Safeguarding the Administration of Justice From Illegal Practice

Warren H. Resh
action without hazard to our representative concept of popular government captured in the doctrine of departmentalization. 184

184 See supra note 137.

The judgment of the commission "is entitled to the greatest weight, while recognizing that the Commission's discretion must square with its responsibility. Only if the remedy chosen is unwarranted in law or is without justification in fact should a court attempt to intervene in the matter." American Power & Light Co. v. Securities and Exchange Commission, 329 U.S. 90, 112 (1946).

"Private rights are protected by access to the courts to test the application of the policy in the light of these legislative declarations." Id. 105. The determination is so great to achieve this that Ex parte Young employs a fiction to avoid the stagnation of the assumed, sovereign immunity defect of parties. While the explanation in Ex parte Young, supra sect. V, is spurious, the result is sound. The fiction is a temporary bridge of light to progress. Its own illumination will decorticate the fiction shadow and allow the wholesome fruit of result to nourish directly the administration of Government through law.

See Smith v. Flynn, 261 F. 2d 781 (8th Cir. 6 Dec. 1958).
SAFEGUARDING THE ADMINISTRATION OF JUSTICE FROM ILLEGAL PRACTICE

Warren H. Resh*

ADMINISTRATION OF JUSTICE IS DEPENDENT UPON PRACTICE OF LAW BY TRAINED PROFESSIONAL CLASS FROM WHICH ALL OTHERS MUST BE EXCLUDED

Law is the profession to which the lives of attorneys are devoted, and they would not be worthy to assume the responsibilities which the practice of law entails if they were unwilling to assume the challenge of improving its administration whenever possible.

As Justice Frankfurter has said:

Certainly since the time of Edward I, through all the vicissitudes of seven centuries of Anglo-American history, the legal profession has played a role all its own. The bar has not enjoyed prerogatives; it has been entrusted with anxious responsibilities. One does not have to inhale the self-adulatory bombast of after-dinner speeches to affirm that all the interests of man that are comprised under the constitutional guarantees given to "life, liberty and property" are in the professional keeping of lawyers.¹

Hence it is imperative that those who as attorneys are sworn to uphold justice should see to it that justice is administered and legal services are rendered only by those who through character, training, experience, examination and appropriate discipline have qualified themselves to serve the public in the legal field.

Practice by others not so qualified and not so regulated is unauthorized and illegal. The fight to stop it is the public's fight, since otherwise the public is cheated either through receiving incompetent or unethical service or by being served by some captive and unethical lawyer whose wares are being peddled by a corporate or other lay intermediary to whom the lawyer owes his undivided allegiance rather than to the client who thinks he is receiving disinterested assistance. In other words, it's a plain bare swindle upon the public.²

HISTORICAL BACKGROUND

History has lessons for those who will read, and the greatest mistake any generation can make is to neglect to read the minutes of the

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* Assistant Attorney General of Wisconsin.
² See Bump et. al. v. Dist. Court of Polk County, 232 Iowa 623, 5 N.W. 2d 914 (1942).
last meeting. Thus it is appropriate that we should take at least a fleeting glance at the record.

The earliest known treatment of the problem which has been called to the attention of the writer was when Kosho, Mikado of Japan, in 457 B.C. rounded up and beheaded the leaders of an association formed to settle the estates of wealthy subjects. This drastic action was founded on the premise that such a group could not have the conscience and responsibility essential to the discharge of such a confidential trust.3

In other words the practice of law "is not a lawful business except for members of the bar who have complied with all the conditions required by the 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. As it cannot practice law directly, it cannot indirectly, by employing competent lawyers to practice for it, as that would be an evasion which the law will not tolerate. Quando aliquid prohibetur ex directo, prohibetur et per obliquum. Co. Litt. 223."4

The essential disqualifications for practice of law inherent in the nature of the corporate structure was recognized in principle at least in Lord Coke's report of the case of Sutton's Hospital,5 where it was pointed out that the corporation is only in abstracto, as a corporation aggregate of many is invisible, immortal, and rests only in intendment and consideration of law. "It cannot commit treason, nor be outlawed, nor excommunicated for it has no soul. Neither can it appear in person but by attorney. A corporation aggregate of many cannot do fealty, for an invisible body can neither be in person, nor swear. It is not subject to imbecilities, death of the natural body, and divers other cases."6

With reference to lay practice generally it should be noted that as early as 1292 by royal ordinance of Edward I authorization was granted for the appointment of a certain number of "attorneys and lawyers of the best and most apt for their learning and skill, who might do service to his court and people; and that those chosen only and no other should practice."7 Again in 1402 Parliament passed the statute known as 4 Henry IV, Ch. 18, which provided that all attorneys should be examined by the justices, and in their discretion only those found to be good and virtuous, and of good fame, learned and sworn to do their duty, be allowed to be put upon the roll and all

3 See 3 Unauthorized Practice News 70 (June 1937).
5 10 Coke Reports 285 (1612).
6 Id. at 303.
7 Emphasis supplied.
others be "put out." Also in 1606, Parliament provided that admission to practice should be limited to those brought up in the Inns of Court.

Thus at a very early date, to insure the public adequate protection from dishonesty and incompetence in the administration of justice, the practice of law was limited to those who had attained the proper standards, and the movement to curb the unauthorized practice of law may be said to be as old as the legal profession itself.

Edwin M. Otterbourg of New York, one of the nation's greatest leaders in the fight against illegal practice of the law, calls attention in the April, 1958, issue of the American Bar Association Journal to a case which has always intrigued the writer. It is the case of Child v. Hearn, decided in England in 1874. The case does not involve the unauthorized practice of law in any way, but rather it related to damages caused by pigs which had broken through a fence between the properties of the litigants, and the question really was how strong a fence the defendant should have built. Baron Bramwell wrote:

Nor do we lay down that there must be a fence so close and strong that no pig could push through it, or so high that no horse or bullock could leap it. One could scarcely tell the limits of such a requirement, for the strength of swine is such that they would break through almost any fence, if there were a sufficient inducement on the other side. But the owner is bound to put up such a fence that a pig not under any excessive temptation, will not get through it.

Since lawyers, who are attempting in the public interest to curb the illegal practice of law, are often accused of "fence me in" tactics they might well remember the language of Baron Bramwell and keep the fences in repair. Either the fences should be torn down completely so that everyone regardless of character, training, or professional qualifications may practice, or if the fences are designed to protect the public from the incompetent and unethical practitioner they should be reasonably adequate to supply that protection.

NEED OF ALERTING THE PUBLIC AND THE PROFESSION TO THE NATURE OF THE PROBLEM

If the lessons of history are to be heeded, the public, the profession, and students who are preparing themselves for the profession must be alerted to the nature of the problem and the steps which are necessary to meet it.

8 See Pollock and Maitland, History of English Law 194.
9 See Rhode Island Bar Assoc. v. Auto Service Assoc., 55 R.I. 122, 179 Atl. 139 (1935).
11 L.R. 9 Ex. 176 (1874).
Those who profit from the illegal practice of law all too frequently refer to members of unauthorized practice of law committees as "the business agents of the lawyers’ union." While they impliedly recognize the fact that a member of a trade union is entitled to the protection afforded by his organization, they are unwilling to see similar protection extended to its members by a learned profession which has been licensed by the state for the very reason that public necessity over the centuries has demonstrated the need for such regulation and control.

In other words they cry "monopoly" while glossing over or ignoring the public interest which has made the monopoly necessary.

As the late Justice Vanderbilt so ably explained it in the case of In re Baker, the reason for prohibiting the practice of law by laymen is not to aid the legal profession but to safeguard the public from the disastrous results which are bound to flow from the activities of untrained and incompetent individuals, assuming to practice a learned profession which entails years of preparation and without being bound by the high standards of professional conduct and integrity which are imposed on members of the bar by the canons of ethics and which canons are zealously enforced by the courts for the public good.

He goes on to point out that if the purpose of prohibiting the unauthorized practice of law is to protect the public and not the legal profession, it must also be remembered that there would not long be a highly trained legal profession to serve the public if the lawyers are going to have to compete with everyone who has a typewriter and a set of forms, particularly since such a person is not likely to feel bound by any ethical restrictions as to soliciting business, representing adverse interests and the like.

Thus if the public is to be adequately protected, a corollary of that protection is that the skilled person rendering the service shall have a monopoly as against unskilled and unlicensed persons; and it is the inescapable obligation of the bar to identify the boundaries of its professional practice and to resist the encroachment of others thereon. The legal profession’s exclusive domain, the right to practice law and the right of the public to receive that service will continue only to the extent that the bar insists upon it. It should perhaps be noted in passing that some members of the bar do not insist upon it for the very selfish and indefensible reason that they can make more money out of litigating the problems created by the will or conveyance drawn by a layman than they can be drafting such documents. This argument has been made to the writer many times, but it completely

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overlooks the interests of the public, but like so many things connected with the law this idea is an old one as is attested by the fact that for centuries the English law students at Gray's Inn have sung a toast to "The Jolly Testator who makes his own will."

THE CHANGING CHARACTER OF THE PROBLEM

A generation or so ago the problem of stopping the illegal practice of laymen was much simpler than it is today. Many of the offenders were rural bankers, notaries, insurance men, county officers and the like who often drifted into the practice unwittingly or as an accommodation to people seeking a little legal help in a community which had no lawyer.

A rural Wisconsin advertisement of perhaps 50 years ago which typifies this type of practice reads as follows, with the name being changed:

JOHN DOE
Merchant, Postmaster and Notary Public
We carry a complete and up-to-date line of General Merchandise, Dry Goods, Clothing, Gents' Furnishings, Shoes, Groceries, Flour, Feed, etc.

MILLINERY A SPECIALTY
Real Estate transactions satisfactorily handled. Legal Documents carefully drawn up and Legal Advice given.

Another and more recent one taken from the bulletin board of the courthouse at Granbury, Texas, shows some awareness on the part of the advertiser of the possible illegal character of his activities, the consequences of which he hoped to avoid by the use of an appropriate self-serving label for his work. His advertisement reads:

John Doe, upstairs in old County Atty. office. Notary Public and Income Tax. Any kind of non-legal work.

This reminds one a little bit of the farmer who had reduced his acreage in return for federal subsidies and in response to an inquiry as to his occupation reported that he was in "the not-growing corn business."

Operations of the character described above were fairly easy to combat and oftentimes were discontinued on the strength of one warning letter.

However, the picture has changed particularly during the last quarter century which can be readily illustrated by a paragraph in an unauthorized practice of law complaint which was taken from the case of The State Bar of Arizona et al. v. Arizona Land Title and Trust
Company et al., which is now pending in the Supreme Court of Arizona.  

Paragraph VIII of the Complaint (Abstract of Record 24-26) reads:

That in particular during the quarter century last past many and varied organizations, firms and associations, corporate and otherwise, composed of laymen have gradually and almost imperceptibly, but over the years most substantially, invaded various fields lying exclusively within the province of the profession of law; that in recent years such business organizations have become increasingly aggressive, and, by the employment of vast modern means of communication and advertising, have sought to persuade the public to repose in such organizations and associations of laymen the confidence and trust theretofore reserved to the licensed attorney, upon the theory that such laymen by reason of years of experience had become as proficient, or more proficient, in various fields of law than the legal profession itself; that among such organizations so encroaching upon the field of the lawyer, and thereby endangering the public interests, have been, and are, banks, title and trust companies, insurance and claim adjusters, collection agencies, automobile clubs and associations, accountants, tax experts, real estate brokers and salesmen, estate planners, labor and industrial relations counselors and the like; that said organizations are not licensed as attorneys nor eligible to be licensed as attorneys, nor subject to proof of moral or intellectual qualifications or fitness, nor subject to the laws or rules of ethics that apply to an attorney, nor hindered in the use of powerful and influential advertising media, nor subject to any disciplinary restraints comparable to those applicable to licensed attorneys at law.

It should perhaps be noted in passing that while the situation quoted above has been intensified in the last quarter the trend was already becoming apparent at a much earlier date.

It is apparent that today more than ever before the profession is faced with lay competition from large and well financed corporate organizations who can afford to employ modern and expensive advertising media and whose profits from illegal practice are so large that they can afford to retain the highest priced legal talent available and vigorously litigate any attempts to restrict their practice. Few local bar associations dependent upon the voluntary and unpaid services of unauthorized practice of law committees are in a position to adequately cope with this situation, which brings us to the next phase of our discussion relating to what is being done to meet the problem on the local, state, and national levels.

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13 Appeal No. 6274 (Consolidated), Sup. Ct. of Arizona.
14 See Bristol, The Passing of the Legal Profession, 22 Yale L. J. 590 (1913).
THE SITUATION IN WISCONSIN

In the March 1945 issue of the Wisconsin Law Review there is an article which the writer prepared on the problem in Wisconsin. Space will not be taken here to duplicate this article in any way but by way of summary thereof it should be pointed out that in 1934 the State Bar Association prevailed upon the Attorney General to institute quo warranto proceedings against unlicensed practitioners under ch. 294 of the statutes upon the theory that illegal practice of law constitutes an usurpation of an exclusive franchise granted by the state to members of the bar.

Reference was made in the article to the circuit court cases, some twenty-four in number which had been commenced up until that time. Since then the number has increased to about thirty-five, and the bar takes pride in the fact that it has never had an adverse decision, although we should hasten to add that most of the cases terminated with consent decrees. It is a trite saying that nothing succeeds like success, and by pointing to such success in warning letters along with the possibility of the imposition of a $2,000 fine under sec. 294.13, it has been possible to secure the cooperation of offenders in the great majority of instances where the local bar has indicated that a warning letter should be issued rather than a summons and complaint.

It should perhaps be added that in all instances where quo warranto actions were instituted it was done only after careful investigation by the experienced and well trained investigator for the Attorney General's office, Mr. Milo Ottow. The bar has been most appreciative of the services which have been rendered to the bar without expense by the Attorney General's investigator as well as by the writer who has been with the Assistant Attorney General in charge of each of the cases that have been commenced.

When the bar became integrated on January 1, 1957, by Supreme Court order it was felt by the Attorney General that the moneys collected from the membership for carrying on the work of the organized bar should be utilized for the investigational work in these cases and that while the Attorney General would continue to commence quo warranto actions on complaint of the state bar, he would feel free to call upon the bar to furnish legal assistance in the handling of such cases with counsel furnished by the bar being designated as special Assistant Attorneys General without compensation from the state and operating under the general supervision of the Attorney General.

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15 Resh, The Unauthorized Practice of Law—Activities of the State Bar Association, 1945 Wis. L. Rev. 163.
16 Wis. Stats. c. 294 (1933).
17 Wis. Stats. §294.13 (1957).
18 Integration of the Bar, 274 Wis. VII (1956).
Perhaps a word in passing should be said about the activities of local bar association committees on unauthorized practice of the law as well as those of the state committee. The most active of the local committees have been those in the most populous areas, Milwaukee and Madison. The Junior Association of the Milwaukee Bar has been most active and helpful, as is evidenced by the fine job it did in assisting with the case of *State ex rel. Junior Assoc. of Milwaukee Bar v. Rice.*

Local committees can be very helpful in making preliminary investigations and in counseling the state committee on the steps which appear to be desirable in meeting a specific problem, i.e., whether a warning letter, or a conference, or litigation is indicated.

The State Bar now has a paid investigator, John McCarthy, Esq., who will be undertaking the task of investigating these complaints referred to him by the state committee. This is in keeping with the Rules and By-Laws of the State Bar of Wisconsin. Rule 1, sec. 2, relating to the purposes of the Association provides that one of its purposes shall be “to safeguard the proper professional interests of the members of the bar,” and Art. IV of the By-Laws, Sec. 11, provides for a Standing Committee on Unauthorized Practice of the Law. The section reads as follows:

*Committee on unauthorized practice of the law.* This committee shall keep itself and the association informed with respect to the unauthorized practice of law by laymen and by agencies, and the participation of members of the bar in such activities, and concerning methods for the prevention thereof. The committee shall seek the elimination of such unauthorized practice and participation therein on the part of members of the bar, by such action and methods as may be appropriate for that purpose.

Generally speaking it would seem that where litigation is to be initiated it should be on the state rather than the local level. The administration of justice is a matter of state-wide interest and concerns the sovereign people of the state as a whole. Moreover, the disinterestedness of local bar groups and individual attorneys is often challenged. Hence, it is likely to be more impressive and effective when the Attorney General, who is the chief law officer of the state, commences the action in the name of the state upon complaint of the State Bar committee. For the most part this is the pattern followed in various parts of the country, although some of the larger city bar associations in other states have from time to time commenced such actions either independently of or along with state bar committees as co-plaintiffs.

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19 236 Wis 38, 294 NW. 550, 151 A.L.R. 797 n. (1940).
WHAT IS BEING DONE ON THE NATIONAL LEVEL

No discussion of unauthorized practice of law would be complete without calling attention to the activities of the American Bar Association Standing Committee on Unauthorized Practice of Law, which had its inception in 1930 when the Association's Ethics Committee recommended that a new committee be appointed to investigate the practice of law by corporations and by lay individuals. This committee has consistently taken the position that the fight against unauthorized practice is really the fight against unqualified practice and is a part of the public service of the bar.

It would be impossible in an article of ordinary length to catalogue and detail all of the activities of this committee, but they should at least be summarized, as the bar generally as well as the public has all too little information on the subject.

1. The Conference Approach

There is not much room for argument on the proposition that the public interest is better served by preventing the unauthorized practice of law than it is by punishing some lay practitioner after his handiwork has resulted perhaps in the loss of the savings of a life time through an improvidently drawn document or the devolution of an estate contrary to the wishes of the testator because of a faultily drawn will. The printed reports of cases abound in all sorts of horrible examples of the harm done to the public by illegal practice.

Realizing this, the American Bar Association through its unauthorized practice committee adopted the Conference approach of entering into discussions with organizations representing laymen who operate in areas closely touching upon the practice of law and in working out written statements of principles with such groups. These statements may or may not attempt to spell out the area within which the respective groups operate, although most of them make provision for submission of disputes to the Conference for settlement rather than by litigation, if mediation is at all possible.

Such agreements have been made by the American Bar Association with the following organizations: American Bankers Association, Trust Division; American Institute of Accountants; Life Insurance Companies; National Association of Life Underwriters; Collection Agencies; Insurance Adjusters; Publishers of Loose Leaf Services; and the National Association of Real Estate Boards.

Through the efforts of the A.B.A. Committee these Statements of Principles and Agreements are published each year in the Martindale-Hubbell Law Directory.\footnote{1958 Martindale-Hubbell Law Directory, Vol. III, pp. 109A-116A.} This company as a courtesy to the bar has reprinted these statements in pamphlet form for free distribution by
the American Bar Association. Each member of the A.B.A. Unauthorized Practice Committee serves on one or more of these National Conference Groups, and the general feeling is that some of the best contributions to the public and the profession are made through these groups. For the most part excellent cooperation has been obtained from the lay members of these Conferences, many of whom are high-minded men representative of the top echelons of these lay groups and who are anxious to cooperate in a sincere and diligent effort so as to solve mutual problems in a way that will be consistent with the best interests of the public and to the end that good public relations will be maintained with the legal profession. Countless illustrations could be given of situations unknown to the general public or even to the members of the bar generally where after Conference discussion a difficult and often explosive problem has been solved without litigation.

It might be mentioned that these national agreements have also served as the framework for numerous Conference agreements on the state and local level throughout the country. For example the State Bar of Wisconsin from time to time has entered into such agreements with the Corporate Fiduciaries Association, the Wisconsin Association of Bonded Collection Agencies, the Wisconsin State Association of Life Underwriters, the Wisconsin Association of Real Estate Boards, and the Wisconsin Society of Certified Public Accountants.

2. Unauthorized Practice News

After some 12 years of service the writer recently resigned as editor of Unauthorized Practice News, a quarterly magazine published by the A.B.A. committee. This publication is devoted to a discussion of current problems and digests of recent cases on the subject of illegal practice. Emphasis is given to lower court decisions which do not find their way into the printed reports, and one of the most important services is the printing of complaints verbatim in unauthorized practice cases so that the publication may help to serve as a form book for the use of state and local committees. It is distributed free of charge to the members of such committees regardless of membership in the A.B.A. with a top limit of 15 free copies to any one committee. Additional copies are at the subscription rate of $1.50 per year. It also goes to members of the Board of Governors and of the House of Delegates of the A.B.A. as well as to all law school libraries, state and local bar presidents, and appellate judges. Currently about 4,000 copies of each issue are printed and distributed with the cost being met from the budget of the A.B.A. committee.

The many fine comments which have been received about this publication have been most gratifying to the committee and to the editor.
3. Litigation

The A.B.A. committee never instigates litigation, although it is glad to give advice to local committees on this subject when requested. However, from time to time upon authorization of the Board of Governors the committee does file briefs \textit{amicus curiae} in important cases involving matters of unusual significance to the profession. These are likely to be cases where some lay association has intervened on behalf of the defendant and some basic principle relating to the scope of the practice of law is involved. A few illustrations will suffice.

One of these cases was \textit{Gardner et al. v. Conway}.\textsuperscript{21} In this case the A.B.A. committee as well as the American Institute of Accountants filed briefs \textit{amici curiae}. This case involved the right of a layman to render legal services in connection with the preparation of income tax returns. The defendant had only a grade school education but he had at one time been a United States deputy collector of internal revenue and advertised as an "Income Tax Expert." The court held that where in the preparation of a tax return difficult or doubtful questions of law are presented, such questions must be resolved by an attorney, \textit{e.g.}, whether taxpayer was in partnership with his common-law wife in operating a truck farm, whether he could claim her as an exemption, whether they should file a joint or separate returns, \textit{etc.}\textsuperscript{22}

More recently the A.B.A. committee participated in a proceeding before the Illinois Supreme Court in the case of \textit{In re Brotherhood of Railroad Trainmen}.\textsuperscript{23} This was an original proceeding to determine whether the conduct of a labor organization and its lawyers was illegal or unprofessional. It was concluded there that the interest of the railroad union in individual claims of its members for injuries sustained in railroad accidents did not authorize the union to engage in active solicitation of those claims for particular lawyers who financed the solicitation.

Another very important recent case in which members of the A.B.A. committee participated was that of \textit{State Bar Ass'n of Conn. v. Conn. Bank and Trust Co.}\textsuperscript{24} In this case F. Trowbridge vom Baur, Esq., chairman of the A.B.A. committee, was permitted the unusual privilege of participating in the oral argument as well as the privilege of filing a brief \textit{amicus curiae} with several other members of the committee. The decision is an excellent one on corporate practice of law particularly in the field of probate practice and estate planning. In

\textsuperscript{21} 234 Minn. 468, 48 N.W. 2d 788 (1951).
\textsuperscript{22} As to services in connection with tax matters constituting the practice of law, see Annot., 9 A.L.R. 2d 797 n. (1950).
\textsuperscript{23} 13 Ill. 2d 391, 150 N.E. 2d 163 (1958).
\textsuperscript{24} 145 Conn. 222, 140 A. 2d 863 (1958).
discussing the exacting requirements for a license to practice law and
the characteristics of such practice the court pointed out that:25

... Only a human being can conform to these exacting re-
quirements. Artificial creations such as corporations or associa-
tions cannot meet these prerequisites and therefore cannot
engage in the practice of law. The practice of law consists in no
small part of work performed outside of any court and having
no immediate relation to proceedings in court. It embraces the
giving of legal advice on a large variety of subjects and the pre-
paration of legal instruments covering an extensive field. Al-
though such transactions may have no direct connection with
court proceedings, they are always subject to involvement in
litigation. They require in many aspects a high degree of legal
skill and great capacity for adaption to difficult and complex
situations. No valid distinction can be drawn between the part
of the work of the lawyer which involves appearance in court
and the part which involves advice and the drafting of instru-
ments. The work of the office lawyer has profound effect on the
whole scheme of the administration of justice. It is performed
with the possibility of litigation in mind, and otherwise would
hardly be needed.

The most recent litigation in which the A.B.A. committee is par-
ticipating is in the Supreme Court of Arizona in the consolidated
cases of State Bar of Arizona v. Arizona Title and Trust Co. and
State Bar v. Ford Hoffman Realty.26 One of these cases involves the
activities of a company engaged in the title insurance, trust and escrow
business, and the other involves the activities of a licensed real estate
broker and his staff. The briefs are being prepared as of the time of
the writing of this article.

4. Unauthorized Practice of Law Symposia

For a number of years the A.B.A. committee has been sponsoring
symposiums or forums on unauthorized practice of law at regional
meetings of the A.B.A. which usually take in about a nine state area.
Members of the committee give short talks at these meetings on cur-
cent developments in particular areas of unauthorized practice, and
the chairman of the various state bar committees are called upon for
reports. These meetings wind up with open forum discussions, and
there has never been time enough to really cover the questions raised.
In the past 10 years such meetings have been had either in connection
with regional meetings of the A.B.A. or independently at Boston,
Philadelphia, Richmond, Atlanta, Miami, New Orleans, Chicago, Den-
ver, Dallas, San Francisco and Los Angeles.

25 140 A. 2d at 870.
26 Case No. 82430 and 77390, on appeal from Judgment of Superior Court of
Maricopa County, April 28, 1958. See also 24 UNAUTHORIZED PRACTICE
NEWS 29-48 (Fall 1958) for Findings, Conclusions and Judgments in trial
court.
In addition individual members of the committee have endeavored to fill speaking engagements whenever possible at state and local bar association meetings. Besides Wisconsin engagements the writer can recall having appeared on programs of the state bar associations of New York, Minnesota, Illinois, Kentucky, West Virginia, and twice on Ohio State Bar programs. Other committee members have had similar or more extensive experiences, and they have all appeared from time to time on city and county bar association programs.

5. Cooperation with state and local committees

The amount of committee correspondence with state and local committees in the course of a year is tremendous and covers about every conceivable problem of unauthorized practice of law along with other related problems. About two years ago the committee retained the part-time services of an executive secretary, Melvin F. Adler, Esq., of Fort Worth, Texas. For many years Mr. Adler has been a bulwark in the fight against illegal practice, and his services to the committee are invaluable not only in the handling of inquiries but in assisting with the writing of briefs in these cases where authorization has been granted the committee to file briefs amicus curiae.

6. American Bar Foundation cooperation

The A.B.A. committee in its efforts to be of greater service to the profession and to the public upon invitation of the American Bar Foundation has recommended a research program involving:

1. The collection of all existing agreements or statements of principles executed between local bar associations and local lay groups.

2. The assembling of pleadings and decrees in unauthorized practice litigation, together with previously unreported lower court decisions.

3. The compilation of reported cases and commentaries in the form of a source book on unauthorized practice.

Actual work on the project started in July, 1956, under the supervision of F. B. MacKinnon, Esq., Deputy Administrator of the Foundation, with Neville Ross, Esq., assigned to the project of Research Assistant. Lloyd A. Hale, Esq., has been the research assistant for this project during the 1957-1958 fiscal year. Meetings have been held with the A.B.A. committee which has served as an advisory group and has assisted in the collection of materials. It was decided that the project would be most useful by issuing a series of publications. In other words, the project will supply a continuous service function.

The first of these service publications consists of an up-to-date bibliography or Source Book now in the course of publication. The committee believes that this constitutes a very valuable and helpful addition to the literature on the subject in keeping with one of the
expressed purposes of the American Bar Foundation "to foster and maintain the honor and integrity of the profession of the law." In other words, it is a constructive step in the age-old challenge to the bar of improving the administration of justice.

7. Law School Education Program

The A.B.A. committee has long been of the opinion that there is urgent need of acquainting law school students with an awareness of the problems of unauthorized practice as a part of their training in professional responsibility. To be sure the law school curriculum is already a crowded one and is steadily becoming more so, but the public good to be derived from acquiring skills in new subjects is going to be greatly watered down if those skills are to be subverted by division of fees with lay intermediaries, corporate and otherwise, who control and exploit the professional services of the lawyer. By being a party to such arrangements the lawyer permits his services as well as his name to be used in the aid of the unauthorized practice of law, all contrary to Canons 34, 35, and 47 of the A.B.A. Canons of Professional Ethics.27

In an effort to meet the problem of the law school student individual members of the A.B.A. committee have been glad to speak on the subject of unauthorized practice upon invitation from law schools in various parts of the country, and just recently the committee has been endeavoring to stimulate the writing of law review articles by students on particular phases of unauthorized practice. It is obvious, of course, that adequate coverage of the law school situation is quite beyond the manpower of a seven man committee, and it should be noted that a number of state and local committees have likewise shown an interest in the problem and a willingness to assist in meeting it.

8. Encouraging state committees to seek assistance of Attorney General and other public officials

The A.B.A. committee has long been striving to stimulate state committees to enlist the cooperation of public officials who should be interested in enforcing the laws relating to illegal practice.

Mention has already been made of the assistance of the Attorney General in Wisconsin in the use of quo warranto proceedings. Not only lawyers but members of other licensed professions and callings look to the Attorney General for such assistance. For example, this has been true in Wisconsin in the case of doctors, dentists, optometrists, chiropractors, nurses, architects, engineers, barbers, etc. The

public officer who perhaps most nearly fills the position of attorney for the general public, is the Attorney General as the state's chief law officer, and upon him probably more naturally than upon anyone else falls the duty and obligation to see that the people of the state are not exploited and victimized by those who are not authorized to practice law. Space does not permit here any catalogue of the cases in this state or elsewhere where great harm and loss has resulted to members of the public from illegal practice of the law.

Some years ago the writer made a survey for the American Bar Association as to the use of *quo warranto* and other remedies used in various states to suppress unauthorized practice of law and found that *quo warranto* could be used in many of them. Also he has conferred with some of the Attorneys General of other states and in both Minnesota and Iowa indications were given that such assistance would be given the bar, and the Attorney General of Nebraska is using contempt proceedings. On Mar. 20, 1958, Governor Harriman of New York signed two bills which greatly increase the powers of the Attorney General in investigating unlawful practice of the law and in enforcement procedures relating to such practice.\(^2\) Raymond Reisler, Esq., of Brooklyn, who is chairman of the New York State Bar Association Unauthorized Practice of Law Committee as well as a member of the A.B.A. committee assisted in the drafting of these bills.

Also it is important to remember that the Attorney General is the legal adviser for many state regulatory agencies that license laymen to perform functions, which if not properly controlled, lead to illegal practice of law. For example, collection agencies are licensed in many states as are real estate brokers, accountants, insurance agents, architects, engineers, and state banks are supervised by the state banking commission or commissioners. By working closely with those agencies the Attorney General can do much by way of advising the adoption of rules to curb possible illegal practice of law by licensees of one sort or another and by assisting such agencies in the disciplining of those who violate the rules and regulations. Without going into details the writer can state, for instance, that the close liaison between the Attorney General and the Banking Commissioner who licenses collection agencies has been most effective in discouraging illegal practice of such licensees, and this has also been true in the case of other agencies whose problems have been somewhat less acute.

9. *Cooperation with law book companies, trust companies and life insurance companies*

In the past and to some extent at present the lawyers have had difficulties with illegal practice of law by law book companies, banks

\(^2\) N.Y. Sess. Laws 1954, ch. 198 and 261, amending §1221-b and creating §1221-d of the *Civil Practice Act*.
and trust companies, and life insurance companies. However, there is a growing realization that the lawyer can be and usually is one of the best friends of these agencies from a business standpoint.

Mention has already been made of the cooperation of the Martindale-Hubbell Law Directory in reprinting Statements of Principles with the National Conference Groups. They also publish for free distribution through the A.B.A. and the American Law Student Association the Canons of Professional Ethics, Oath of Admission to the Bar, Canons of Judicial Ethics, and Credo of the American Law Student Association.

Some years ago the writer noted that the West Publishing Company had a ready reference or digest of cases on unauthorized practice in Vol. 33 of Words and Phrases under the title "Practice of Law." It was pointed out in a report of the A.B.A. committee in the April, 1953, issue of the American Bar Association Journal that any lawyer willing to spend thirty minutes reading this digest of cases would have a good working knowledge of the case law on the subject. At the suggestion of the committee the West Publishing Company reprinted this section of Words and Phrases in pamphlet form for free distribution, and it is reasonable to assume that it has been of great help to unauthorized practice committees everywhere.

Also it is the understanding of the writer that the publishers of A.L.R., The Lawyers Co-operative Publishing Company and the Bancroft-Whitney Company, started their annotations on unauthorized practice cases quite a number of years ago at the suggestion of the A.B.A. committee.29

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29 At the expense of unduly prolonging this article these references are included with the justification that they may prove helpful to the student who wants to further explore the subject of illegal practice.

   d. Services incident to membership in automobile "association" as practice of law or as ground for discipline of attorney who conducts the "association" or is connected therewith, 106 A.L.R. 548 (1937); see also 105 A.L.R. 1364, 1371 (1936); 157 A.L.R. 282 (1945).
   e. Practicing medicine, dentistry or law through radio broadcasting stations, newspapers or magazines, 114 A.L.R. 1506 (1938).
   f. Right of corporation to perform or to hold itself out as ready to perform functions in the nature of legal services, 73 A.L.R. 1327 (1931); 105 A.L.R. 1364 (1936); 157 A.L.R. 282 (1945).

2. Injunction-Contempt
   a. Right to enjoin practice of profession or conduct of business without a permit, 81 A.L.R. 292 (1932).
   b. Injunction as proper remedy to prevent unlicensed practice of law, 94 A.L.R. 359 (1935).
For many years the writer as editor of Unauthorized Practice News made it a practice to feature in nearly every issue a collection or summary of advertisements of banks, trust companies, and insurance companies all calling the attention of the public to the importance of seeking the help of a lawyer on all legal matters. While most of these also advertise the services of the particular company involved, many of them are devoted entirely to the lawyer's services to the public in matters such as will drafting, taxes, estates, etc. These are invaluable to a profession whose members are precluded from direct individual advertising, and they have done much to cement friendly relationships and encourage teamwork between the advertiser and the lawyer.

CONCLUSION

The trouble with writing or talking about unauthorized practice of the law and its relationship to the bar's program of improving the administration of justice is that while it is not too difficult to pick out some point of beginning in the history of the profession it is never possible to quite know where to terminate the "seamless web."

The emphasis here has been more on the approach to the problem from the national level, as that is perhaps all too little known, and it should of course be made clear that only the highlights have been accented. Time and space did not, for instance, permit of any discussion of the work of the A.B.A. with federal agencies and the Congress on legislative programs over the years directed to such problems as lay practice before federal administrative agencies, and the writer purposely cut short any basic or comprehensive discussion of the work on the state level in Wisconsin, because of an earlier law review article on this subject mentioned previously.

As our population increases and the problems of business as well as those of individuals become more complex one would expect an increase in the number of students in law schools and of admissions to the bar. However, this increase is conspicuous by its absence. In the decade 1930-39 when the population was 123,000,000, the total number of students in law schools was 390,840, and admissions to

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In order that this article may not be open to the criticism that it overlooks the many fine collections of other materials of general reference character not heretofore mentioned, attention is called to the following:

5 Am. Dig. (Cent. Ed.), Attorney and Client §§ 14, 15;
Am. Dig. (Decen. Ed.), Attorney and Client §§ 10, 11;
5 Am. Jur., Attorneys at Law §§ 2, 3, 16-18 (1936);
7 C.J.S., Attorney and Client §§ 15, 16 (1938);
6 Fletcher, Cyclopedia Corp. §§ 2524, 2524.1, 2524.2 (Perm. Ed.).

the bar were 91,245. In the decade 1940-49 when the population was 150,000,000 the enrollment was 294,100 and admissions were 65,513, and the trend is continuing. In the year 1949 the students totalled 56,102 and the admissions were 13,344, but by 1956 when the population had increased to 167,000,000, the student enrollment was down to 42,089 and admissions totalled 9,450.31

Could this be a reflection of the situation quoted earlier from the complaint in the case instituted by the State Bar of Arizona?

Of one thing we can be sure and that is if the members of the bar present and prospective do not sufficiently realize that when unlicensed practitioners are permitted to invade the field of legal practice, the inevitable tendency is that the area invaded is abandoned by the bar either voluntarily or under the pressure of competition from those who are free to advertise and solicit such practice through all of the media of modern advertising.

An illustration of the position of such competitors might be cited in the speeches of some Florida real estate brokers in opposing certain legislation proposed in the Florida legislature.32 The bill in question was Senate Bill 345 and House Bill 524 which the brokers contended would hamper their activities. One of them referred to the bills as "vicious, nefarious attempts to railroad innocently titled bills into law which would allow the legal profession to abrogate or assume certain long-established prerogatives, customs, and technical setups evolved through the years by Realtors, title insurance companies, and other organizations." He stated further:

To appreciate how senseless, vicious and assinine the proposed act is, one need only reflect and note the . . . skilled complexities and techniques of highly specialized branches of Realtorism as evolved, established and practiced as a highly learned profession, about which the legal profession knows little or nothing.

He wound up with the statement: "Abuses to liberty are swiftly, surreptitiously born—but slowly, laboriously removed. 'Eternal vigilance is the price of Liberty.'"

Perhaps this is good advice to the lawyer as well as to those who would usurp his functions.

More disturbing is the attitude of some members of the bar and attention is called to a recent article33 in the American Judicature Society where the writer makes the argument that if real estate instruments can be prepared as satisfactorily by the real estate broker as by the lawyer it necessarily follows that any lawyer engaging in such

31 Ibid.
32 See 24 Unauthorized Practice News 53, 54 (June 1957).
33 Porter, The Practice of Law-Profession or Trade, 41 Am. Jud. Soc. 110 (December 1957).
practice descends to the market place when he competes with laymen for such work. It is contended that the bar cannot hope to advance its prestige or even maintain its status as a profession unless those of its members professing to practice law limit their practice to purely professional work. This article does not stand alone, and attention is called to some language by Professor Cheatham.\(^3\) He mentions the efficient large scale methods of the title company, the trust company and the collection agency with the observation that the bar is under the necessity of "coming to terms" with these new rivals or collaborators. The same theme has been expressed from time to time in law review articles.

To follow these arguments to their logical conclusion would deprive the public of the standards of competency heretofore assured to some extent at least by the teaching of conveyancing in the law schools as well as the many other subjects in the real property field heretofore deemed essential by the law schools and boards of bar examiners. Indeed, what is to become of the ethical requirements of undivided loyalty to the interests of the client, or the confidential relationship between the client and his lawyer, and the very practice of law itself which has so often been held to be not a business but a profession?

In preparing the annual report of the Wisconsin Bar Association Unauthorized Practice Committee for 1950 the writer pointed out that there are many reasons why the lawyer should either prepare instruments of conveyance or at least be called upon to examine the sufficiency of a deed prepared by a layman as well as the abstract of title or title insurance policy. Among the determinations which must be made are the following:\(^{35}\)

1. Determining the class or form of deed to be used, \(e.g.,\) quitclaim or warranty.
2. Determining whether the title should be conveyed in joint tenancy and choice of appropriate language therefor. (This has caused many headaches and lawsuits. Only lawyers are qualified to pass upon the various legal incidents and problems connected with joint tenancy.)
3. If a warranty deed is decided upon, there must be a determination as to whether it should be general or limited.
4. There is the preparation of a description of the property so as to contain all of the elements of a valid description, or the checking of descriptions previously used to determine that they are sufficient.
5. Determining whether existing mortgages, tax assessments, liens or incumbrances should be assumed by the grantee,

\(^3\)Cheatham, Cases and Materials on the Legal Profession 461, 462 (2d Ed.).

and if so, the preparation of a proper clause to accomplish the desired result.

6. Determining who are the proper and necessary parties to sign.

7. Seeing that signatures, execution and acknowledgment are made according to law.

8. If any of the grantors sign in another state, determining whether the signatures, execution and acknowledgment are made in conformity to legal requirements.

9. If the grantor is a corporation, determining that the officers or persons who sign have the legal authority to do so.

10. If a note and mortgage are involved, there are likewise numerous questions as to form which must be decided upon by one who has a full realization of the needs of the parties and the legal effect of the language used.

One of the basic troubles with the expertise developed by the so-called lay specialist is that it often so tragically falls short of supplying the well-rounded knowledge of the many fields of law, real property law, contract law, corporation law, insurance law, domestic relations law, partnership law, tax law, etc., ad infinitum, which goes to make up the seamless web of the administration of justice in its totality. While it is true that specialization is growing in the practice of law itself it is done only by building on a well grounded and comprehensive knowledge of law generally with some experience in its multifarious and interrelated applications in the same way that specialties have been developed in medical practice.

If the lawyer must compete in earning his livelihood with the layman who is subject to no prescribed qualifications or examination, and who is free to solicit business with gaudy neon signs and slick Madison Avenue advertising with all of the modern media for bringing it into the homes of the people, and who in the rendering of advertised services is subject to no canons of ethics or discipline and who owes no duty of undivided allegiance to the client,—it is obvious that something must yield.

It must be either the standards for administering justice which the legal profession has built up over the centuries in the public interest, or it must be the illegal practice of the quack practitioner. The two cannot flourish side by side.

The answer rests with the lawyer of today and tomorrow, as the problem always has been and always will be with us. As Daniel Webster once said, "Justice is the great interest of men on earth," and those who as attorneys are sworn to uphold it are responsible for seeing that it is administered in court and out by a trained professional class from which all others are excluded, "so that the government and the people might be well served" to paraphrase the words of King Edward I in 1292.