



1966

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Recommended Citation

Howard M. Rossen, *The Solo Practitioner and the Poverty Program*, 15 *Clev.-Marshall L. Rev.* 238 (1966)

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The Solo Practitioner and the Poverty Program

Howard M. Rossen*

FOR ECONOMIC REASONS the young individual general practitioner must accept and handle practically all potential new business. He must expect to get, at first, repetitive legal matters that will constitute a large part of his early practice.¹ And he must learn quickly how to handle a very demanding clientele.²

He will learn very quickly that solo practice is not the most lucrative type of law practice.

In a recent survey based on figures assembled by the Internal Revenue Service, the income of law partners and of individual practitioners was compared.³ Salaried income (from other sources) of the solo practitioner was not included in this survey. This point is emphasized because many young attorneys work at full-time salaried jobs and moonlight the practice of law in neighborhood offices or in their homes. The average partnership surveyed contained three partners. Not only do law partners earn more income than do solos, but the derived average net income of law partners is more than double that of sole practitioners. Surveys made by state bar associations also confirm that greater earnings are realized by law partners compared with sole practitioners. This partnership trend is reflected by figures compiled by the Internal Revenue Service. A total of 22,071 law partnerships filed returns during the survey reporting period. This was an increase of 2,121 over the previous period as contrasted with 2,000 additional sole practitioners.

Data indicated that \$3.9 billion in legal income was reported by practicing attorneys. This was an increase of almost \$500 million over the preceding reporting period. More than \$400 million of this increase was earned by partnerships. Although only half as many partners exist as compared with sole practitioners, partnerships earn more than one-half of the legal income. There is also a marked difference in the average net profit of partners and solos. Figures reveal that the average net

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¹ Stumpf, *Continuing Legal Education: Its Role in Tomorrow's Practice of the Law*, 49 A. B. A. J. 228 (Mar. 1963).

² *Ibid.*

³ Conner and Clifton, *Income of Lawyers, 1961-1962*, 51 A. B. A. J. 753 (Aug. 1965).

profit of all individual practitioners increased by only \$600, whereas partnership income increased by \$3,700.⁴

The American Bar Association has repeatedly emphasized the many benefits, financial and otherwise, to be gained from partnership practice.⁵ It has pointed out that increasing complexities in the business world, burgeoning of regulatory agencies and regulations, and the numerous problems of the individual client, hamper the sole practitioner.⁶ The final analysis concludes that the law partnership is better able to cope with complex and overlapping problems. Likewise, specialization in varying degrees is difficult, if not impossible, for today's individual practitioners. This is probably the greatest challenge faced by the general practitioner, since he must be an expert in all fields in order to serve his clients satisfactorily.

Some 250,000 lawyers now are actively engaged in practice in the United States. A recent survey showed nearly 300,000 lawyers at the end of 1964. This figure includes practicing and salaried attorneys, judges, law teachers, and many lawyers not active or who are only in part-time practice. The professional competency of lawyers is also at the highest level ever. This is due primarily to the excellent legal education programs in the law schools, and to the continuing legal education courses following admission to the bar.

At the same time the need for legal services has increased considerably over the past two decades. This need has been accelerated by the growing complexities of modern society and the pyramiding of laws and regulations that affect the daily lives of citizens to an extent undreamed of at the turn of the 20th century.⁷

Lewis Powell, Jr., past president of the ABA, pointed out that there is reason for concern over the economic plight of the sole practitioner. Latest figures from the Treasury Department showed that the net profit for sole practitioners who filed individual returns in 1961-62 was only \$7,860, whereas the average net profit for individual partners for the same period was \$17,757.⁸ Powell feels that there should be greater concern for

⁴ *Id.* at 754.

⁵ *Id.* at 755.

⁶ *Ibid.*

⁷ Powell, *The State of the Legal Profession*, 51 A. B. A. J. 821 (Sept. 1965).

⁸ See Treasury Department, *Statistics of Income, 1961-62*.

improving the economic opportunities of the thousands of lawyers who practice alone or in small partnerships.⁹ He also suggests that the quality, independence and ethics of lawyers bear a relation to their economic status.

Another problem of concern of the young lawyer and to legal profession is the general reputation of the lawyer. Public polls indicate that the lawyer ranks below the other major professions in general reputation. The vague and unexplained suspicion of the lawyer by the layman is not of recent origin. It is deep rooted in history and springs from inevitable misconceptions about the role of attorneys in the adversary system.¹⁰

The ABA has noted a growing dissatisfaction with the adequacy of the discipline maintained by the legal profession. Although a relatively small number of lawyers fail in their duty to clients, laymen tend to generalize, and consequently stigma is cast on the whole legal profession. A recent survey taken by the Missouri Bar showed that "a majority of lawyers are convinced that the public image of the profession is affected adversely by the policing procedures of the Canons of Ethics and that policing is not adequately enforced."¹¹

There are five attributes which, combined with personality, delineate the image of the good lawyer. These are: counselling; advocacy; services for improving the profession, the courts and the law; leadership in molding public opinion, and the unselfish holding of public office. A lawyer who possesses these attributes practices law in "the grand manner," which is the only way in which it is worth practicing.¹² In a recent article, C. Brewster Rhoads of the Pennsylvania Bar points out some problems of trying to practice in the "grand manner."¹³ With mounting office overload and the concern for greater efficiency in office management, and in the constant pressure upon law partners for almost computer-like accountability to their firm, Rhoads says that we are unconsciously permitting the law firms and the legal profession to acquire the attributes of big business.¹⁴

⁹ Powell, *op. cit. supra* note 7 at 822.

¹⁰ *Ibid.*

¹¹ See Lawyer's Practice Manual, Missouri Bar—Prentice-Hall Survey, p. 16 (1964).

¹² Rhoads, *The Lawyer's Image*, 51 A. B. A. J., 621, 622 (July 1965).

¹³ *Id.* at 622.

¹⁴ *Ibid.*

This is dangerous for several reasons. It may cause the profession to overlook the claims of the little man, with his sometimes small and unprofitable litigation, in favor of the business merger with its profitable tax loss acquisition and higher fees.¹⁵ There is also a corresponding tendency in some areas to consider the courtroom trial as a waste of valuable time and energy. This is especially true when the fee is not commensurate with the labor expended on behalf of the client. Such an attitude ignores the ethical obligation of the lawyer to serve his client regardless of the amount of the fee. The image of the individual lawyer and of the profession will be enhanced when clients know that the work of the attorney is motivated by dedication, and not merely by his fee.¹⁶

The organized bar long has recognized the responsibility of the legal profession to provide adequate legal services to the public.¹⁷ With the passage of the Economic Opportunity Act in 1964,¹⁸ the role of the lawyer looms large in the area of assistance to the poor. The Office of Economic Opportunity, through the Community Action program, will channel federal funds to local communities for local services to be administered to the poor. From all indications the federal government will not formulate or attempt to run the community action program. The initiative for developing and operating neighborhood law offices and other facets of the program will come from the local community.¹⁹ The role of the OEO is to insure that local programs are administered within the framework of the Economic Opportunity Act. This program is designed to solve the problems of the poor by administering free legal services to those who qualify. Each community must study the local problems of its poor and set up standards for approaching and solving these problems. A former dean of the Yale Law School noted in an article that "there is a large amount of legal business untapped by the legal profession."²⁰ He was referring to the millions of

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ See McCaLpin, *The Bar Faces Forward*, 51 A. B. A. J. 548 (June 1965).

¹⁸ See Pub. L. No. 88-452, 78 Stat. 508, 42 U. S. C. Sec. 2701-2981, approved August 20, 1964.

¹⁹ Berry and Powell, *National Conference on Law and Poverty*, 51 A. B. A. J. 746 (Aug. 1965).

²⁰ Clark and Corstvet, *The Lawyer and the Public: An A. A. C. S. Survey*, 47 Yale L. J. 1272 (1938).

persons in the poverty-stricken category. Figures indicate that 20% of the present population, or 40-million, are economically distressed and fall into the poverty classification.²¹

In support of this program the ABA has adopted a resolution in which it promises to fully support and cooperate with the OEO.²² The ABA in its resolution noted the "problem of providing legal services to all who need them and particularly to indigents and to persons of low income who, without guidance or assistance, have difficulty in obtaining access to competent legal services at reasonable cost."²³ This means that the legal profession will be expected to devote more time and effort than in the past to the needs of the poor. The poor are both apathetic and suspicious of law and lawyers. Since the law usually has worked against the poor in evicting them from their homes and garnishing their wages this attitude can be readily understood.²⁴

From even a superficial analysis of the program it would appear that the individual practitioner can benefit. He can make himself available for rendering legal services within the framework of the program, wherever possible. This would mean a guarantee of some fee, however slight, to be paid by the federal government via the OEO. An increase in private referral cases through local bar associations should follow once the program gets into full gear. Those persons whose income prohibits them from obtaining free legal assistance will generate business for private practitioners. We need a better process for channeling persons of moderate income to attorneys who will serve them for moderate fees commensurate with their income.

The new program founded by the OEO in Washington, D. C. has set definite criteria for administering legal aid to the needy. To qualify for legal assistance a single person cannot exceed \$55.00 per week take-home pay. A sum of \$15.00 per week is allowed for each dependent. This means that the standard for a family of four is \$5,200 a year. Special circumstances such as age, illness, or high debts may permit persons with higher incomes to qualify for legal assistance.²⁵ Monetary standards would

²¹ McCalpin, *op. cit. supra* note 17 at 550.

²² See 51 A. B. A. J. 551 (June 1965) for full text of Resolution adopted by House of Delegates of ABA on February 8, 1965.

²³ *Ibid.*

²⁴ Berry and Powell, *op. cit. supra* note 19 at 748.

²⁵ *Ibid.*

vary according to geographical location, with average incomes as one criterion. Persons earning more than the fixed incomes would be referred to the local bar association for assistance by private practitioners.

Martin Mayer, a layman, says in a notable recent magazine article that "law has always been a relatively easy profession for a poor man to enter."²⁶ He points out that some 17,000 law students attend night law schools. "To sweat through law school while holding down a full-time job, cram for complicated problems on the bar exam, borrow the money for an office, and then find oneself without business—well it's hard."²⁷ The author candidly sums up the struggle that the solo practitioner faces in the practice of law. The average individual attorney is often forced to take any business that comes along in order to earn an annual salary of less than five figures. Moreover, his regular clients do not expect to pay for "just advice" given over the telephone or in an office consultation.²⁸ This means that the lawyer must often pamper his clients as part of his personal "public relations" program.

It is the responsibility (and opportunity) of the legal profession to offer good legal service to all, including the poor. The chief goal of the solo practitioner is, and should be, to protect and preserve the rights of the individual. There is a need for the solo practitioner, and it seems that his opportunities, under the OEO program, will be better in the years ahead.

As this note goes to press we observe that the New Jersey Supreme Court has ruled that every defendant in a criminal case is entitled to counsel; and that the poor must be given assigned counsel who shall be paid by the county, a public defender's office, or a combination of both.²⁹ The demand for competent solo practitioners' services is bound to be vastly increased by such a rule.

²⁶ Martin Mayer, *Justice, The Law and the Lawyer*, *The Saturday Evening Post*, 36, at 70 (Feb. 26, 1966).

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Haines case, reported in *N. Y. Times*, p. 1 (Mar. 8, 1966).