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A Revolution in the Law Practice?

F. William McCalpin*

WHEN I WAS A BOY, there was a popular abbreviated saying, "Comes the revolution," with the usually unsaid, but well understood additive, "Things will be different around here." My suggestion in this writing is that we may well be on the verge of a revolution in the practice of law, and that things may indeed "be different around here" in the practice.

Every revolution is rooted in a broad background of causes. Most are triggered by some specific incident.

The Background

Down through the 19th century, practitioners in the Anglo-Saxon legal system tended generally to follow the profession singly or in pairs, with perhaps a clerk or two. The bulk of their practice lay in, and their public image was focused upon, the court room. Litigation was their daily business.

About the turn of the century—perhaps with the creation of the I. C. C. and the passage of the anti-trust laws—government began to play an active role in business through the medium of statutory, regulatory laws; *a fortiori*, the lawyer was drawn into the inevitable conflict between the governed and their government.

More and more the lawyer became the counselor, advising his clients how to adjust to and minimize the impact of the new laws. In spite of the regulatory laws, business got bigger. As the regulatory laws increased by geometric bounds, more and more lawyers were needed to answer the questions and solve the problems which the laws created for the businessman. This did several things: it shifted the focus of the law practice more and more from the problems of the individual to the legal problems of the business world, it increased the size of law offices, and it tended to create more and more specialties in the law practice. In a rising cost economy, both legal education for the lawyer and legal service for his client became more expensive. By a sort of centripetal force, the lucrative practice tended to flow to the larger downtown law offices, and the lot

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of a sole practitioner with an individual-client oriented practice has become more difficult and unenviable.

This, in brief, is the broad background of what may well be an impending revolution in the structure and organization of the legal profession. A few recent portents indicate that the triggering device may already have been activated.

Change

The Supreme Court of the United States held, in *National Association for the Advancement of Colored People v. Button*,¹ that the right of a group of citizens—the NAACP—to retain and pay lawyers to represent both members and non-members of the group in civil rights cases was protected by the constitutional guaranty of free speech and the rights of association and petition. If there was any disposition on the part of the Bar to believe that this breach in the Canons of Ethics was to be limited to civil rights situations, that hope was shattered in *Brotherhood of Railroad Trainmen v. Virginia*.² There, the Court protected, on the basis of the same constitutional guarantees, the plan of the Railway Brotherhood, designed to secure attorneys approved by the Union to represent injured workmen in FELA cases. If nothing else, these decisions have sparked a thorough, long-range re-examination and analysis of the canons of professional ethics by a special committee of the American Bar Association.

What is perhaps less well known is that the doubts evinced by the Supreme Court concerning traditional methods and structures of law practice are also shared within the legal profession. The Group Legal Service Committee of the State Bar of California issued a Progress Report—the third report in the seven-year life of the Committee and its predecessors—which has received wide, though insufficient, attention.

The Committee found that there was an unfilled public need for legal services of such a substantial degree as to cause serious concern, and concluded their report with a recommendation which would, in effect, legitimate nearly every type of group legal service plan. Arguments have been made which make it difficult to reject the utility and economics of group legal service plans.

¹ N. A. A. C. P. v. Button, 371 U. S. 415 (1963).

² 377 U. S. 1 (1964).

The approbation of the Supreme Court decisions has brought to light apparently long existing, though *sub rosa*, group legal service plans. For example, the New York Times described an arrangement maintained by the Hotel Trades Council in New York.³ They have set up four offices to service the legal needs of their members in the New York City area. Most of the legal advice is given by laymen. The Council does, however, retain a lawyer when representation in court is necessary. Although protests have been made by some segments of the organized Bar, in today's climate the effect of such protestation is doubtful.

Functions of Group Legal Service Plans

There are essentially three functions which are performed by various group legal plans; they are as follows: education, contact, and satisfaction of the general economics of the situation. In the *Brotherhood* case, the Supreme Court premised much of its decision on the obvious social desirability of educating workmen in their legal rights and in methods of vindicating these rights. In our increasingly urbanized society, many citizens have no acquaintance with members of the legal profession; neither do their friends or neighbors. Therefore, the labor union, the trade association, the teachers association, or any other group performs a useful function in bringing the citizen in contact with a lawyer on some basis less chancy than a blind stab in the Yellow Pages. The economics of the situation seems to be a lesser incentive in the formation of group legal service plans than might be thought. This is, though, certainly a factor in plans which center around workmen's compensation and unemployment compensation claims.

War on Poverty

The needs being met by group legal plans are those of our middle-class. In our society, poverty is scarcely to be equated with union membership, and certainly not with motel ownership. Yet, if there is a revolution-triggering force in the nation today, it is the War on Poverty which, inter alia, aims to meet the legal needs of 40,000,000 economically disadvantaged 'Americans.

³ April 10, 1964.

Section 201 of Title II of the Economic Opportunity Act of 1964, which is entitled Urban and Community Action Programs, states the following:

The purpose of this part is to provide stimulation and incentive for urban rural communities to mobilize their resources to combat poverty through community action programs.

The following section defines a community action program as one which mobilizes and utilizes resources, public and private, of any urban or rural area in an attack on poverty and which gives promise of progress toward elimination of poverty or its causes through developing employment opportunities, improving human performance, motivation and productivity or bettering the conditions under which people live, learn, and work. It has become a part of the social philosophy of these community action programs that many of the ills and problems of the poor are either rooted in legal causes or may be alleviated through the employment of legal remedies or procedures.

Examples

At a settlement house in a "fringe" or "changing" area of a large American city, a volunteer worker was surprised to find children of apparently second or third grade age loitering about on week days. Upon further investigation she determined that state law provided for compulsory education for children between seven and sixteen years of age.

Further inquiry about the apparent truancy of her settlement house charges disclosed the following: These children were from migrant families, culturally deprived. They had gone to kindergarten or first grade at the prescribed age. When the teacher told them to draw a circle or a line from left to right, they did not know what a circle was or the meaning of left and right. When asked to describe an orange or an apple, they could not because it was not within the realm of their experience. This lack of response slowed the teacher down. It brought jibes from the other children. Not atypically the children reacted defensively and became something of disciplinary problems; whereupon, the principal made an administrative determination that, although the children had reached the chronological age of seven, they had not yet reached the mental age of seven and were therefore not required to continue attendance

at his school. They were thus encouraged to be dropouts. Is it not the business of the attorney to test, for the benefit of those children and the community, such a ruling?

New York has a statute which provides aid to indigent families and particularly for indigent children. The statute contains a provision rendering ineligible for such aid persons who migrate to New York for the purpose of seeking welfare or relief. In New York City, the administrators of these welfare programs adopted a regulation generally to the effect that if a person were a recent arrival in the state and had no means of support, it would be presumed that such person had come to New York for the purpose of seeking aid; they would, therefore, be rendered ineligible. Those people who had come on the promise of a job and been disappointed, those who had come because of illness in the family, and even those who had been deserted in another state and had come back to the home of their parents, were denied relief.

In California, welfare recipients have suffered the indignity of midnight raids in their homes without warrants to see whether a father might be making a clandestine visit to his wife and children; and welfare has been cut off when entry was denied the investigator.

Elsewhere, applicants have been denied admission to public housing projects on the basis of arbitrary regulations of project managers. At one point, I was told by one of these that neither I, as attorney for the employee of one of my clients, nor the employee himself might even see a public housing project lease which he would be required to sign until after the tenant had paid his first monthly rental payment of \$65 and had actually signed the lease.

The cases about the door-to-door salesmen in housing projects who sell \$18 watches for \$98 on time payments and television sets at many times their value, of the repossessions, garnishments and resulting losses of employment, of the requirements of the poor in domestic relations, adoption, naturalization, are myriad.

The Profession's Obligation

What we are slowly, slowly coming to realize is that forty million of our fellow citizens, unlettered and unschooled, are today not really part of our culture. They have real needs.

Law and the legal profession form one branch of these needs; but these people who have been largely unrepresented are antagonistic to the law which they see mostly in the form of eviction by a landlord, repossession by a greedy merchant, or in the heavy hand of the police at the precinct station. They are to a large extent ignorant of the rights and obligations which those of us who have been better educated take for granted.

The legal profession has, of course, not been totally unmindful of these needs. For ninety years now we have sponsored and encouraged the formation of legal aid societies, bureaus and committees. But the 750,000 citizens reached annually by our efforts to date are less than two per cent of the population who experience needs of the kind which I have described. Even if all of our existing Bar sponsored services measured fully up to the standards which we have set for them—and they do not—obviously, more would be required. This is the background against which to judge the need for the rendition of legal services in community action programs in the War on Poverty.

How is this to be accomplished? The Economic Opportunity Act itself specifies that the plans designed to reach, alleviate or cure poverty and its causes are to be hand-tailored on a local basis to meet local needs. The emphasis is on local initiative to draw together all the forces in the community, specifically including the poor themselves, to structure a program to improve human performance, motivation and productivity, and to better the conditions under which people live, learn and work. As might be expected, there are emerging guidelines which will require considerable accommodation of local imagination and initiative to official Washington requirements.

By and large, the developing approach is to center these community action programs around what the Director of the OEO has called "supermarkets of social service." Any thoughtful person will quickly realize that the problems of the indigent are seldom purely economic, or purely legal, or purely hygienic. The uneducated person who over-spends his income, suffers a judgment, has his wages garnisheed, loses his job, is evicted by his landlord, holds up a confectionery to feed his family, and goes to jail, has one basic multifaceted problem with multiple ramifications. The concept is to locate in the neighborhood of the indigent a center staffed by social workers, home economists,

nurses, job counselors, lawyers, and others for the purpose of concentrating the abilities and efforts of all on the solution of the complex problem of the individual. It is generally believed that to be successful, such centers must be located in close proximity to where their clients live; otherwise, they will be beyond their reach economically, geographically, and in terms of what has been termed the upward migration of society.

Some Trends

Insofar as the provision of the legal service elements in these supermarkets of social service is concerned, two distinct trends may now be seen. In Washington, D. C., there has been created—and in Los Angeles there is proposed—a new corporate entity much like legal aid but somewhat more expansive and flexible in its application and more representative of the whole community in its directorate. These new entities will supplement existing legal aid by rendering legal service in the neighborhood centers under contract with the OEO or its local contracting agency. This approach obviously raises the possibility of competition with existing legal aid organizations and offers the prospect of moving outside the influence of the legal profession.

The other approach is to provide neighborhood legal services through an expanded legal aid mechanism. This is the approach which we have taken in St. Louis. Whereas up to now we have had one legal aid office in the City Court House and another in the County Court House, under a recently executed three party contract involving the St. Louis Human Development Corporation, the Legal Aid Society, and The Bar Association of St. Louis, the Legal Aid Society will be expanded to provide legal services in 12 new neighborhood centers. The lawyers, the investigators, and the secretarial help will all be employees of the Legal Aid Society, a majority of whose directors are named by our local Bar Association.

I am advised that the Community Action Commission of the Cincinnati area originally embarked on the third course of simply having the neighborhood center employ whom it wished to render legal advice. This could be as good as a fine, dedicated lawyer can be, or as unwholesome from a professional point of view as the New York Hotel Trades plan which I mentioned earlier. Fortunately, the dangers of this procedure have been made apparent to the leadership of the local organization, and

they are now considering the rendition of legal services within a more traditional framework.

Obviously, the Bar here has much at stake in establishing the rapport which will preserve the essentials of high caliber legal representation and yet accommodate itself to the very real needs of the indigent. Doubtless, comparable situations exist in other great cities of the United States. It is to be hoped that the organized Bar in those areas is taking affirmative steps to make its experience, its training, and its dedication fully available for the good of the whole community.

These are the presently emerging patterns of federally prodded legal service plans. Section 207 of the Economic Opportunity Act specifically provides for government funding of research and experimental projects involving other methods of providing legal services. The OEO is, I think, anxious that imaginations be exercised and that innovations be tried. Here is an obvious area in which the legal profession can exercise constructive leadership in influencing and directing the forces which would revolutionize the law practice.

In what must be regarded as something of a default on the part of the legal profession, the Federal government has seized the initiative in providing legal services for the economically disadvantaged 20 per cent of the population. If their needs are met because of government action, can those of the other 80 per cent lag far behind?

As pointed out earlier, middle income segments of the population have already begun to make their needs felt in a tangible way. They have moved out ahead of the profession by providing themselves with legal services in the framework or structure of a social or economic grouping. Many additional examples could be cited.

It then appears that many signs point to a possible revolution in traditional methods of providing legal services. The public needs, seems to want, and is asking for more, better and perhaps more economical legal service than we apparently have provided. If experience is any guide, the public will get what it wants with or without us. The question is whether we shall experience a bloody revolution or a peaceful evolution.

There are forces at work which give hope for the latter result. The House of Delegates of the American Bar Association adopted a resolution which reaffirmed its deep concern

with the problem of providing adequate legal services for all who need them, authorized appropriate elements of the Association to improve existing methods and to develop more effective methods for meeting the public need, and stated an affirmative policy of cooperation with the OEO.

Numerous ideas and suggestions for modernization and improvement of the structure and operation of the legal profession to meet the public need have been advanced. They include increased specialization, simpler and more efficient methods of practice, creation of a subprofessional class comparable to medical technicians, approval of group legal service plans under proper safeguards, creation of law companies, increased utilization of interdisciplinary approaches to the solution of problems, and range all the way to lay advocates for the poor, prepaid insurance similar to Blue Cross, the Scandinavian Ombudsman, and even subsidization of the private practice along the lines of the English system. However extreme these ideas may at first appear, we cannot reject them without intelligent, open-minded consideration. We as a profession cannot afford to ignore any idea or device which may assist the public in obtaining the legal services it wants and needs. If we ignore the obvious yearnings and stifle the legitimate demands, we shall be inviting a revolution in our profession with unforeseeable consequences.

Comes the Revolution

The future may find that your son's law practice may be as different from yours as the River Rouge plant is from Henry Ford's buggy shop, or as the United Steel Workers are from the medieval metalworkers guild. Better organization, more institutionalization of the law practice seem inevitable. The story of our age is that of increasingly complex social organization. It may be that in this supermarket age more of our individual practitioners are headed for the same fate as the corner grocery store. However repugnant the effects may seem, neither the legal profession nor a labor union can stop the relentless march of progress by obstructionist or featherbedding tactics.

The inventive genius of our profession is frequently employed in devising a plan to meet the needs of an individual client. It may be an estate plan, or an intricate corporate structure, or a contract, or the battle plan of litigation. What we may have been slow to perceive is that not an individual client but

the public collectively, and in a somewhat inarticulate way, has been asking the whole profession to use its composite skill not on a particular substantive legal problem, but to structure the legal profession itself to meet the public's total legal needs.

The appearance of group legal service plans, the development of legal service departments in supermarkets of social service under the OEO may indicate a growing impatience with our lack of response to the public need. We would do well to profit from the experience of others. As Professor Cheatham, in his perceptive Carpentier lectures at Columbia University in the fall of 1963, later published under the title "A Lawyer When Needed," commented in viewing English solutions to the public's demands for professional services:

It is worthy of note that the plan for legal services was put forward by lawyers and is administered by them, while the English plan for medical services was not devised by the medical profession and is administered by the state.

Whether we will enjoy the obviously more favorable position of the English Bar remains to be seen. It is largely up to us.

No matter whether we seize the initiative and shape our own future or default to the revolutionary forces now in motion, it seems pretty clear things are likely never to be the same again.