Washington Law Review

Volume 24
Number 4 *Annual Meeting of the Washington State Bar Association*

11-1-1949

Unauthorized Practice of Law

George E. Mathieu

any witness a question, never giving him the benefit of any counsel. But this resolution goes far beyond any such enunciation of principle of that character and the committee therefore takes no action on that resolution.

Another resolution, submitted about 2.30 today, is one which I think might be germane for action on the part of this Association. It states in substance that, "The Board of Governors of the Washington State Bar Association shall, within ninety days from the date hereof, select and employ one or more executive assistants whose duty shall be to supervise, manage and operate the State Bar Association under the direction of the Board of Governors."

Now, obviously, that is not the entire resolution, but that is the substance of it. Now, obviously, a resolution submitted at half past two in the afternoon, unless it involves no controversy of any kind, is not the kind of a resolution which this Committee, all of whom are gray-haired, would adopt or recommend for adoption or rejection.

There is another resolution proposed by the Legislative Committee, but that deals with this revised Code. I take it that the action of this convention relative to the revised Code, or what you have heard about the revised Code, is enough without any resolution. That being the duty of a special committee, the Committee on resolutions takes no action with reference thereto.

I move, therefore, Mr. President, if you please, the adoption of the Committee's Report.

Unauthorized Practice of Law

by George E. Mathieu

The matter of practice of law by laymen is the constant concern, not only of the Washington State Bar Association, but of 180,000 lawyers in the United States. The Bar is in reality a partially self-policing and self-regulating body which, together with the courts, establishes and seeks to maintain the standards for admission to practice and norms of ethical conduct. Through centuries of experience it has been found that insistence upon such standards of moral and legal attainments is essential to the administration of justice and is in the public interest.

The Washington State Bar Association is concerned not only with establishing proper standards, but also with their enforcement. While the courts of the state are generally charged with the responsibility of enforcing the requirements for admission and the codes of ethics of the profession, as a rule court action becomes necessary only when the members of the Bar themselves fail in the discharge of their duties.

The members of the Bar are officers of the court, without whom the courts cannot function and without whom courts would be powerless to perform their obligations and to see that justice is fairly administered, not only in the court room, but in the infinitely larger field outside of the immediate supervision of the court, where the greater opportunity for miscarriage of justice exists. Thus the courts and the lawyers are necessarily jointly and severally concerned with the practice of law by laymen.

Unauthorized Practice is Contempt of Court. Unauthorized practice, both in and out of the courtroom is in reality a contempt of court. As courts are organized, they can only function by having a corps of officers whose professional qualifications are adequate, and whose obligations as such officers make them amenable to the proper directions of the court.

If men who lack the requisite training and who are not bound to this discipline assume the functions of lawyers, the same confusion results which would be anticipated if a person without military training and not subject to military authority were to appropriate the stripes and insignia of a sergeant and assumed to act and give orders to the enlisted men in a military establishment.

There are two essentials—one is professional knowledge and the other is professional liability to discipline by the court. Without such professional knowledge and liability to discipline on the part of its officers, the bar, a court would be powerless to function.

It follows, therefrom, that whenever the facts of the unauthorized practice have been brought to the court's attention it is the court's primary duty to take adequate corrective measures. The bar and the public likewise owe it to the courts, as well as themselves, to see that the court is kept fully informed.

The Bar Association also recognizes that the practice of the law by laymen has an unfortunate effect, not only upon the public in the particular instances in which the unauthorized practitioner fails

adequately to serve the client, but on the conduct of some lawyers who have been misled by it. The unethical conduct of lawyers which has been occasioned by the unlawful practice of law by laymen can roughly be divided into two general classes:

1. misconduct felt to be required in order to meet the competition of the unauthorized practitioner, and

2. a disregard of bar standards because of competition, a lawyer's professional conscience thus suddenly becomes a liability rather than an asset to such a lawyer.

Since the turn of the century every attorney has witnessed the passing of legal affairs into the hands of laymen and lay organizations. Strange as it may seem, his concern in this change is not primarily occasioned by his own financial interests. Of much greater significance, he knows from years of personal experience, as well as from the experience of civilized society down through the centuries, that the standards and ethics of the profession must be preserved for the public good, and that the transfer of important concerns from the safeguards of professional learning and ethics to the field of mere commercial activity cannot but be fraught with serious results.

The lawyer is at a distinct disadvantage in an attempt to stamp out the unauthorized practitioner of law with his serious adverse influence on the standards of professional conduct, unless there is a militant unanimity of opinion among lawyers, and unless the courts support the efforts of the bar. Also, unless the public appreciates the significance of further encroachments in the field and the disastrous results that will obtain from carrying the trend of encroachments to its logical conclusion, the lawyer is powerless to solve the problem.

It should not be necessary to remind members of the bar, or the courts that not infrequently the practice of law by laymen likewise results in individuals receiving inadequate and often seriously detrimental advice. The case reports are full of instances which would never have arisen had an attorney been consulted instead of a layman.

The field of unauthorized practice is, of course, coextensive with the field of law, but outstanding among those groups where there is the greatest chance of impinging on the legal field are bankers, trust companies, credit men, collection agencies, insurance carriers,

and adjusters, real estate operators, notaries, and even broadcasters.

It must be obvious to the most casual observer that each of the categories enumerated would be the first to object to the improper intrusion upon their own fields by those not authorized. The banker would be the first to protest an unauthorized and uninspected bank, the insurance company and adjuster would rise in righteous wrath against uncontrolled competition not based upon the limitations of examination or inspection to which they presently are subject; and so with all other licensed classes. Under such circumstances it is difficult to understand why these and other groups feel that they are justified in engaging in the practice of law

The Public Cannot Safely Rely on the Layman for Legal Advice. True, a trust officer or customs broker may have a more precise knowledge relating to his business than most lawyers. Granted that some accountants know more about tax law than some legal practitioners, and that many men engaged in business for a lifetime or less have a greater knowledge of their particular businesses than lawyers who are not specialists in the law relating to such businesses. A layman may know a lot about a particular subject, upon which knowledge he may rely at his own risk in his own business. Such knowledge, however, does not set him up as a public consultant on the law of his specialty, nor should it. If the services of a specialist in some particular branch of the law are required, the public should still turn to the bar for all the reasons of public protection for which the bar and the bar standards are maintained.

The lawyer offers more, and much more is required for him to gain admission to practice, than the mere knowledge of his specialty He must be well grounded in the whole field of the law and have a wide general legal education and training. He must pass examinations in the whole body of the law and attain and maintain legal and personal standards which are imposed by the bench and bar for the protection of the public.

A Little Knowledge is Sometimes a Dangerous Thing For generations past it has been deemed necessary for the proper administration of justice that those seeking admission to the bar should not only be men of broad general legal training, but also of proven character and high standards of conduct. While it is also true of most other professions, the field of law is a classical example of the maxim that "A little knowledge is a dangerous thing."

Intrusion of Laymen in Any Professional Field is Pernicious Where Necessary Standards Are Ignored. To insure the faithful performance of his trust, the lawyer is subject to summary discipline or disbarment by the courts. This is because the administration of justice is, in the last analysis, that part of the structure of government which is responsible for the maintenance of the "law of the land" including the preservation of property rights and personal security If these standards, established as necessary by the various states and accepted and approved by the bar, are requisite in our social order, then a few laymen should not be allowed to break them down.

Statutes and rules establishing educational qualifications and ethical standards for those who "practice law" should be enforced. What good is a standard of admission or ethics for lawyers licensed by the sovereign State to practice law when anyone else may practice the law with immunity from such a standard or the necessity of a license?

The Public Has Absolutely No Protection Against the Lay Practitioner The matter of unauthorized practice of law, as we use the term, includes not only performance by a person unlicensed to act, which constitutes the practice of law, but also the directly related conduct of intermediaries and practice brokers engaged in controlling the flow of professional employment and as middlemen selling ing the services of lawyers. This trend would permit lay control of lawyers, and there can be no doubt that the practice of law as an independent profession would come to an end under such conditions.

We are frequently told that giving advice in the zone where the function of the lawyer and the layman overlap may be the practice of law when done by a lawyer, and the practice of the layman's profession when done by him. That is an age-old formula calculated to extend to nonlegal groups the right to practice law as an incident to their specialty without let or hindrance or license.

Authority and Responsibility Must Be Co-Equal. In the final analysis, what these intruders really desire is the authority of the lawyer without his responsibility This is a common pattern of imposition. They want the privilege of practicing law without paying the price demanded of the licensed lawyer in study, in examination, in proven character, in ethical conduct, and in knowledge of the wide legal field necessary to formulate proper professional judgments.

Carried to Its Logical Conclusion, Unauthorized Practice Will Withdraw All Limitations in All Professions. Based upon such arguments, the only function that they would leave for the lawyer, apparently, would be the actual presentation of cases in court. Many laymen now even have the temerity to demand the right to practice before quasi judicial and administrative courts. Legislatures have heretofore rejected this approach on a national pattern and if such had not been done, the inevitable development would have been a group of specialists in lay employment; collection agencies would prosecute and enforce collection of accounts and engage in collection practice; corporate fiduciaries would prepare wills, agreements and handle estates; title insurance companies would do a general real estate law business; adjusters would handle the field of insurance and tort law; credit associations would direct the activities of lay persons in handling all matters relating to insolvency, etc.

No Objection is Made to Anyone Practicing Law—Only That He Comply With the Requirements for a License. We are asking no quota of admissions to practice; we are democratic. If these specialists want to practice law, lawyers have absolutely no objection provided only that the individuals qualify themselves by education, examination and license, become admitted to the bar, and assume all of the responsibility of lawyers. Membership in the bar may be a privilege, but it also is burdened with many conditions. Without these conditions the bar would not be useful in dispensing justice because if these conditions are not complied with justice is imperiled and the public's gurantees are lost.

If the question be whether the layman is practicing law or his specialty, it is in the public interest that a judicial officer make the determination. The courts shall say whether the laymen, not authorized to practice law, may hold themselves out to the public as law consultants.

Some of these laymen fail to recognize that knowledge and ability alone are insufficient for the standards of the profession. A character committee investigates and reports upon the honesty and integrity of the applicant for admission, and all with the purpose in view of protecting the public from ignorance, half-knowledge, inexperience, and unscrupulousness.

Can it be sincerely contended that only in a courtroom lies danger from such evils? On the contrary, the danger there is at its min-

imum for little can go wrong in the court where the proceedings are public and the presiding Judge is usually a man of judgment and experience. Most judges have had frequent occasions to guide the young practitioner, or to protect a party litigant from haste or folly of an older one. Not so in the office or on the Rialto. Here, the client is alone with his adviser, without the calcium light of publicity Ignorance and stupidity born of too narrow knowledge may there create damage which no court can thereafter correct. Did the legislatures intend to leave this field to any person out of which to make a living? Did the voters intend such to be the case? Reason and the record say no.

Practicing law necessarily covers the drawing of legal instruments as a professional function. Further, the relationship between those giving and those receiving advice on agreements, or on other legal matters, frequently involves the important principle that communications between the parties are privileged. Such privilege is established only by the relationship of an attorney and client, and does not arise when legal advice is given by unauthorized persons, nor should it. This conception of law was instituted and continued wholly for the benefit of the public. All of which militates against practice by laymen.

It is the experience of those dealing with the area of unauthorized practice that the great majority of cases ordinarily contended to be in the lay specialists' field are, in fact, problems involving evidence and fundamental principles of a general law with which only a man with general legal training is equipped to cope.

In over forty states the general educational requirements for the lawyer necessitate two years or more of college. In over one-quarter of the states, the special college training for entrance to the bar requires three years of law study Legal eductaional requirements in most states require evidence of satisfactory completion of courses of study in contracts, evidence, pleadings, real property, personal property, private corporations, agencies, partnerships, trusts, wills, negotiable instruments, conflicts of laws and several others. All applicants for admission to the bar are thoroughly examined on these subjects.

If such requirements are necessary before a lawyer can hold himself out to the public as authorized to practice law, does it seem

logical that those without such training should be permitted, under some other designation, to practice law?

The Franchise of A Layman in His Own Field Should Not Be Automatically Extended to Permit the Practice of Law. In the final analysis, those laymen with franchises to practice in their own field really want their own licenses enlarged, and are simply seeking to extend their franchises to permit them to practice law without the requirements necessary to obtain licenses in the legal field.

The skills of a chemist are most useful in medical laboratories; the skill of the pharmacist is essential in a drug store; but does that mean that they should be permitted to practice medicine? Bailiffs, court reporters, clerks, law stenographers are essential for their specialty Should they be permitted to practice? By the same token, the licensed real estate broker is not justified in holding himself out to the public as a consultant in real estate law A bookkeeper or accountant does not make a tax law consultant. An insurance agent should not be permitted to hold himself out to the public as an insurance lawyer, nor be permitted to inform individual members of the public that they do not need lawyers, which is a vicious practice. Nor, because an architectural problem is the chief or sole point involved in a trial of a law suit, should that authorize a qualified architect to practice law A physician may be well qualified as to mental and physical conditions, but he does not thereby become a testamentary consultant authorized to draft wills nor a personal injury consultant authorized to advise as to tort liability

Unauthorized Practice is Frequently Profitable to Members of the Bar Unfortunately, a few lawyers have not exerted themselves to oppose unauthorized practice because of a selfish financial motive. In a gathering of lawyers, in a humorous vein, they once toasted "The lawyer's best friend," whose identity was climactically announced as "the man who draws his own will!"

Any lawyer of even the meagerest experience in the practice has had cases which have resulted in protracted and expensive litigation because of the lack of technical knowledge of some unauthorized practitioner who assumed to give advice.

From the standpoint of financial interest alone, a lawyer would, more often than not, be well advised to encourage the amateur, the intruder, and the vicious practitioner to give legal advice since the normal course of this would lead to situations wherein the lawyer's

services would later be required in the more remunerative and expensive fields of litigation.

Conclusion. In conclusion, we believe that the public interest requires that the practice of law in and out of court be conducted only by licensed practitioners who have had the requisite educational requirements, who have shown the proper character, and who have been duly licensed to practice law, and who are subject to a code of ethics. We also are convinced that a militant Bench and Bar, united to enlighten and guide the public, is necessary to protect them from the impositions of the unauthorized practitioner.