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UNAUTHORIZED PRACTICE OF LAW**

HONORABLE JOHN W. KEPHART*

I have been asked to speak to you on the "unauthorized practice of law." While articles have been addressed to this subject, I know of no such thing as the "unauthorized" practice of law. To practice, a person must be licensed by the courts and anyone who is not, while attempting to, does not practice law. No one has a natural or constitutional right to practice law. Engagement therein is unlawful except to those who have met the conditions for admission to the bar and have been admitted. Others merely endeavor to usurp the function, special privilege or license granted by the courts to certain persons. To determine what constitutes this "unauthorized" practice of law, it is necessary to describe what is the field and scope of the authorized practice of law. That subject cannot be outlined with exactness; if it could be we might establish a sharp line between the activities permissible only to lawyers and those permissible to lawyers and laymen alike.

The compass of the average lawyer's work swings through such a wide range that to denominate all of his activities as the practice of law would be to embrace a fair share of the normal commercial activity of many laymen. On the other hand, to restrict the field too narrowly would be unwise, as it might exclude the constantly and ever increasing fields in which the true practitioner has a real place, and where he only, by reason of his education and training, is the only fit person to perform the duties connected with representing the rights of the individual or municipality which may be in issue before those bodies which hear the dispute.

Through every office there is a flow of business and varied transactions. The practice of law is not confined to the conduct of actual litigation in court and the preparation of pleadings and other papers incidental thereto. This indeed is sacred ground,—a "No man's land" barred to all but the attorney—beyond this, there is a wide field of legal activity commonly called "office practice," which is the larger part of the lawyer's work. It consists not only in the preparation of numerous legal documents such as wills and mortgages, contracts and a host of other papers giving rise to legal rights and obligations, but advice and service in connection with legal matters for vast corporate and partnership interests. There is similar advice to individuals in their legal relations or conduct, and the

**An address delivered before the Luzerne County Bar Association, March 19, 1936.

*See page 217.

adjustment and compromise of disputes and claims. We might add further that wherever rights of persons or property are affected by the conclusion concerning the subject-matter under investigation and where evidence with all its accompanying rules is necessary in reaching that conclusion, trained minds must be used and where used, the work is the work only of a lawyer. It makes no difference where or by whom that subject-matter or question is to be heard and determined,—whether by a court, or an administrative body such as Workmen's Compensation Boards and the like—the forum is not material. What is material is an adverse judgment or conclusion affecting rights of parties. Where the matter and evidence attendant thereon is subject to review by the courts this is more strongly emphasized. It is in the field of office practice and practice before semi-judicial boards that authorized persons poach on the lawyer's work. These are most important fields of legal activity and ones where the distinction between practice of law by lawyers and practice of law by laymen is of the most importance, since their invasion threatens the lawyer's source of livelihood and the public's right to a skilled, supervised legal service.

Where the practice of law is public, as for illustration, litigation in the courts, direct knowledge of unauthorized attempts to practice may be had and courts may thus protect the parties litigant from malrepresentation. But where the activities are in an office, the actors closeted, courts do not know nor does the profession of such acts. Here the opportunities for wrongdoing and bad advice grow correspondingly. Attorneys play a strong part in our system of government and, as "officers of the court" in the administration of justice, they must take steps to prevent the misuse of the powers and authority of the lawyer by those whose education does not fit them, or whose qualifications have not been passed on, to practice law.

It has been stated by one writer: "If there is such a thing as a profession as a concept distinct from a vocation, it must consist in the ideals which its members maintain, a dignity of character in the performance of their duties and the austerity of their self-imposed standards." No member of the bar comes to the profession easily. It is a long, arduous course. The sacrifices of time, money and energy in its learning are many. Because of the difficulties that beset the way, many who aspire must give way to other fields of endeavor. But for those who succeed in breasting these first handicaps, whose untiring efforts have won the coveted prize, there is a heritage of a noble tradition and a prospect of a life fraught with service and interest. These make the sacrifices worth while. A lawyer must be of good moral character. He must have the requisite educational qualifications and skill. There are other obligations that must be met. When admitted to the bar he takes an oath, he is sworn to uphold the laws of the state and nation; he swears fidelity to the court and client. He assumes an obligation and a supervised career that is not impressed or exacted by the public from any

other profession in the world. He submits to ethical standards on which his whole future as a lawyer must depend,—standards of such potency that they bring those whose personal standard of conduct is not so high into conformity with other members whose natural traits lead to their observance. By them he is deprived of the use of many of the methods of securing business which the unauthorized may employ. All these standards have an elevating and ennobling effect, and safeguard the public from incompetence and dishonesty. Having thus embarked upon a field, hard won and strongly ruled, an attorney is justified in demanding a return for his efforts and a suppression of those who illegally invade his field.

Notwithstanding the clear prohibitions established to prevent the invasion by unauthorized practitioners to the ruin of the members of the public who seek advice from such imposters, there are many individuals and organizations who today perform the office of attorney and duties commonly regarded as the exclusive province of the lawyer. Lay agencies and laymen are competing with the legal profession; trust companies, title and insurance companies, automobile clubs, banks, insurance adjusters, tax experts, accountants, collection agencies, notaries, real estate agents and the like from time to time have encroached on the lawyers' rights.

Some writers suggest that corporations should be allowed to practice law and to give legal service. They point out that no harm comes when title companies search titles and prepare papers relating to transfer of title. The lawyer's answer to this is to point to the thoroughness of training which is required of him before he is considered fit to handle the same matters. Most defective titles exist because such corporations or their agents do not understand the legal effect of wills and certain language embodied in a conveyance where the work of abstracting is merely superficially advised by lawyers. Such corporate work may not assume the status of unauthorized practice. But the lawyer has, however, a traditional argument embodied in the Canons of Ethics against such practice. It is that the relationship of attorney and client is a personal relationship such as cannot possibly exist between client and corporation. Thus Canon 35, American Bar Association, provides in part: "The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual A lawyer's relation to his client should be personal, and the responsibility should be direct to the client." When a corporation wrongfully practices law and does it through attorneys, as agents, the necessary personal relationship is lost. Perhaps warning from judges to them would stop such unauthorized practice.

Unauthorized practice by corporations and individuals is prohibited. In *Childs v. Smeltzer*,¹ a conveyancer was a stenographer and notary public but not a lawyer. She advertised that she specialized in the preparation of deeds, mortgages and all other legal papers and in fact drafted wills, deeds of trust, partnership agreements, etc. The defendant was enjoined from holding herself out as competent to perform legal services, although permitted to engage in conveying and notarial work.

The Act of 1933, P.L. 66, makes it unlawful not only to hold oneself out as an attorney but also to practice law, if unauthorized, irrespective of a holding out. In *Umble's Estate*,² the orphans' court of Lancaster County was asked to set aside the probate of a will because written by an officer of the Northern Trust & Savings Co., a corporation, he not being an attorney, and that the corporation be enjoined from advertising itself as conducting an office for the practice of law. While the Superior Court held that the trust company had not violated the statute against unauthorized practice and that the will was valid, it said: "We are of the opinion that the preparation of one will by a trust company acting through an officer not authorized to practice law, where the will names the trust company as executor, as is here alleged, is not of itself a violation of the statute but we do not wish to be understood as approving the practice of trust companies and laymen drawing wills. In fact, such practice has been condemned not only by bar associations, but by bankers' associations as well, and is approaching upon dangerous ground. If the practice is followed, it is not difficult to conceive of circumstances under which the persons so acting would make themselves liable under the statute."

In *Matter of Co-operative Law Co.*,³ where the Co-operative Law Company asked approval to continue to practice law under the 1909 law, the New York court of appeals said: "No one can practice law unless he has taken an oath of office and has become an officer of the court It is not a lawful business except for members of the bar who have complied with all the conditions required by statute and the rules of the courts. As these conditions cannot be performed by a corporation, it follows that the practice of law is not a lawful business for a corporation to engage in The relation of attorney and client cannot be delegated without consent and it cannot exist between an attorney employed by a corporation to practice law for it, and a client of the corporation, for he would be subject to the directions of the corporation and not to the directions of the client. . . . The corporation would control the litigation. . . ."

In *In re Pace*,⁴ Pace and Stimpson, were censured for assisting the Corporation Company of Delaware, a corporation, as attorneys. The court said that

¹315 Pa. 9 (1934).

²117 Pa. Super. 15 (1935).

³198 N. Y. 479, 98 N. E. 15 (1910).

⁴156 N. Y. S. 641 (1915).

corporate practice of law was against public policy. In *Grocers' & Merchants' Bureau, a corporation, v. Gray*,⁵ a suit for fees for legal services was dismissed. The court held the contract was illegal except when made by a duly licensed attorney. The cases might be multiplied.

While the judicial field is being narrowed and curtailed by the activities of arbitrators, commissions and administrative bodies that are constantly increasing in number and before whom laymen are at times permitted to practice this is a positive infringement of the lawyer's right. There is no distinction between the practice before such boards, and the duties of a lawyer; all ultimately find their way into the courts, and their preparation and trial should be guarded by the same safeguards as in a court.

What safeguard is there thrown about the citizen who employs a layman to deal with rights and obligations created by law, to give advice concerning these rights and duties, and engage in the defense and prosecution of them? The graveyard of mistake and clients' loss is filled through unwise advice, ambiguous contracts and wills and a host of illegal and unlawful acts done and given by men whose training and legal equipment is totally inadequate. The lawyer has a broad obligation to his client and is responsible in many instances for mistake. That is part of the price he pays for being a lawyer. What is the responsibility of the layman to his client? No matter how far a client may desire a lawyer to go, he is always subject to a greater obligation—the obligation to the courts of which he is a part. The lawyer is always under the overseeing eye of the judges and to their continual supervision of his conduct in practice. But a layman who attempts to do the work of a lawyer or to perform what has hitherto been regarded as the exclusive duty of an attorney, is shorn of the rules which have guided the practice of law in a gentlemanly and honest manner. In their hands we witness a degrading spectacle where exists the sordid methods of commercialism, with concomitant solicitation, advertising, cut-throat competition and other deleterious practices, which quickly result in the corruption of the administration of the law. No relation of trust and confidence can grow up between the party seeking advice as to his rights and the party who gives advice under these circumstances.

Courts and other bodies of judicial or quasi judicial character are part of our form of government and, as such, they must have their trained corps of assistants, ethical practitioners who can and will safeguard the rights accorded by law to private persons. Of course, the bar itself has had unethical practitioners, who fail to live up to the standards of the profession in this respect, but the bar and the courts have at all times maintained a watchful eye for such activities and, once

⁵6 Tenn. Civ. App. 87 (1917).

disclosed, should not hesitate to purge themselves of such members. If laymen, however, are permitted to engage in the same pursuits as the lawyer and such conduct arose, they would not be subject to the same discipline that the lawyer is and they are not subject to the same body of rules which guides the conduct of attorneys; they have a free rein to wreck for private gain any client's cause.

I have now discussed at some length the iniquity of these incursions into our field, but I cannot let this occasion pass without comment on matters which affect the legal profession. What duties devolve on lawyers and judges to meet the conditions that have arisen with regard to this practice? It is of more importance to the younger members of the bar than it is to those who have acquired a practice, though it is of importance to all members of the bar. A more earnest effort should be put forth by the lawyers to suppress unlawful practices. A committee of the bar should be appointed in each county whose duty it would be to bring these cases to the attention of the court and the court should be willing to punish when the occasion requires. This is not solely for the protection of the lawyers' fees or emoluments. It is in protection of the public. Their rights should not be sacrificed, their property lost and their liberties threatened through advice or services given by persons who are in no way qualified to render such service. The matter should be taken up with earnestness.

Then there is another situation and I speak generally of conditions throughout the State. Very often people in trouble seeking advice are willing to take the suggestions of real estate agents and what-nots simply because they find that if occasion arises for litigation their causes are so delayed that they cannot receive justice in the courts. The fault does not lie entirely with the judges. A large burden of it must be placed on the shoulders of the lawyers. Delay in bringing cases to trial, delay in submitting briefs to judges, all the many technicalities of the profession which lead to delay, all this is accomplished at the expense of the reputation of the profession for promptness in forwarding justice. It seems to me that we should make an earnest effort to rid ourselves of this complaint. The courts are undergoing a very severe strain at the present time because of public censure, some of which is justified. Much of it is without any foundation. If we are to preserve ourselves as a body, as a judicial system, it would be well for us to take cognizance of the clamor that is about us and endeavor within ourselves to clean house and bring our practice to the point where no criticism can be levelled against it.

I had occasion to go over this same matter with the judges at a meeting in Harrisburg. While we are suppressing those who attempt to practice law in an unauthorized manner, let us also see that our own practice meets the commendation not only of our clients but of the public and that ours remains the greatest of all professions.

John W. Kephart