Defining Practice of Law

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ten years for another felony. He announced that he was going to take a correspondence course in law and, pinning his faith on the clemency of the female executive of the Lone Star State, he appeared confident that he would soon be out and that he would make a better lawyer than many with whom he had come in contact. He is still in the penitentiary and his chances of a pardon do not seem particularly bright, but he is pursuing his law course with unabated zeal, and although he has no educational qualifications, in many states he would be entitled to come before the examining board. In Texas he is automatically barred by a statute which prevents the licensing of anyone who has been convicted of a felony.

Texas is but one of fifteen states which have no requirements whatsoever of general education. Seven of these have no requirements as to kind, quality or duration of the legal training which candidates are supposed to possess. While this situation is showing improvement slowly but surely under the efforts of Associations and individual lawyers in the various states, there is much still to be done. That it can be done is conclusively proved by the work of the American Medical Association, through the efforts of which more than three-fourths of the states require graduation from an approved medical college with a four-year course requiring for admission at least two years of college work. The standards which the American Bar Association recommend were adopted in 1921, after being reported on favorably by a committee of which Elihu Root was the chairman. They provide for graduation from an approved law school which requires as a prerequisite for admission two years of college, or its equivalent, and which has a law course of three years if the students devote substantially all of their working time to law study, or four years in case of an afternoon or evening school. These requirements were considered as a minimum by the leaders of the bar ten years ago, and that conclusion is much more pronounced today.

Mr. Philip J. Wickser, secretary of the New York Board of Law Examiners, estimates that in 1940 we will have some 240,000 lawyers in this country as against the present legal population of between 150,000 and 160,000. This means an increased strain on the moral and ethical standards of the members of the profession and requires an increasingly searching surveillance of the qualifications of candidates, both moral and legal. Bar associations and legislatures must bear their share of the responsibility, which they can only do by making every effort to see that applicants for the bar who knock at the gates in their states have those qualifications which will most certainly insure an adequate moral and ethical background for the practice of law, as well as a knowledge of its intricacies.

DEFINING PRACTICE OF LAW

We are indebted to an article by Ewell D. Moore, of the Los Angeles Bar, in the December, 1930, issue of the Los Angeles Bar Association Bulletin, for the following brief outline of court opinions defining the practice of law:

What constitutes the practice of law? That is the issue everywhere between the banks and trust companies and the lawyers. The courts—Federal and State—have spoken on the subject in many instances and in many jurisdictions.

In Savings Bank v. Ward, 100 U. S. 195, the services of an attorney at law are defined as follows:

"Persons acting professionally in legal formalities, negotiations or proceedings or by warrant or authority of their clients may be regarded as attorneys-at-law within the meaning of that designation as used in this country; and all such when they undertake to conduct legal controversies or transactions profess themselves to be reasonably well acquainted with the law the rules and practice of the courts, and they are bound to exercise in such proceedings a reasonable degree of care, prudence, diligence and skill."

In Eley v. Miller, 7 Ind. App. 529, 34 N. E. 386, the Court refers to practicing law as follows:

"In a larger sense it includes legal advice and counsel and the preparation of legal instruments and contracts by which legal rights are affected, although such matters may or may not be pending in court."

In People of the State of N. Y. v. Henry Alfani, 227 N. Y. 325, the Court said:

"It is common knowledge . . . that a large, if not the greater, part of the work of the bar today is out of courts or office work. Counsel and advice, the *drawing of agreements, the organization of corporations and preparing papers connected therewith, the drafting of legal documents of all kinds, including wills, are activities which have long been classed as law practice.*

"The reason why preparatory study, educational qualifications, experience, examination and license by the courts are required, is not to protect the bar, ... but to protect the public."

In People v. Peoples Trust Co. 167 N. Y. S. 767, 180 App. Div. 494:

The defendant company advertised in the newspapers the drawing of wills for customers.

The Court said, after citing the language used in the case of Eley v. Miller (supra):

"The drafting and supervising of the execution of wills is practicing law . . . . The statute in terms forbids a corporation to hold itself out to the public as being entitled to practice law, to render or furnish legal services or advice, or to furnish attorneys or counsel to render legal services of any kind. This is what the defendant did. Its advertisements offered to furnish legal advice."

The California Courts have not been silent on this subject. Section 281, Code of Civil Procedure of State of California says:

"If any person shall practice law in any court, except a justice's court or police court, without having received a license as attorney and counselor, he shall be guilty of a contempt of court."

Section 1209, Code of Civil Procedure of State of California:

"The following acts or omissions in respect to a court of justice, or proceedings therein, are contempts of the authority of the court:

"Subdivision 13: Practicing law, or advertising or holding one's self out as practicing or as entitled to practice law, in any court, except a justice's or police court, without having received a license as attorney and counselor, issued under the laws of this state. . . ."

In People v. Merchants Protective Corp., 189 Cal. 531 at 538. The Court after citing the cases of Eley v. Miller, and People v. Alfani, (supra) and many other cases said:

"The essential element underlying the relation of attorney and client is that of trust and confidence of the highest degree growing out of the employment and entering into the performance of every duty which the attorney owes to his client in the course of such employment. . . . .

"The essential relation of trust and confidence between attorney and client cannot be said to arise where the attorney is employed, not by the client, but by some corporation which has undertaken to furnish its members with legal advice, counsel and professional services. *The attorney in such a case owes his first allegiance to his immediate employer, the corporation, and owes, at most, but an incidental, secondary and divided loyalty to the clientele of the corporation.*" (Italics ours.)

In People v. California Protective Corporation, 76 Cal. App. 354, at 364, the Court said:

"It is argued that under its articles of incorporation, a franchise to practice law was 'granted' appellant by the state, and that, the franchise having thus been 'granted,' appellant should be allowed to exercise it 'without being subjected to fine for doing so'. While it is true that appellant usurped, or unlawfully exercised, the privilege or franchise of practicing law, it is not true that such privilege or franchise was 'granted' to it. *The practice of law by a corporation is, as we have seen, unlawful.* The statute did not authorize appellant's incorporators to call it into being for an unlawful purpose." (Italics ours.)

AUTO INSURANCE AGAIN

Notwithstanding the action of the State Bar Association expressing the view that licensing, rather than insurance, would best serve our needs so far as motor vehicle accidents are concerned, there is considerable amount of discussion elsewhere in favor of insurance.

Mr. J. Philip Bird, President of the New Jersey Manufacturers' Association, is quite active along this line. We quote from a recent statement:

"The insurance policy should insure everyone riding the particular automobile which is covered, be he riding as owner, as chauffeur, as business associate or as guest. The policy should insure also any other person upon the public street, or highway, except the owner, chauffeur, business associate or guest, riding in the other automobile.

"Those in the other automobile are protected by the insurance which the owner of that automobile has furnished, and, therefore, should not receive protection from the policy procured by the owner of the first automobile. . . . The law making these changes should provide a schedule similar to the schedule contained in the Workmen's Compensation Laws which would fix a definite amount to be paid for certain injuries. This schedule . . . would not depend upon the income or earnings of the person injured. It would be a minimum schedule in this sense that there would be nothing in the law to prevent an automobile owner from procuring a policy containing a higher schedule than the law requires.

"However, if the owner procures a schedule higher than the law requires, reading in favor of himself, or his chauffeur, or the guests in his car, it should be unlawful for the insurance company to give that