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Legal Ethics: Standards for Whose Sake?

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LEGAL ETHICS: STANDARDS FOR WHOSE SAKE?

In its Preamble, the ABA's Canons of Professional Ethics state some basic premises for their own existence. "In America, where the stability of Courts and of all departments of government rests upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing Justice be developed to a *high point of efficiency* and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration."[1] It is more important that the ethical restrictions presently in effect promote such efficiency and respect for the system of justice in the minds of all the people than merely to preserve the rules themselves intact.

In recent years, the public has developed several methods of providing adequate legal services. For the most part, strong objections to these plans have been lodged by the organized bar on the basis of the traditional interpretations of the Canons of Professional Ethics. The canons prohibiting solicitation, intervention of lay intermediaries, and stirring up of litigation are most often cited as reasons for restricting the plans. Glorification of the canons is not desirable when such glorification operates to the disadvantage of both the public and the practicing bar. It is asserted that revision of the canons can facilitate the orderly provision of legal services while at the same time give attorneys standards that are both meaningful and profitable to them as professionals. "[B]roadening the availability of legal services by encouraging new forms of group representation might well serve to increase the financial security of lawyers practicing at the lower levels of the bar, thereby strengthening their capacity to conform to ethical norms."[2]

Professional standards are not designed to be understood by laymen; but when a practice that is reasonable to the layman is contrary to ethical standards, the burden is on the ethical rule to show its virtue. "It is not met by a mere reiteration of a rule."[3]

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1. AMERICAN BAR ASSOCIATION, OPINIONS OF THE COMMITTEE ON PROFESSIONAL ETHICS AND GRIEVANCES WITH THE CANONS OF PROFESSIONAL ETHICS 1 (1957) [hereinafter cited as OPINIONS or CANONS]. (Emphasis added.)

2. CARLIN, LAWYERS' ETHICS 181 (1966).

3. Schwartz, *Foreword* to *Group Legal Services in Perspective*, 12 U.C.L.A.L. REV. 279, 283 (1965).

GROUP LEGAL SERVICES AND THE OFFICE OF ECONOMIC OPPORTUNITY: THE PUBLIC SEARCHES FOR A LAWYER

In *Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar*,[4] respondent sued to have certain practices of the Brotherhood enjoined on the grounds that they constituted the solicitation of legal services and the unauthorized practice of law in that state. The Brotherhood maintained a department of legal counsel in sixteen regional divisions. Each division gave legal advice to Brotherhood members and recommended particular attorneys who, in its judgment, were especially qualified in handling plaintiffs' cases in railroad personal injury suits.

The Brotherhood of Railroad Trainmen was formed in response to the hazardous nature of the members' work and their need to band together for protection.[5] Yet, even after the passage of the Safety Appliance Act[6] and the Federal Employers Liability Act,[7] the employees did not have sufficient protection against the practices that railroads used to avoid proper payment of just claims:[8]

> Injured workers or their families often fell prey on the one hand to persuasive claims adjusters eager to gain a quick and cheap settlement for their railroad employers, or on the other to lawyers either not competent to try these lawsuits against the able and experienced railroad counsel or too willing to settle a case for a quick dollar.

In addition, the railroads have the ultimate weapon in this battle, the right to discharge an employee. This right plus the mere threat of discharge can effectively be used to dissuade employees from pursuing just claims. This fact was implicitly recognized in the case of *In re Heirich*.[9] There, the court took judicial notice "that in Federal employers' liability cases settled without counsel, 97% of the employees returned to work for the railroad; while if suit was filed, from 80% to 96% of such employees lost their jobs."[10]

The nature of the railroad business enhances the possibility for the employer to abuse the trainman's ability to properly litigate or settle his claim. His job often consumes twenty-four hours a day, seven

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4. 377 U.S. 1 (1964).
5. *Id.* at 2.
6. 27 Stat. 531 (1893), 45 U.S.C. §§1-7 (1964).
7. 53 Stat. 1404 (1939), 45 U.S.C. §§51-60 (1964).
8. Brotherhood of R.R. Trainmen v. Virginia *ex rel.* Virginia State Bar, 377 U.S. 1, 3-4 (1964) (footnotes omitted).
9. 10 Ill. 2d 357, 379; 140 N.E.2d 825, 836 (1957).
10. *Ibid.*

days a week; he is out of touch with the community in which his "residence" is located; and lawyers whom he would contact would probably not be as competent in this area of the law as the railroad-hired adversary.[11] Thus, the trainman is greatly hindered in his attempt to obtain adequate legal counsel.

Speaking for the majority of the United States Supreme Court in *Brotherhood*, Mr. Justice Black emphasized the plight of railroad workers and their widows in seeking compensation for their losses. The legal program of the Brotherhood was an attempt to solve this dilemma, and the activity was found to be protected by the first amendment:[12]

> The right of members to consult with each other . . . necessarily includes the right to select a spokesman from their number who could . . . give the wisest counsel. . . . And the right of the workers personally or through a special department of their Brotherhood to advise concerning the need for legal assistance — and, most importantly, what lawyer a member could confidently rely on — is an inseparable part of this constitutionally guaranteed right to assist and advise each other.

In essence, Mr. Justice Black's opinion turned on his determination that the needs of individual litigants should be fulfilled, even if the fulfillment of such needs required modification of existing ethical standards. This holding is not startling in light of the Court's earlier decision in *NAACP v. Button*.[13] In that case, the right of the NAACP to persuade its members and nomembers to bring litigation was recognized. The association was also allowed to supply counsel as part of its plan to advance the cause of civil rights through judicial proceedings.

The Court's decisions in *Brotherhood* and *NAACP* rested on the first amendment's protection of the right to associate freely. In *NAACP*, the Court noted that association for litigation is probably the most effective form of political association for the NAACP. Although the reason for association in *Brotherhood* is not "political," the first amendment does not so limit its protection. Within the purview of the first amendment's associational right is the privilege of members of an association to freely advise each other. Such a right may be restricted only upon the showing of a "compelling state interest in the regulation of a subject within the State's constitutional

11. Bodle, *Group Legal Services: The Case for BRT*, 12 U.C.L.A.L. REV. 306, 308 (1965).

12. Brotherhood of R.R. Trainmen v. Virginia *ex rel.* Virginia State Bar, 377 U.S. 1, 6 (1964).

13. 371 U.S. 415 (1963).

power to regulate. . . ."[14] The Supreme Court noted that the State of Virginia was attempting to curtail the activities of the Brotherhood's legal department on the basis of the state's powers to halt commercialization of the legal profession. In this case, the state's interest in regulating the professional conduct of attorneys was not sufficient to justify the infringement of the trainmen's right to be fairly represented in law suits. By emphasizing the individual's need for effective legal representation, the Supreme Court has declared that the time has come for a change within the legal profession.

Before the Supreme Court rendered its decision in *Brotherhood* the practice of maintaining a legal aid department constituted apparent violations of the Canons of Professional Ethics. Particularly involved are those canons dealing with solicitation,[15] stirring up liti-

14. *Id.* at 438.

15. CANON 27, which governs solicitation, reads: "It is unprofessional to solicit professional employment by circulars, advertisements, through touters or by personal communications or interviews not warranted by personal relations. Indirect advertisements for professional employment such as furnishing or inspiring newspaper comments, or procuring his photograph to be published in connection with causes in which the lawyer has been or is engaged or concerning the manner of their conduct, the magnitude of the interest involved, the importance of the lawyer's position, and all other like self-laudation, offend the traditions and lower the tone of our profession and are reprehensible; but the customary use of simple professional cards is not improper.

"Publication in reputable law lists in a manner consistent with the standards of conduct imposed by these canons of brief biological and informative data is permissible. Such data must not be misleading and may include only a statement of the lawyer's name and the names of his professional associates; addresses, telephone number, cable addresses; branches of the profession practiced; date and place of birth and admission to the bar; schools attended, with dates of graduation, degrees and other educational distinctions; public or quasi-public offices; posts of honor; legal authorships; legal teaching positions; memberships and offices in bar associations and committees thereof, in legal and scientific societies and legal fraternities; the fact of listings in other reputable law lists; the names and addresses of references; and, with their written consent, the names of clients regularly represented. A certificate of compliance with the Rules and Standards issued by the Special Committee on Law Lists may be treated as evidence that such list is reputable."

gation,[16] and intervention of lay intermediaries.[17] Apparently the Supreme Court in *NAACP* and *Brotherhood* has substantially altered the traditional meaning of these canons. The precise activity that has been condemned in opinions of the American Bar Association[18] is now protected under the first amendment.

Congress has also recognized the need to extend legal services to all economic classes. The Office of Economic Opportunity (OEO) has created the Neighborhood Legal Services Project under the authority of the Economic Opportunity Act of 1964,[19] which provides for granting federal funds to local programs. The purpose of this project is to provide assistance to "community action programs" that assist in the elimination of poverty.[20] This plan contemplates the active participation by nonlegal personnel in finding those who need legal help and channeling those in such need to local law offices supported by OEO funds. Those who oppose this project

16. CANON 28 prohibits stirring up of litigation: "It is unprofessional for a lawyer to volunteer advice to bring a lawsuit, except in rare cases where ties of blood, relationship or trust make it his duty to do so. Stirring up strife and litigation is not only unprofessional, but it is indictable at common law. It is disreputable to hunt up defects in titles or other causes of action and inform thereof in order to be employed to bring suit or collect judgment or to breed litigation by seeking out those with claims for personal injuries or those having any other grounds of action in order to secure them as clients, or to employ agents or runners for like purposes, or to pay or reward, directly or indirectly, those who bring or influence the bringing of such cases to his office, or to remunerate policemen, court or prison officials, physicians, hospital *attachès* or others who may succeed, under the guise of giving disinterested friendly advice, in influencing the criminal, the sick and the injured, the ignorant or others, to seek his professional services. A duty to the public and to the profession devolves upon every member of the Bar having knowledge of such practices upon the part of any practitioner immediately to inform thereof, to the end that the offender may be disbarred."

17. The prohibition against intervention of lay intermediaries is contained in CANON 35: "The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries.

"A lawyer may accept employment from any organization, such as an association, club or trade organization, to render legal services in any manner in which the organization, as an entity, is interested, but this employment should not include the rendering of legal services to the members of such an organization in respect to their individual affairs."

18. OPINIONS 8, 10, 56, 57, 98.

19. 78 Stat. 508 (1964), 42 U.S.C. §2701.

20. See Korosec, *Legal Ethics and the Poverty Program*, 15 CLEV.-MAR. L. REV. 225, 230 (1966).

criticize this active advertising, or "running," as an intervention of lay intermediaries. Critics say that the traditional attorney-client relationship cannot exist under this arrangement. The client has been actively solicited, told by a layman that he has a legal problem, and sent to the neighborhood OEO legal office for free advice. This type of activity has been disapproved because no potential sanction of disbarment protects the public against the fraud of the intermediary, the confidential attorney-client relation is disrupted, control of the litigation might be exercised by the intermediary, and a conflict of interest is likely to exist. It is said that a lawyer's relation to his client must be strictly personal, and that his responsibility should be direct and not subject to interference by lay intermediaries.[21]

It should be noted, however, that once the client is directed to him, the OEO lawyer is able to maintain the traditional lawyer-client relation contemplated in canon 35. He also remains independent to handle the problem on its merits.[22] The questionable aspects of the OEO plan arise in the manner in which the indigent reaches the OEO lawyer.

The OEO attorney is part of a sociological team that seeks to attack and remedy the causes of poverty. The assumption is: "[T]he poor must be trained to participate regularly in the critical decisions affecting their lives if they are to break out of the cycle of proverty [*sic*]."[23] This training must relate to the effect the law has upon the lives of all people, including the poor. Because the financial consequences of decisions involving legal relations are relatively small does not diminish their importance to the individual making that decision. The relative effects are equally beneficial or disastrous.

In terms of the traditional interpretations of the Canons of Ethics, however, the activities of the OEO apparently constitute solicitation, intervention of lay intermediaries, and stirring up of litigation.[24] What is viewed as charitable legal education[25] on the one hand is denounced on the other as ethical impropriety. The ultimate question regarding the OEO, and the group legal service plans in *Brotherhood* and *NAACP*, should be: Does the lawyer's role as a professional in modern America include participation in a group-financed program that actively seeks disadvantaged people in order to solve their socio-legal problems?

The plans in *Brotherhood* and *NAACP* have been approved by the United States Supreme Court, and the OEO plan is even less ob-

21. CANON 35, note 17 *supra*.
22. See Korosec, *supra* note 20, at 225.
23. WALD, LAW AND POVERTY: 1965, 3 (1965).
24. See OPINION 8.
25. CANON 35, note 17 *supra*.

jectionable. Regarding the problem of intervention of lay intermediaries, proponents of the OEO and group legal services compare these plans to the legal aid programs that have been in operation for years, and interpret them to be within the exception in canon 35 that: "Charitable societies rendering aid to the indigent are not deemed . . . intermediaries."[26] The sanction against lay intermediaries is based on the assumption that a lawyer's responsibilities and qualifications should be individual.[27]

Unlike the OEO lawyer, the lawyers in *NAACP* and *Brotherhood* are more apt to feel a responsibility to the interests and requests of the organization as opposed to the client. The NAACP lawyer's retainer is not paid by his client and the admitted purpose for the sponsored litigation is to advance the political cause of civil rights.[28] Only when the client's claim has a strictly civil rights basis can the lawyer be certain that his employer's interests (NAACP) are not divergent from those of his nominal client. Similarly, the solicitation activities[29] are more questionable in *Brotherhood* and *NAACP* than under the OEO plan. The OEO lawyer works on a salary basis, which does not necessarily make it to his advantage to handle a larger number of cases. The NAACP lawyer and the Brotherhood lawyer, on the other hand, work on a retainer or on a contingent fee basis, which means that any solicitation is to their financial advantage. From the point of view of the evils that the solicitation canon attempts to eliminate, the OEO plan is more acceptable.

Specialization: A Method of Informing Laymen Within the Spirit of the Canons

The role of a professional must be defined within the context of the society in which it operates. The canons, which attempt to regulate the ethics of the practicing bar, were formulated in the context of late nineteenth-early twentieth century America.[30] With particular reference to the canons prohibiting solicitation, stirring up of litigation, and lay intermediaries the tremendous societal changes have eliminated the justifications upon which these canons were based.

In a predominantly nonurban society, the existence of lawyers and their capabilities were considered to be well known in the community.[31] It was further assumed that membership in the bar quali-

26. *Ibid.*
27. *Ibid.*
28. N.A.A.C.P. v. Button, 371 U.S. 415, 419 (1963).
29. See Canon 27, note 15 *supra.*
30. See Costigan, *The Canons of Legal Ethics*, 21 Green Bag 271, 273 (1909).
31. Schwartz, *supra* note 3, at 288.

fied a lawyer to competently handle all legal problems that might be presented by a wide variety of clients.[32] A corollary to this idea is the assumption that the lawyer would refer any client whose case he could not handle to a more qualified fellow attorney.[33] Of course, the layman must be able to identify his legal problems as such and realize that a lawyer is necessary to resolve them satisfactorily.[34] It is maintained that none of these assumptions are now valid.

In our highly urbanized and complex world the particular skills and traits of all the lawyers are not generally known. If one is fortunate enough to realize that a legal problem exists, the methods available to choose a lawyer qualified to handle a particular problem are highly unsatisfactory. One must "consult" either the telephone directory or the local lawyer referral service or rely on acquaintances to locate a lawyer.[35] These alternatives involve too great an element of chance that the lawyer selected will not be properly qualified. The prospective client's chances of success are slight because the necessary information for selecting a competent lawyer is not provided. Ideally, a layman should be able to determine which lawyers are competent in a given specialty, and, among those, which particular lawyer is the most competent. It is recognized that the profession cannot undertake to publicly list lawyers by *degrees* of competency. On the other hand, the orderly segmentation of the law into specialty areas and the implementation of minimum proficiency requirements within these areas would be a great aid to the laymen in his search for the proper attorney.[36]

Currently, classification into specialities is condemned by the canons as advertising.[37] Justification for the present operation of canon 27, which prohibits most forms of advertising,[38] is not purely historical. There are certainly some practical reasons for adherence to its proscriptions. It is said:[39]

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32. Elson, *The Canons of Ethics and the Providing of Legal Services*, 33 TENN. L. REV. 171 (1966).

33. Schwartz, *supra* note 3, at 290.

34. Elson, note 32 *supra*.

35. See, *e.g.*, OPINIONS 4, 7, 105A, 107A, 244, 249, 291, 295.

36. American Bar Association Special Committee on Recognition and Regulation of Specialization in Law Practice, Report (1963); Cantrall, *A Country Lawyer Looks at "Specialization,"* 48 A.B.A.J. 1117, 1118 (1962); Habermann, *Preventive Law—A Challenge to the Bar*, Wis. B. Bull. Aug. 1966, p. 7.

37. CANON 27, note 15 *supra*; OPINIONS 145, 175, 183.

38. See, *e.g.*, OPINIONS 11, 69, 121, 123, 159, 207, 260.

39. State *ex rel.* Florida Bar v. Murrell, 74 So. 2d 221 (1954); *In re* Rothman, 12 N.J. 528, 97 A.2d 621 (1953); DRINKER, LEGAL ETHICS 212 (1953); Note, *Solicitation of Clients and Advertising by Attorneys*, 9 DRAKE L. REV. 102, 110 (1960); Note, *Advertising, Solicitation and Legal Ethics*, 7 VAND. L. REV. 677, 678 (1954).

(1) that advertisements, like other forms of solicitation, tend to stir up litigation in contravention of public policy;

(2) that without the restrictions of canon 27, the least ethical and least capable lawyers would publish extravagant material about themselves, and that the resulting harm would fall on those least able to afford it;

(3) that lawyers would hold out assurances of success to the client which could not be realized and thereby increase the lawyer's temptation to engage in illegal conduct to secure the ends desired by the client;

(4) that conduct which commercializes the practice of law tends to lower the profession in the public confidence;

(5) that bargain counter methods on the part of lawyers would lower the whole tone of the administration of justice.

None of the foregoing reasons for prohibiting advertising appears to be a foreseeable consequence of the recognition of legal specialization. The equally desirable goal of permitting the layman to make an informed decision when he chooses an attorney would seem to outweigh these possible evils. The system that the medical profession employs to certify its members as specialists in certain fields has been most successful. It is doubtful that the medical profession has been injured by the adoption of this system, and the public itself is better prepared to choose a doctor.[40] Undoubtedly, the legal profession could benefit from similar certification in specialties.

The establishment of a system of specialties would encourage the practice of referring clients when referral is appropriate. As it now operates the system leaves to the lawyer's complete discretion the decision to refer a client to another attorney, regardless of either lawyer's competence.[41] Implicit in this system is the danger that the decision to refer the client will be based on grounds other than the client's own best interests. While the existence of specialties would not completely eliminate this danger, it would substantially decrease the lawyer's opportunity to make arbitrary referrals.

RULES OF PROFESSIONAL CONDUCT: HOW ARE THEY SERVING THE PRACTICING BAR?

Since the date of the formulation and adoption of the Canons of Professional Ethics in 1908, America has undergone a process of growth and resocialization. The increase in population has been

40. Niles, *Ethical Prerequisites to Certification of Special Proficiency*, 49 A.B.A.J. 83, 84 (1963).

41. Schwartz, *supra* note 3, at 290.

explosive. The industrial revolution has produced a tremendous flow of goods, and a great number of institutions have sprung up to distribute the wealth. Labor is highly specialized, and the population has moved together to form huge urban centers and metropolitan complexes. These changes have had a marked effect upon the way law is practiced.

The ratio of lawyers to total population has been increasing. In 1951 there were 221,605 lawyers, or one for every 696 persons. In 1963, the number had risen to 296,069, or one lawyer for every 637 persons. The most drastic change, however, has been in the form of practice. Although the total number of lawyers has increased, the number of solo practitioners has steadily declined since 1955. In that year, 127,389 lawyers practiced alone, while in 1964 the number had decreased to 113,127.[42] Despite this decline, solo practitioners still comprise over half of the total number of approximately 200,000 practicing attorneys.[43] During the same period, the number of lawyers practicing as partners has risen from 54,966 in 1955 to 70,064 in 1964.[44] In recent years this trend to practice in partnerships has been accelerating.[45] The number of associates in partnerships has also increased in recent years, which is a further indication of the trend away from solo practice.[46]

The incomes of lawyers who practice alone compared with those who practice in partnerships might indicate an economic reason for this shift in form of practice. On the average, the partnership lawyer earns from 3,000 to 5,000 dollars more per annum than does the lawyer who practices alone.[47] Also, partnerships more readily allow specialization within the firm. Economic surveys indicate that lawyers who specialize earn more than general practitioners.[48]

Economic independence seems to have a high correlation to strict adherence to traditional interpretations of the Canons of Professional Ethics. Jerome Carlin's surveys of the Chicago and New York City Bars are graphic authority for this statement.[49] Mr. Carlin concluded that the stratification of the bar has a great effect on the ethical tendencies of any particular level within the bar.[50] Generally, the

42. Hankin & Krohnke, The American Lawyer: 1964 Statistical Report 26 (1965).

43. American Bar Association Committee on Economics of Law Practice, Economic Facts About Law Practice (1966).

44. *Ibid.*

45. *Ibid.*

46. *Ibid.*

47. *Ibid.*

48. *Ibid.*

49. CARLIN, LAWYERS' ETHICS (1966); CARLIN, LAWYERS ON THEIR OWN (1962).

50. CARLIN, LAWYERS' ETHICS 166-82 (1966).

"large-firm" lawyer is more successful financially and is more able to withstand temptation to violate any of the canons than is the individual practitioner, who is much more in need of money. According to Carlin the canons call for two types of norms: those that proscribe behavior considered immoral and unethical by society generally, such as bribery,[51] stealing,[52] and cheating;[53] and those that deal with strictly professional standards, including conflicts of interest,[54] methods of obtaining business,[55] and relations with clients.[56] The more general standards are accepted by most lawyers, while the distinctively professional standards are widely accepted only by the "elite" lawyers.

The large firm versus individual practitioner is not the only important factor in this contrast. On the contrary, this is the only one of three elements that Carlin points up in his analysis of deviant behavior. Aside from these situational inducements to violate the ethical norms, the lawyer who does violate them must have the proper inner disposition to do so and his behavior must be reinforced by his peers. Thus, the young lawyer in a small firm or in individual practice is exposed to more opportunities to deviate, and the pressure on him to do so is greater due to economic factors, meaning that he is also more vulnerable to such persuasion. As he becomes skeptical of his chances for success, he will tend to attribute his failure to the restrictive character of certain norms and seek to avoid them. Feeling twinges of regret about any such action, or having second thoughts, this lawyer seeks the opinions of his peers who have the same problems and have likely felt the same need to justify their behavior. Thus, the process of violation is facilitated and substantiated among this group of lawyers. Finally, there is much room to question whether the young lawyer has been effectively inculcated with the professional norms. What is his inner disposition toward the behavior proscribed by the canons? The problem here is said to be one of "late socialization."[57] Professional conduct is supposedly governed by a distinct set of norms, some in line with those of society and some in contrast. The professional is seen as having certain unique characteristics: lack of concern for monetary gain and dedication to the service of others. These are viewed as products of socialization into a professional subculture. When viewed as such, a process of resocializa-

51. CANONS 1, 3, 15, 29, 41.
52. CANONS 11, 15, 29, 41.
53. CANONS 10, 11, 12, 15, 29, 41.
54. CANONS 6, 7, 10.
55. CANONS 27, 28.
56. CANONS 4, 8, 10, 11, 12, 14, 15, 16, 19, 21, 30, 31, 32, 35, 37, 41, 44.
57. CARLIN, LAWYERS' ETHICS 176 (1966).

tion becomes important to internalize these unconventional norms. It is highly doubtful whether such a basic change in norms can be wrought at a late stage of the individual's development over a relatively short period of time.[58]

If these theories are correct, the young law graduate who is *not* employed by a large secure firm is turned into the world at a great disadvantage. What aid and solace does he derive from the canons and his training in legal ethics? Carlin's findings indicate that whatever exposure he may have is too little and too late, regardless of his good intentions.

The young lawyer's tendency to feel that the canons cannot be taken too literally can only be strengthened by the manner in which they are enforced. While it is said that the hallmark of a profession is its right to govern itself,[59] the low percentage of violators who are processed and sanctioned[60] puts the effectiveness and importance of the policing function in serious question. The chances of the lawyer suffering from his unethical conduct, except as his conscience may treat him, is highly unlikely. Without effective internalization of ethical norms, the conscience cannot be expected to handle the job effectively. The function that formal controls are to perform is highly questionable.

Thus, the social stratification of the bar tends to weaken and undermine the practicing bar at the lower social strata. This stratification also accounts for the wide range in quality of legal services that different clients receive. The most affluent members of society have the most highly trained, specialized, ethical lawyers. The lower income individuals are represented by the least competent and least ethical lawyers. The paradox is that the latter are greatly in need of the best legal representation and are the least likely to get it.

From the perspective of the practicing attorney then, the canons fail to accomplish their stated objectives. Rather than insuring: "[T]hat the system for establishing and dispensing Justice be developed to a high point of efficiency"[61] the canons contribute to its inefficiency. It should be recognized that the inculcation of professional standards may not be accomplished by the mere exposure of third-year law students to canons that are realistically suited to conditions that existed over half a century ago. If young lawyers are to perform in a professional manner, they must be guided and restricted by professional norms that are more meaningful and

58. *Ibid.*

59. Allen, *Goals of Professional Discipline*, 37 FLA. BAR J. 374, 379 (1963).

60. The statistics indicate that only 2% of the violators are processed and only 0.2% are officially sanctioned. CARLIN, LAWYERS' ETHICS 170 (1966).

61. AMERICAN BAR ASSOCIATION, OPINIONS OF THE COMMITTEE ON PROFESSIONAL

realistic to them. Currently, canons that seem unrealistic are avoided and transgressed with impunity.[62] They are often an unmeaningful hindrance to the practicing lawyer and seldom guide him in the conduct of his professional activities.[63] Under the present operation of the canons, is it not reasonable to think that the only real function performed is to forestall public criticism of the profession rather than to regulate the profession and to punish all violators? While violations of the professional norms are more widespread than violations of normal community standards, the former are far less likely to be punished than the latter. This emphasis on normal morality rather than on professional ethics seems to accent the "overriding concern of the organized bar for its public image."[64]

CONCLUSION

The Canons of Ethics, though rich in tradition and history, fail in their objectives of serving both the profession and the public. The advent of group legal service plans (NAACP and Brotherhood of Railroad Trainmen) and the Neighborhood Legal Services Project of the OEO manifests the demand by the public for competent legal services. The problem is to supply competent legal counsel to fill the needs of those who are unable to intelligently seek out and employ an attorney. For the layman the problem arises in several forms: (1) the inability to recognize legal problems as such; (2) the ignorance of the relative cost and value of legal services; and (3) the difficulty in locating a competent lawyer.[65] For the lawyer, the canons impose impractical restrictions on the one hand and fail to provide realistic guidelines for his professional behavior on the other.

At a time when large numbers of people are in need of legal advice, and a great segment of the profession is in need of clients,[66] it seems anachronistic that the professional code of ethics should keep the two classes apart. The canons are formed for the purpose of keeping the system of justice operating at a high peak of efficiency and maintaining the public confidence in that efficiency.[67] This purpose, how-

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ETHICS AND GRIEVANCES WITH THE CANONS OF PROFESSIONAL ETHICS 1 (1957).

62. CARLIN, LAWYERS' ETHICS 165 (1966).

63. Crabites, *Our Maleficient Legal Ethics*, 1 NATIONAL LAWYERS GUILD Q. 186-93 (1937) found in SELECTED READINGS ON THE LEGAL PROFESSION 91-98 (1962).

64. CARLIN, LAWYERS' ETHICS 170 (1966).

65. WALD, *op. cit. supra* note 23.

66. Carlin, *Will Poverty Program Empoverish Lawyers?*, 24 NATIONAL LAWYERS GUILD PRACTITIONER 132, 134 (1965).

67. AMERICAN BAR ASSOCIATION, *op. cit. supra* note 61.

ever, is not served by keeping those in need of justice so completely isolated from the only realistic means of obtaining it.[68] Nor is the profession served when its members must violate the canons to reach these same people who need such services.

The continued expansion of new forms of group representation, therefore, could benefit both the public and the bar. Such plans could enhance the financial position of lawyers who are presently in the lower strata of the bar, thus decreasing their tendency to violate ethical norms. "If this requires altering certain canons of ethics, then let it be done, since it would permit a *genuine* improvement of ethical conduct in the bar. The effective extension of legal services is thus entirely consistent with, if not an indispensable condition for, strengthening the moral integrity of the legal profession."[69] The plea for more available legal services by the mass of people should be interpreted by the legal profession as a challenge requiring the articulation of its role in our society. What we are dealing with is no longer a problem of mere interpretation of legal ethics. Rather, it is a question of fulfilling our duty to the public to provide legal services to all those who need them.

KARL B. BLOCK, JR.

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68. In the October 1966 edition of Law in Action (Volume I, No. 3), Mr. Justice Abe Fortas is quoted as saying: "[J]ustice without lawyers is not a practical possibility. The provision of lawyers for people who are involved in legal problems is essential. It is basic democracy to provide lawyers to those who need legal services and who cannot afford to pay the fee."

69. CARLIN, LAWYERS' ETHICS 181 (1966).