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IN THE PUBLIC INTEREST

BOYLE G. CLARK*

1. WHAT IS THE REASON FOR THE DECLINE OF THE PROFESSION OF LAW IN THE PUBLIC ESTIMATION?

In a current issue of the Journal of the American Bar Association there are recalled to mind the remarks of John Randolph of Roanoke in announcing to Congress the death of William Pinkney in 1822. In part, Randolph is quoted as follows:

“I rise to announce to the House the unlooked-for death of a man who filled the first place in the public estimation in the first profession in that estimation in this or any other country.”

What speaker of today, unless he be musing by the ashes of extinguished fires would refer to our profession as the first profession in the estimation of the public? We all admit that such a declaration could not be made without the fear of challenge.

The reasons for the decline of the profession in the estimation of the public may differ in the minds of those who have given the subject consideration. I believe, however, that a reading of the great number of contemporary comments on the legal profession will evoke one underlying thought as the basis of the trouble with the profession. Simply stated, the complaint is that the lawyer has gradually but continuously and surely adopted the practices and the standards of the business world. He has done this at the expense of his ideal of public service, service to his government and service to his people as a whole.

2. SHOULD ONLY LAWYERS PRACTICE LAW?

We have become convinced in Missouri that the adoption of the standards and the practices of the business world are the direct result of the bar's being compelled to compete, in its own field, with unauthorized practitioners of the law and compelled to deal with other commercial influences which have projected themselves into the domain of the lawyer. We had always assumed, as the law of the land dictated, that only lawyers should practice law. Upon the assumption that only lawyers should practice law the organized bar,

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in concerted effort, has proceeded to suppress the unauthorized practitioner and to combat what we assume to be the subversive commercial influences which were, and are, gradually forcing downward the lawyers' standard of professional conduct.

Imagine, then, the astonishment of the majority of the bar when this movement was met with the confident assertion of those who are commercializing the practice of law, that the handling of all law practice by lawyers is not in the public interest; that it is not true that only lawyers should practice law; that the public demands the services of laymen in the handling of certain phases of the practice of law. The bar has been thus forced to a re-examination of its original position in the unauthorized practice drive, namely, that, in the interest of the public, a prerequisite to the handling of law practice is the obtention of a certificate from the government of the state that the practitioner is possessed of superior skill, and sound moral character and is imbued with the principles of professional conduct exemplified by the Canons of Ethics.

Imagine further the astonishment of a majority of the bar when it learned that a considerable minority of the bar maintain that the original premise is false and that the unauthorized practitioner is necessary to the conduct of business.

Some of you no doubt read with dismay the report of the statement made by Mr. John W. Davis that lawyers should not attempt to eliminate the handling by layman of legal matters before federal commissions exercising judicial functions, because it would create the public impression that lawyers were trying to achieve a monopoly in dealing with the government.

At the last meeting of the American Bar Association, one hundred twenty-six business concerns of the city of St. Louis addressed a communication to the Committee on the Unauthorized Practice of Law of the American Bar Association, expressing their disapproval of the effort to eliminate adjustment bureaus and collection agencies, the rule against their disapproval of the rule against bonded law lists, and their disapproval of the rule against the circulation of lists among laymen. The protest concludes with the statement: "The undersigned therefore request in the public interest that they (The Committee) use their influence to end the agitation and uncertainty." This protest contains signatures of old, recognized, and established firms such as Simmons Hardware Company, Curlee Clothing Company, Pet Milk Sales Corporation, Otis Elevator Company, General Electric Supply Corporation, Westinghouse Electric Supply Company, Buxton & Skinner Printing

and Stationery Company, Ely-Walker Dry Goods Company, and other recognized outstanding business establishments in this state.

It is fairly to be assumed that the business organizations signing this protest represent the sentiment of some business interests of St. Louis with reference to the program in Missouri for the suppression of the unauthorized practice of law. While it is evident that the protest was drawn by those directly interested in the profits of the unauthorized practice, yet the fact that it is concurred in by the credit managers of numerous business institutions challenges our consideration.

3. WHO SAYS THAT IN THE PUBLIC INTEREST LAYMEN SHOULD BE PERMITTED TO HANDLE SOME PHASES OF LAW PRACTICE?

From whom comes the cry that the handling of the commercial law practice and the handling of the insurance adjustment work by laymen is in the public interest? From whom comes the cry that the maintenance of the unapproved law lists as an instrument of the unauthorized practitioner is in the public interest? From whom comes the cry that accountants and so-called lay experts should be permitted to practice before governmental boards and bureaus exercising judicial functions? We have analyzed the body of the complainants and have found that they are composed of the following: (1) the lawyers who directly or indirectly connect themselves with financial institutions and lay organizations for the purpose of securing business; (2) the lawyers affiliated with business interests who believe the services of the unauthorized practitioners before governmental boards and commissions are necessary to procure advantages which they desire, advantages which are procured at the expense of the public interest; (3) the lawyers who benefit from the solicitation and parceling out of law practice by lay agencies; (4) as you no doubt suspect, from the unauthorized practitioners themselves who are beginning to feel the result of the bar's activity; (5) businesses which have been led to believe by the unauthorized practitioners that the bar is incompetent fully to serve their interests in the field of law; (6) the publishers of the unapproved law lists whose revenue is endangered by reason of the losing of their control over the parceling out of law practice.

4. WHY DO THEY SAY IT?

The identification of the complainants establishes the reason for the complaint. It is merely this: *These people have purposely or inadvertently confused the public interest with their own private pecuniary interests.*

5. WHAT IS THE PUBLIC INTEREST?

Properly defined, we think that is in the public interest which is of the greatest good to the most of the people. Needless to say, those opposing the suppression of the unauthorized practice and the commercial influence over the bar, are those persons whose interests are adversely affected, and they constitute a negligible minority of the public. So on the score of direct pecuniary loss to the public by the suppression of unauthorized practice the great majority are not affected.

6. IS THE BAR ATTEMPTING TO ACHIEVE A MONOPOLY?

Against the charge that in suppressing the unauthorized practice the bar is attempting to achieve a monopoly this may be said: the profession of law is not and has never been a monopoly. Any person who is willing to undergo the training, who possesses the necessary intellectual and moral qualifications will find and has always found the doors of the profession open to him or her. It could as well be charged that licensing of drivers of motor vehicles achieves a monopoly in that field. There is never a monopoly where all are admitted to the enjoyment of the privileges upon the same equitable conditions and where admission is perpetually open to the qualified applicant.

7. IS THE HANDLING OF ALL LAW PRACTICE BY LAWYERS FREE OF COMMERCIAL INFLUENCES IN THE PUBLIC INTEREST?

This leaves but one question, namely, can the bar demonstrate that the practice of law as a profession, subject to professional standards of conduct and requiring superior intellectual and moral qualifications, is of greater public benefit than unregulated, unrestricted practice of law?

(a) *The Adjustment Field*

Let us answer this question by specific examples, not intended to be all-inclusive. A person is injured by the negligent conduct of another who is insured against loss thereby. The insurer carrier is entitled to defend or compromise the claim. The company may handle its adjustment either through lawyers, or through lay employees. Let us assume that the injury is severe and the matter of adjustment is placed in the hands of a layman. Liability is so patent that even the lay adjuster must realize it. As happens too often this lay adjuster calls upon the claimant, finds that he is poor and portrays to him large medical expense, hungry mouths to be fed, rent to be paid, and under the stress of the circumstances procures an unconscionable cheap settlement. Will any man say that this is in the public interest?

Let us suppose that the same insurance company employs a lawyer who is sensitive to his ethical responsibilities, which are synonymous with public responsibilities, who upon contacting the claimant, finds that he is unrepresented by counsel and unadvised as to his rights. He instructs the claimant to secure competent advice, which results in an equitable evaluation of the claim, and consequent settlement, on an equitable basis. Is there any man who would say that it is not more in the public interest for this matter to be thus handled by a lawyer than by a lay adjuster?

(b) *The Commercial Field*

Let us look at the commercial field. There we find the lay collection agencies soliciting commercial law practice from businesses and, in turn, we find unapproved law lists soliciting this practice from lay collection agencies for its listees. While it is not pertinent here, let me remark that the collection agency places the practice with the law list's lawyer upon condition that a portion of the fee be paid to the agency. The law list levies further tribute upon the lawyer by charging him upon the basis of the business it is able to obtain from him. When we began to suppress these practices in Missouri, the collection agencies and the unapproved law lists, which were not content to sell the book but were selling the law practice which they controlled through organized solicitation, raised the cry that regardless of ethical considerations their activities should not be questioned because they were being carried on in the public interest.

We heard that same argument advanced in another connection, in a situation where the conduct of members of the bar was questioned. I refer to the suppression of the solicitation of silicosis cases in Missouri. Lawyers in the industrial districts were engaged in organized and systematic solicitation of suits arising from occupational diseases. Unquestionably the rights of the workmen involved in those cases in a great many instances were violated by the employers who had failed to provide modern equipment. As a result, the workmen contracted diseases. They did not know their rights; they had no money to obtain medical advice; they were not advised that the employers were accountable for the wrong done them. These cases were solicited, suits were filed and damages, rightfully owed, were collected for the claimants. When the lawyers engaged in this solicitation were charged with unprofessional conduct, they, and many of them, urged that the solicitation of these cases should not be condemned because it was in the public interest

that these suits be brought. In remarkable contrast to the position now attributed to business interests, the businesses of the area affected, including many not involved in the litigation, applauded the efforts of the Bar Committees, and offered to subsidize suppression of this solicitation. We conceived solicitation in this instance to be unprofessional and inimical to the ultimate public interest and proceeded to secure discipline of the lawyers involved. *There can be only one standard to apply in the administration of justice. Solicitation of law practice is either right or it is wrong, and, if wrong when engaged in by the personal injury lawyer, it is wrong when engaged in by the commercial practitioner.* And it matters not whether the solicitation is effected through the agency of a runner on the streets or through organized "snitches" of commercial practice, such as collection agencies and the unapproved law lists. If it is in the public interest to suppress the solicitation of personal injury claims, it is in the public interest to suppress the solicitation of commercial law practice.

8. UNAUTHORIZED PRACTITIONERS COMBINE WITH OTHER INTERMEDIARIES

Unauthorized practitioners seldom appear in court. They handle matters of law practice up to varying points but stop short of representation in a court of record. Only in justice of the peace and probate courts and before commissions exercising judicial functions have they yet the temerity to appear. Consequently, in the present state of the development of the unauthorized practice, they occupy the position of intermediaries, between the client on the one end and the lawyer on the other, in cases where actual institution of suits is involved. Sometimes the unauthorized practitioners divide the field of practice between themselves and their commercial allies. For instance, as we have noted, the collection agency contacts the owner of accounts; the law list bargains for the services of the lawyer. Together, they constitute a pair of intermediaries between the owner of the commercial account and the lawyer. Each, of course, levies tribute on the item of practice as it passes through his sphere of influence. In this particular instance, the law list and the collection agency are standing shoulder to shoulder in the fight against the suppression of unauthorized commercial practice. Unable to defend their positions on the ground that their activities are within the law, and unable to defend their activities as intermediaries doing for the lawyer that which he might not do for himself, they raise the camouflage, "in the public interest."

9. THE AMERICAN BAR ASSOCIATION EXAMINES THE LAW LISTS

The Missouri Bar's drive against unauthorized practice, begun simultaneously against the law lists and collection agencies among others, produced results quicker in the case of the law lists because the institution of suits was necessary in the case of the collection agencies, but not in the case of the law lists. Stung by the action of the Bar of Missouri,¹ subsequently radiating to other states, the law lists have taken their troubles to the American Bar Association. The American Bar Association has appointed a special committee to make a study of the law list question and to report thereon.

10. LAW LISTS PREDICT THE COMMITTEE'S REPORT

What the report of this Committee will be, we of the Missouri Bar do not know. However, the publisher of *The American Lawyers Quarterly* presumes to know what the final report of the Committee will be. In a pamphlet entitled "Regimentation of the Bar," circulated by him, this publisher, Mr. Marc Grossman, confidently infers that the Special Committee,

1. *Law Directories and Law Lists, Publication of Professional Card.*—A lawyer may insert his professional card and that of his lawyer associates in a reputable law directory or reputable law list. The card with propriety may contain only a statement of his and their names, addresses, telephone numbers, cable addresses, special branches of the profession practiced, dates and places of birth, dates and places of admission to the bar, the schools attended, the dates of graduation and the degrees received, and the bar associations of which the subscriber and his associates are members. The card may also give references or names of clients for whom the lawyer and his associates are counsel with their permission in writing filed with the publisher.

A "law directory" as used herein is a publication containing a roll of all lawyers engaged in the practice of law.

A "law list" as used herein is a publication containing a list of lawyers engaged in a particular line of practice.

A publication, the prime purpose of which is not the listing of lawyers, or which contains a roll of lawyers as an adjunct to other matter not addressed to the profession, is not within the term "law directory" or the term "law list."

Law lists and law directories may be maintained as instrumentalities of the subscriber lawyers for the purpose of affording media of contact between lawyers. A reputable law directory or reputable law list is a publication which, as the instrumentality of its subscribers, serves the profession with fidelity and does nothing to cause its subscribers to be guilty directly or indirectly of any professional misconduct.

A publication the circulation of which is not confined to members of the profession is not within the term "reputable law directory" or the term "reputable law list."

A publication which guarantees to its users the fidelity of its listees through bond, guaranty, or any other similar means is not a reputable law directory or a reputable law list. A lawyer who places his name or card in a publication which he knows is not a reputable law directory or reputable law list is guilty of unprofessional conduct.

in its report to the Association, will find that his and other unapproved lists are necessary to the public welfare and the conduct of modern business and essential to "interstate commerce." (This last phrase aptly describes Mr. Grossman's appraisal of the practice of law.) These unapproved lists insist upon substituting a bond for the fidelity of their listees, upon soliciting business for their listees, upon dividing fees with their listees through the charge for listing and upon selling law practice controlled by them.

Therefore, we are told that the American Bar Association is going to countenance the splitting of fees, the solicitation and sale of law practice, and the substitution of a bond for character, because the Association feels that these commercial institutions are necessary in the public interest to supply an assumed defect in the makeup of its members. As a member of that great Association of lawyers, and speaking for the integrated Bar of Missouri, among which is found many of the Association's greatest advocates, permit me to say that *Mr. Grossman's prediction of the Committee's findings are not only unwarranted and presumptuous, but a direct affront to the members of the Committee who have assured many members of the Association, both in formal reports and otherwise, that they had reached no decision upon the matter. We feel confident that that Committee's report will reflect the conception of the public interest, established by decisions of courts and public estimation since the establishment of the bar as an arm of the administration of justice, rather than the conception of the public interest so recently evolved by the unauthorized practitioners and their allies who speak of the practice of law as intra- and inter-state commerce.*

11. RETURN OF LAW PRACTICE TO LAWYERS WILL RESULT IN SATISFACTION OF PUBLIC DEMANDS OF THE BAR

If the practice of law is returned in its entirety to lawyers, the three things most demanded by the public of the bar will be accomplished. First, the lawyer's economic security, endangered by preying intermediaries and by competition with the unauthorized practitioner, will be restored. Then will cease the great bulk of unprofessional conduct caused by economic pressure. Second, procedural reforms demanded by the public will have the attention of a bar which, since the rise of the unauthorized practitioner and the intermediary, has not had the time to quit the fight for existence long enough to give to that subject the study and time that is owed. Third, professional conduct freed of the menace of commercialization, will be further refined.

12. THE OUTLOOK OF THE BAR IS BROADENING

As we live we grow. As we grow we seek higher goals. At the outset we announced the objectives of the State Bar of Missouri as the attainment of that state in our profession "when only lawyers handle law practice; when a lawyer may sit in his office secure in the fact that law practice comes to him and other members of the profession upon merit alone; when we have reached that state where law practice, and all the law practice, seeks the lawyer uninfluenced by unauthorized practitioners, uninfluenced by intermediaries and uninfluenced by unprofessional conduct." To those objectives we have added the attainment of that state in our profession when the lawyer, being sole custodian of the law practice, shall have ceased the enervating battle against the unauthorized practitioner, his allies, and accompanying unprofessional conduct; when the lawyer shall have the means and the time to render the free public aid which the public has the right to demand of the profession; when he is able to engage in legal research and the perfection of our judicial system, both matters in the prime public interest and both matters to which the bar as a whole is unable to devote its attention in its struggle for existence against those now striving to commercialize the bar.

13. WILL THE AMERICAN BAR ASSOCIATION KEEP PACE WITH THE INTEGRATED BARS?

No agency, voluntary or official, lay or professional, has been able to contribute so much to the advancement of the welfare of the bar and the attainment of these objectives as the integrated bars of the United States, now numbering seventeen. These official bar associations, these arms of the state governments, have not been masters of the bar nor ends in themselves, but are the weapons with which the profession is regaining the prestige of the day of John Randolph and William Pinkney. Some pressing local problems within the jurisdiction of the various state bars will soon be in hand. Then will come the welfare of the profession throughout the nation. Then will come the necessity for national concert of action to consolidate the gains. The integrated bars of America will have to find an outlet for their endeavors in some national association of lawyers. With the renovation and democratization of the American Bar Association that body appears to be the logical meeting point for the efforts of the integrated state bars. I know, because I feel it myself, that the American Bar Association has been recently reborn. It is on trial with the integrated state bars of the United

States. If the American Bar Association is to be an affiliate of the commercial world, imbued primarily with commercial interests above professional interests, the integrated state bars will find another meeting ground. We in Missouri feel that the American Bar Association is primarily a professional group; that it will express itself in the public interest with due regard to commerce in its rightful place as a beneficial public unit. Then, and only then, will it grow and prosper as an association of lawyers formed and maintained in the public interest.