be chancy, he does more than that: He stays away. Yet on the other hand, when a college boy reads once in four years of some single headline-making fee—which he must know is chancier than any lottery—he gambles on the best, and pays, too—and draws five cards, to join the Bar. In a jack-pot. He does it, by the thousand.

But the chanciness of our service remains a vital factor in the unauthorized practice picture. Trust Companies make clear that they, as corporations, survive the chance of your lawyer's death. Title companies, in their turn, make much of the insurance they offer. Whether or not the factual value of that insurance be very material, the client's *feeling* of assurance is. Now I strongly suspect some such feeling that the customer really knows where he is at to have a strong part in each other field of encroachment which has succeeded without indecent means in becoming a thing for lawyers to bother over. Can we offer to *our* public a similar feeling of safety about moderately competent *use* of the available techniques? Let me put the question this way: which of us would care to entrust his own interest to any first lawyer whom he happened to pull out of the grab-bag? Which of us would feel it to be *equal* nonsense to entrust his own interest to the first trust company, title company, collection agency, automobile owners' association, legal aid society, civil liberties protective association, landlords' guild, whom he happened to pull out of the bag? There is no positive assurance to be got out of mere size; there are men still alive who can recall real estate "finance" from which title companies were not wholly disassociated, and who can recall interesting relations between widows' trust funds and the duds left on the counter of a securities affiliate. Size alone guarantees nothing—except easier possibility of supervision and more concentrated attack, more effective reform, in the event of abuse. But in any matter in which the customer's check-up comes quickly, if size is found together with continuance in business there is enough to show a *prima facie* record of moderately adequate performance. The law factory can and does claim that advantage over individual lawyers, and mints the public's understanding of a presumption which, though occasionally tricky, is nonetheless for any man a sounder base for action than a grab-bag. Few lawyers or law firms work today in groups big enough to meet this aspect of their better lay competition. For in the area of unauthorized practice—the wild 20's apart, and they were the whole country's and no peculiar possession of the Bar's competitors—in that area the exposures of dirty dealings or of gross incompetence relate peculiarly to the in-

dividual or the small fly-by-night outfit, not to the bigger groupings with an address and a reputation, still less to cooperative lay legal ventures.

In which, for the Bar, there either is a lesson, or there is not. Monopoly legislation, at best, drives business merely Bar-wards, to be picked up—when it is not thereby dammed off—by any lawyer who happens to get it. The adverse advertising value of one client abused is not here to be labored, but it is to be recalled. And let the fact be looked at openly for once. Why, with the whole profession at stake, must it be pussy-footed? The fact is that a third or more of the lawyers now in practice in metropolitan areas are incompetent. Law school faculties give degrees to men to whom the faculty members would under no conditions entrust their personal business. Bar examiners find no way to keep such men out of the Bar. Practicing lawyers, individualistically organized by tradition, feel no responsibility for training the green, raw rookies from the schools, even the good ones—though, I repeat, any error by any one of them blots and blurs not only the reputation but the very livelihood of all but the best established of the Bar.

Now either monopoly legislation or any Bar publicity campaign must face the fact that some of the resulting business—and a little is enough, for the harm to be done—must go to these incompetents. A publicity campaign must face the fact that wangling and favor, even with safeguards, will lead to the presence of some incompetents even upon the reference list; though this is not so troublesome; work can be watched. More bothering is the case of the clients who go not to headquarters, but to “some” lawyer—who proves to be the wrong one—and then get active in their counter-publicity. “Just one more gouge: the experience of Acidophilous G. Robins.”

I see just one road out of this which would be workable in terms of human motivation. I shall describe it. As an intellectual exercise; for I cannot believe that a buggy-riding Bar could ever bring itself to act on an idea whose only virtue would be, by group-action and a bit of forethought, to drive the Bar's competitors to the wall. The fantasy has to do with an institution of pre-Soviet Russia, modified to fit American conditions. In the Russia of the Tsar, certain skilled crafts were organized into *artels*, of which the characteristic here in point was that the whole *artel* was responsible for defects in the work of any of its members. To apply such an idea to the American metropolitan Bar would be to invite the ruination of every worthwhile member. Yet almost the only people who really know the worth of a lawyer are his brethren. And the only way to make sure that their recommendations to non-friends are deeply sincere is by enlisting their own welfare in the recommendation. And the politics which lead to handing out patronage and even that share in the profits which goes with firm-membership are resisted even within the firm by quiet sabotage when it comes to entrusting the firm's business and reputation to a known or suspected dud-like senior partner's son-in-law in a responsible matter. And groups can build up the type of reputation in a metropolis which factories already have and which individualistic lawyers have been unable to. And whereas disbarment of the incom-

petent is unthinkable, the negative selection made familiar by Charles Darwin, applied by their own fellows, would force those same incompetents out of the practice, if they had group-reputations to compete against. It is a pretty fantasy: voluntarily formed artels, the members practicing on their own as now, taking new members only whom they trusted. A line of additional letters on the glass: "of the Marshall Artel."¹⁹ A security afforded to the client, and known in advance, which no corporation could match. The policing done not by an over-worked grievance committee, or a character committee which has to move on inadequate evidence, at best on evidence of what a man looks like before his work begins; the policing done instead by a man's mates, on the basis of his performance in the game itself. No monopoly, within the trade, because new artels would be free to form; perhaps, to keep risk within reason, a limited group-liability could be set on any one claim. . . . But why dream on. It is too sensible ever to happen. It simply would fit the Bar, with due attention to the essentially individual nature of law-work (which the factor, for all its virtues, has tended to forget and to blur) into the industrial structure of today, and provide, to *any* client, as against lay competitors, that *assurance* of service which today is available in the metropolis only at the price of unflawed diamonds. It would settle any questions of reference lists. It would semi-automatically drive shysters out of practice. It would have the quality of any sound social organization, the enlisting of solid self-interest, clearly seen and clearly directed to the simultaneous welfare of Bar and public. Well . . . good-bye, Dream. . . .²⁰

QUOTAS AND NUMBERS

The dream goes, the buggy remains, and with it the problem. The problem is to get new business flowing, and to keep it flowing. I have indicated my doubts as to how far blanket monopoly legislation against unauthorized practice can accomplish this. But another proposal comes to the fore which has its values: one can both reduce the percentage of incompetents (insofar as incompetence is correlated with

¹⁹ *Artel*, or *Inn*, or *Guild*, or *Brotherhood* or what have you, so only the term can be, and be in fact, protected from piracy or use in misrepresentation—as a word like *Savings* is today. Even copyright might do it—though that would call for thinking through a most amusing set of problems.

²⁰ Consider, as the Dream departs, the Bonded Law List which finds so little favor with the Bar. After studying reports and canons, and listening, may one not say this? The Bar has not considered the question primarily from the angle of whether some type of Bonded List or its equivalent might provide greater security to a prospective customer, nor of whether providing such greater security might not open a greater flow of business to the Bar. In dealing with the Bonded List, the Bar's eye is less on the Bar's outcompeting the collection agency than on one lawyer's getting a headstart on another.

Yet the security afforded by a bonded list has value to the Bar at large. And one might start considering its use rather than its discouragement. The Canons and Resolutions I read do not seem to think of such things as an income pool from a bonded list—say, the first hundred dollars to any listed man, free to his own use, in absence of complaint; the second hundred fifty-fifty to the pool and him; thereafter thirds to the man, the pool, and the Bar, with the pool taking responsibility for what a lawyer shouldn't do. With listing accompanied by a contract to stay in the pool for a measured and fixed period. An outsider might find in this kind of thing a line of thinking which good thinkers get somewhere with. Present thinking seems concerned with whether a complaining customer will not be too easily satisfied, or a listed lawyer have too much chance to be engaged—in a word: it is lawyer-thinking, not Bar thinking. How, then, can a Dream remain around?

inexperience)—thereby furthering somewhat the whole flow—and one can also somewhat reduce the financial pressures on Bar members, by choking off the influx of new members. Moreover, it is a fair guess that admission quotas and *average* training and better talent (with the due percentage of exceptions) will, over the country, go hand in hand. I believe both to be somewhat inevitably on their way. And I believe their result will be, slowly and a little, to increase the Bar's competitive position as against the unauthorized. Yet I crave permission to round out the picture by briefly canvassing some of the features of this quota picture which are receiving less attention than they deserve.

The quota idea has two roots which tap quite different soils. The one, the bread-and-butter root, calls for no further discussion. The other does. It is the ideal of the lawyer as an American scholar and gentleman. It looks not only toward reducing the number of entrants, but toward eliminating a particularly high proportion of the candidates considered socially undesirable: Jews, radicals, uncouth prospective Lincolns; peculiarly and of necessity, boys who come from disadvantaged background. Any quota-administration, unaccompanied by the most careful checks, will work out that way. Now there are not many who believe as firmly as I do in the need for a lawyer being a gentleman of culture. But culture is an end-product, achieved as finely from bare feet and contact with good earth as from family background. Committees administering quotas *can* keep prejudice from working out misguided short-cuts; but not many Committees *will*; their enlisted self-interest runs the wrong way.

Now if there were nothing to law practice and the position of the lawyer but trying cases, a good deal might be said for frank caste organization: gentlemen only, with gentlemen's restraint and responsibility, as advocates. English experience shows that. But, quite apart from all the other aspects of law practice there is an extra and more vital factor: the way of our Bar is to make the Bar the main road into politics, and the way of our politics is to elect only from the district of the residence, and people are best represented by men who know from youth up the conditions of those people's lives. To represent folk politically one must be able to think not only for them, but with them. To limit the entrance of boys of disadvantaged background is therefore a political calamity. For this reason alone no quota-talk should be even listened to which is not coupled, as a check, with a wide program for Bar scholarships for the able disadvantaged.

But more important to our immediate subject is the relation of the quota to unauthorized practice. I take it as inescapable fact that over the long haul the only way to deal with unauthorized practice is to modernize lawyer's practice until lawyers can compete on moderately even terms. That calls for imagination, for energy, and above all for a burning sense of need to use brains and imagination. The job, moreover, of developing new fields of activity for the Bar is not one which can be done and dropped. It is on-going. But when social invention is in demand, it is not among the comfortable and well-adjusted that one looks first for the supply. The

men who are going to work out new lines of action for the Bar and to explore new areas for its service are the men with no connection, and, it may be, with few manners; men with their whole own way to make, but with brains. In these men, in the disadvantaged, in persons who seem in advance to be without "background," but who have brains . . . seems to be at the present juncture and for decades to come the real hope for the future of the Bar entire. It is amusing.—But again, there are signs that the ablest of the Bar are opening their eyes, and *seeing*.

A last word before I close. No war on unauthorized practice, however well conducted, is going to accomplish soon, if at all, what most of the fighters in the trenches hope from it, nor yet what the generals may be hoping. That is no reason at all for not moving into battle; existence is at stake. But it is the lesser middle and the poverty-stricken classes in the Bar who utterly need business to do. In the metropolis, these are not the groups who will most profit from the mere elimination of unauthorized practice. Indeed, there would be considerable thinning or lifting of fog about the problem if talk about The Bar in this manner could be broken down, and we talked instead about *which* of the heterogeneous conglomeration of persons who happen to be lawyers the talker happens to be thinking of. Some of the worried lawyers who are moving against unauthorized practice have in mind the rent, or a job in law which might open, or a job affording pay enough to live on. Whereas some have in mind owning a Lincoln, though they have a Ford; such members couple vigilance against unethical practice within the Bar with their interest in monopolies for "The Bar"—and yet go on, many or most of them, *unaware* of the plain fact that these two lines of action plus nothing more mean only more income flowing where enough flows already, the decrease of service, and the contribution of nothing to the Bar's true need. Still others of the Bar—including most of its kings—have no defined attitude of either sort, except that the Bar is in trouble, and they are willing to take time off to do something about it. From none of these groupings, *if they think no further*, will come action other than the mustard-plaster and the Sure-Kure, while the patient's stomach-ulcer grows apace. Certainly all hope for the lesser middle and the near-paupers of the Bar lies in such measures as are suggested in this paper, in new business opened, and in new procedures for bringing together the lawyer and his possible client, in widening a market for what you may scoff at as Woolworth wares—which last, in law, too, can be very good indeed, and can be much sought after.

The other difficulty is this: let the economic condition of the Bar, at its low-income end, begin to improve materially and noticeably, and the tide of emigration will reverse itself. For decades now members of the Bar have been moving out—into business as sub-executives, into business as clerks, yes, more recently, into anything from driving taxis to elevator-running. Into government, all the way from dignified professional positions in the department of the Solicitor-General down into totally non-legal routine clerking. Into the police force, where physique has sufficed—and with good prospects, too. In result the Bar resembles the bituminous coal industry,

the working outfits hedged in on every side by little sub-marginal mines ready, each one, to open again at once the minute prices rise sufficiently. By all means, if we can, let us get the machinery set for feeding lawyers oftener and most of them a little better. But when word gets out that there is food at last, we shall find more members crowding to the table than we have cooked for. That is one reason for trying to so work the thing out that service results as well as food. Another reason is that we still are a profession.

THE CAVILLER AGAIN

"So," says the Cynic Caviller, "you want to reduce the Bar to a dishwashing kind of service, or a moving belt?"

This Caviller makes me feel sympathy with whomsoever I may have insulted by twisting words in his teeth. Where did I say, where did I suggest "reduce" the Bar to anything? I want to see it uplift itself. I want to see what *can* be routinized, and get that much actually routinized, so that good energy and good imagination are left over for the jobs that call for both. Did I say other?

"You duck me," says the Caviller, "but this one you won't duck: Debasing Our Profession Into Business! Pure Business. You said so!" Did I, now? Or did I say Business-*getting*, dealt with in modern-age intelligence; Production-costs lowered, where possible, as an Engineer would lower them; but Service given as it is possible *only for a Bar* to render service?

"You duck again," exclaims our Caviller. "You Professor! You Reformer!"

No, I am not reforming. I only have my binoculars, from the cloister walls, upon our team. Superb players, so many of them. They only lack teamwork, coach, quarterback and signals. They have no interference, they never heard of passing. And all our boys have bet their shirts upon the game. That's all.

* * * * *

Antiquated in organization, in methods of doing business, in methods of getting business, in nose for where its services are needed, the Bar finds its buggy crowded to the wall. Specialized business outfits show how to specialize, standardize, and lower price on many services; they offer assurance of moderate adequacy in their work; they are easy to find; they make themselves and their service known. In the great city the Bar's overhead is uselessly high, much of its field of work lies fallow, it has no machinery for coming together with its customers. Its own thinking about its own troubles is still primitively individualistic. The condition grows worse.

The Job does not grow worse, or dwindle. Steady, and beautiful, stands the Lawyers' Work, to do. Eternal. But, as things stand, too many crowd in to the doing, even while much of it goes undone. Unique among professions for the huge spread in income between its top and bottom ranks, the Bar finds its glittering peaks to lure the young; it is, moreover, the only profession in which enormous fees when they occur cannot be kept out of the news.

Quotas may help, but cannot cure; and they need careful watching. Monopoly legislation may poultice somewhat, but unless accompanied by roughly equivalent service rendered by the Bar, contains uncomfortable likelihood of boomeranging. Real progress toward cure lies in *group action* to recognize the getting of business and the doing of it in keeping with the age: in standardizing, spreading, and lowering the price of service. *Once Service is sure*, the Bar can outpublicize any lay competitor—wherever its Service can itself compete; but let Service fail, and the flank attack that opens can cripple and kill.

No move along this line in any manner impairs the lawyer's ancient and lovely task of individualized counselling. It merely reduces to routine what can be so reduced. But it does call for group action. Group action calls for many men to think things through. Whereas the Bar is human. Human beings in pain do not want to think things through; they prefer to chase devils. They prefer an opiate or a poultice to a cure, while the cause continues causing. Doubtless such will be the preference of the Bar.