San Diego Law Review

Volume 10 | Issue 2 Article 7

2-1-1973

# Group and Other Legal Services for the Middle Class

Steve Schroeder

# Comments

## GROUP AND OTHER LEGAL SERVICES FOR THE MIDDLE CLASS

### I. In Search of the Public Interest

Discussions of group legal services invariably commence or conclude with an attempt to relate the supposed advantages of the group approach to the public interest. Such an approach has much to commend it, and indeed is inevitable if one accepts service to others as a necessary criterion of the legal profession. But the "public interest" is an elusive concept, available to justify various, and at times opposing, activities.[1]

The most prolific use of the phrase "public interest" occurs in discussions of the emerging area of law practice dedicated to representation of the poor and advocacy of broad policy considerations in the areas of consumer protection and environmental problems.[2] But even in this arena, there is a lack of agreement as to which activities are truly in the public interest. It has been suggested, for example, that "the allocation of public interest law resources to majoritarian, middle-class, white concerns (i.e. the environmental

1. Were not both parties in *N.A.A.C.P. v. Button*, 371 U.S. 415 (1963) utilizing a public interest argument to advance their positions?

2. *See, e.g.*, Charles R. Halpern and John M. Cunningham, *Reflections On The New Public Interest Law: Theory and Practice at the Center for Law and Social Policy*, 59 Geo. L.J. 1095 (1971).

issue) is contrary to the public interest."[3]

Also there is the traditional concept of public interest work, termed "pro bono publico," generally shortened to "pro bono," and meaning "for the public good." Usually "pro bono" describes work for which the attorney charges no fee or a fee at a lower rate than he generally receives.[4] "Pro bono" may also be used to designate essentially social activities unconnected with the practice of law. Examples of activities described as "pro bono" by respondents in a recent study include umpiring Little League baseball and serving on boards of various associations and school districts.[5]

Inextricably bound up with the concept of "pro bono" work by traditional firms is the assumption that the judicial system will produce a just result if both sides have vigorous advocates. Thus the role of the profession is essentially neutral in the view of the traditional concept. The lawyer simply advocates one side and the system decides questions of right or wrong, with the "public interest" emerging as the end result.[6] Indeed this view of the lawyer's role is not only urged upon students commencing their legal studies[7] but the duty of vigorous advocacy has been codified in Canon 7 of the Code of Professional Responsibility.[8]

Several conclusions suggest themselves from a survey of activities and philosophies purporting to further the public interest. The first is that what constitutes the "public interest" is largely a matter of self-definition, although certain identifiable characteristics of public interest law firms do emerge. Marks, for example, suggests that one "external definition" of public interest activity must encompass ". . . broad policy or investigative approaches designed to identify social injury or particular abuses in advance of or in cooperation with individual or group identification of these wrongs."[9] But despite the utility of such definition, the danger that "public interest" rhetoric may needlessly alienate the private bar and contribute to the abdication of public duty to the "public interest" firms,[10] militates against focusing undue attention upon the phrase itself.

3. Cahn and Cahn, *Power to the People or the Profession?—The Public Interest in Public Interest Law*, 79 YALE L.J. 1005 (1970).

4. F. RAYMOND MARKS, THE LAWYER, THE PUBLIC AND PROFESSIONAL RESPONSIBILITY, 7 (1972).

5. *Id.*

6. *Id.* at 9.

7. *See, e.g.*, LOUISELL AND HAZARD, CASES ON PLEADING AND PROCEDURE, 39 (2d ed. 1968).

8. ABA CODE OF PROFESSIONAL RESPONSIBILITY, CANON 7, "A Lawyer Should Represent a Client Zealously within the Bounds of the Law."

9. MARKS, *supra* note 4, at 50.

10. Hegland, *Beyond Enthusiam and Commitment*, 13 ARIZ. L. REV. 805 (1971).

It also appears that the "public interest" law firms which formulate broad policy prior to the selection of clients[11] have failed to contribute fully to the functioning of the adversary system. The assumption that the public interest lawyers serve "interests"[12] seems counter to a premise of the adversary system: that the law serves individuals.[13] This is not to say that the public interest law movement is not performing a valuable service by representing heretoforeslighted or ignored special interests.[14] The danger comes if we assume that this movement is the *only* legitimate voice of the public interest. If the adversary system is but a tool of our pluralistic society, then individual clients in need of services, or in need of protection from the majority, must obtain access as well.

The third conclusion is that the assumption that the adversary system is capable of advancing the public interest is deeply rooted in legal thinking and generates surprisingly little opposition.[15] This assumption does much to explain the fact that the bar associations' efforts in the public interest area are aimed at improving the quality of the system as it is and not at restructuring the system.[16] But however important it is to maintain the high quality of services actually performed, the fact remains that the adversary system works only for those who have access to it. As Brandeis pointed out, if the system is to produce balanced public-policy decisions, *all* interests must be represented in the process.[17] Thus the question of whether or not the causes which presently use the system represent the "public interest" becomes almost irrelevant. The proper inquiry would seem to be whether there are legitimate interests which are precluded from gaining access.

11. MARKS, *supra* note 4, at 229-236.
12. *Id.* at 151-185.
13. Hegland, *Beyond Enthusiasm and Commitment,* 13 ARIZ. L. REV. 805 (1971).
14. *See, e.g., N.A.A.C.P. v. Button,* 371 U.S. 415, 430 (1963) where the Supreme Court recognizes that litigation may well be the sole practicable avenue open to minority interests to petition for redress of grievances.
15. *But see* Comment, *The New Public Interest Lawyers,* 79 YALE L.J. 1069 (1970) suggesting that it may be desirable to define the public interest apart from the essentially pluralistic concept which underlies the adversary system.
16. *See, e.g.,* Smith, *Canon 2: "A Lawyer Should Assist the Legal Profession in Fulfilling its Duty to Make Legal Counsel Available",* 48 TEX. L. REV. 285 (1970).
17. International News Service v. Associated Press, 248 U.S. 215, 248 (1918) (Brandeis, J. dissenting).

## II. Needs of Middle Income People

Before addressing the question of whether or not middle income people need more legal services than they are presently getting, it is appropriate to offer a definition of "middle income." No precise definition is possible, nor, it is submitted, is it necessary. The term, of course, is relative and any attempt at fixing minimum and maximum income levels would be arbitrary without some knowledge of the community to which the inquiry was addressed. A suggested criterion, however, would be to include those persons whose income is at such a level to disqualify them for free legal aid. The upper limit presents a tougher problem. To define it as simply that level of income at which people regularly utilize the services of an attorney begs the question. The best that can be done therefore is to suggest a monetary figure of $15,000[18] and trust to the sense of the reader a feel for more precise limits.

It is often asserted that the question of whether or not middle income people need more legal services than they are presently getting has never been satisfactorily answered. As early as 1964, the California State Bar Committee on Group Legal Services urged that a comprehensive study be conducted to determine the needs of middle income people for legal services.[19] No such study has been forthcoming. Professor Stolz in his epic study of the feasibility of legal insurance points out that:

> There is no direct evidence that the middle class needs more legal service than it is presently getting. Citations can be collected stating that there is a need, but the sources cite each other, not broad, careful empirical research.[20]

There are indeed proposals, including those by the ABA Special Committee on Availability of Legal Services,[21] which state that there is an unfulfilled need for legal services in the middle class. What is perhaps the most definitive study of means for satisfying the needs of middle income people flatly asserts that such needs do exist.[22] This is august company, and a serious challenge of the assumption that middle class people do have unfulfilled needs for

18. B. Christensen, Lawyers for People of Moderate Means, Some Problems of Availability of Legal Services, 5 (1970).

19. California State Bar Committee on Group Legal Services, "1964 Progress Report", 39 J. St. Bar Cal. 639, 721 (1964).

20. Stolz, *Insurance for Legal Services: A Preliminary Study of Feasibility*, 35 U. Chi. L. Rev. 417, 419 (1968).

21. Preliminary Handbook on Prepaid Legal Services, Papers and Documents Assembled by Special Committee of Prepaid Legal Services, American Bar Association—September, 1971, 25 (hereinafter cited as Prepaid Legal Handbook).

22. Christensen, *supra* note 18, at 229.

legal services would be of questionable validity. It might be in order, however, to examine briefly what empirical data is available, and some parallel experiences.

In January, 1971 California Teachers Association cooperated with the American Bar Association and the American Bar Foundation in conducting a survey of Los Angeles area teachers. Approximately 50% of the 5000 questionnaires were returned, with 77% of those indicating an interest in participating in a prepaid legal plan.[23] Although this response in itself suggests a perceived need for legal services on the part of the respondents, of immediate interest is the disparity between the frequency of the occurrence of legal problems and the retention of an attorney. For example 25.1% of the respondents indicated that they had experienced a consumer problem in the past 5 years and 35% anticipated that future problems in this area were either possible or certain. Yet 3.5% had contacted an attorney and only 1.1% had retained his services.[24]

The Shreveport Bar Association's program of prepaid legal services to the 600 member Laborers Local 229 adds further support to the assumption that there are unfulfilled needs for legal services among the middle class. Demand for lawyer services prior to the instigation of the program was quite close to the "national annual need" of 10%. Demand for services by those participating in the plan had increased to 20% at the end of the first year, with a discernible trend toward 30%.[25] In view of the findings prior to the instigation of the program that a majority of middle income people felt that they would not get their money's worth from a visit to an attorney,[26] this increased usage indicates a direct relationship between utilization of legal services and elimination of the fear that legal services are available only at a prohibitive cost.

The assumption that there are unfulfilled needs for legal services in the middle class gains the most support from an analogy

23. Prepaid Legal Handbook, *supra* note 21, at 48.
24. *Id.* at 257. Admittedly nothing more than the faintest suggestion of unfulfilled needs can be culled from this example in the absence of information as to the monetary value of the problem and an analysis of whether or not the perceived problems were in fact ones which the legal system could effectively address.
25. ABA Revised Handbook of Prepaid Legal Services, 265 (1972) (hereinafter cited as Revised Handbook).
26. *Id.* at 254.

from the OEO Legal Services Program. It also started on "a foundation of assumed need for legal services by the poor, an assumption that its sponsors justified by redefining need. . . ."[27] That the assumption was correct, however, is not to be denied. Half a million cases were handled by OEO Legal Services units in 1968,[28] and it has been asserted that "[i]f all the lawyers in the country worked full time, they could not deal with even the articulated legal problems of the poor."[29]

How far one can generalize from the OEO Legal Services experience is not readily apparent. Demand by the poor for free legal services does not necessarily suggest commensurate demand by middle income people in a market situation. The Shreveport experience does suggest, however, that demand for legal services has certain elasticity, and given this elasticity, it has been suggested that four factors affect the demand for lawyers' services: "(1) The quality of services . . . (2) the cost to the client . . . (3) the accessibility of the service, and (4) public knowledge and attitudes about law, lawyers, and lawyers' services."[30] With the availability of alternative solutions an additional factor.[31]

Two of these factors have also been recognized by the ABA Special Committee on Availability of Legal Services. It has stated that actual or anticipated cost of legal services together with a sense of unequal bargaining status with the attorney is a "significant barrier to wider utilization of legal services" by middle income people,[32] duplicating factors (2) and (4) above.

It would seem reasonable to conclude, then, that money, or lack thereof, directly affects the frequency of utilization of the legal system. Although this conclusion in itself contributes nothing to our present knowledge, it does, in turn, raise the question of whether we are prepared to measure the validity of potential input to the legal system in terms of dollars alone, as the present system has been assumed to do. In view of a basic premise of traditional legal theory that the adversary system can produce results consonant with the public interest, it would follow that economic barriers to utilization of the system, which preclude the system from weighing

27. Stolz, *supra* note 20, at 418.
28. Johnson, *The OEO Legal Services Program*, 14 CATH. L. REV. 99, 100 (1968).
29. Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049, 1053 (1970).
30. CHRISTENSEN, *supra* note 18, at 23.
31. *Id.*
32. Prepaid Legal Handbook, *supra* note 21, at 26.

a large block of interests during the decision making process, make it difficult to equate the public interest with the actual product of the adversary system.

## III. PRESENT RESTRICTIONS ON GROUP LEGAL SERVICES

Before examining the present restrictions on group legal services, it must first be understood that the term "group legal services" is not confined to those activities currently allowed under Canon 2 of the ABA Code of Professional Responsibility. The term as used means simply providing legal services to individual members of a group by a lawyer or lawyers selected by the group to serve the individual legal needs of its members.[33] Prepaid open panel plans developed by the ABA thus do not come under this definition for the purposes of the discussion, although such plans do recognize the necessity of dealing with homogenous groups.[34]

The primary restriction on group legal services is the ABA Code of Professional Responsibility DR2-103 (D) which reads in part:

> A lawyer shall not knowingly assist a person or organization that recommends, furnishes, or pays for legal services to promote the use of his services or those of his partners or associates. However, he may cooperate in a dignified manner with the legal service activities of any of the following, provided that his independent professional judgment is exercised in behalf of his client without interference or control by any organization or other person:
>
> . . . .
>
> (5) Any other non-profit organization that recommends, furnishes, or pays for legal services to its members or beneficiaries, but only in those instances and to the extent that controlling constitutional interpretations at the time of the rendition of the services requires the allowance of such legal service activities, and only if the following conditions, unless prohibited by such interpretations, are met:
>
> (a) The primary purposes of such organization do not include the rendition of legal services.
>
> (b) The recommending, furnishing, or paying for legal services to its members is incidental and reasonably related to the primary purposes of such organization.

33. Stolz, *supra* note 20, at 420 n.16.

34. Prepaid Legal Handbook, *supra* note 21, at 31. Because of the organized bar's long and continued endorsement of essentially closed panel programs by the OEO Legal Services Program for people who do not have the means to pay, the sceptic might be forgiven some doubt as to its motive or insisting on "free choice of attorney" in situations where the client can pay something; especially if this insistence is a factor in denying workable programs.

(c) Such organization does not derive a financial benefit from the rendition of legal services by the lawyer.

(d) The member or beneficiary for whom the legal services are rendered, and not the organization, is recognized as the client of the lawyer in that matter.

Against the background of this Disciplinary Rule, the second factor which affects the use of legal services by middle income people becomes more comprehensible. It has been asserted that failure to recognize legal problems prevents more frequent use of the legal system.[35] This general failure to recognize legal problems was placed in stark relief by the market study conducted in Shreveport prior to the commencement of the prepaid legal services plan.[36] The group as a whole went to a lawyer only as a last resort, and then only about "the most known and settled legal matters." The law was generally not used preventively and many regarded the lawyer as unhelpful in situations which clearly called for a legal remedy.[37]

Failure to contact a lawyer even after a legal problem was recognized also occurred frequently. Of the group surveyed, sixty per cent felt that lawyers generally could not be trusted, and fifty per cent said that it was hard to find a lawyer when one was needed. The manner in which a lawyer was selected was informal and irrational, with fifty-two percent reporting that a friend or family was the most important channel of communication concerning selection of a lawyer.[38] The experience of taking a problem to a lawyer did not have a significant effect on these attitudes.[39] More importantly, *unsatisfactory* experience with a lawyer did not generally lead to changing lawyers, suggesting again that selecting a lawyer is a major obstacle to utilization of legal services.[40]

Thus it appears that large segments of the public are ignorant of their need for legal services. Further, people generally consider it hard to find a competent lawyer when needed. Since these problems would logically seem to exist largely because of ethical restrictions on advertising and solicitation[41] and confinement of the

35. ABA CODE OF PROFESSIONAL RESPONSIBILITY, EC 2-2, reads in part: "The legal profession should assist laymen to recognize legal problems because such problems may not be self-revealing and often are not timely noticed. . . ."

36. Revised Handbook, *supra* note 25, at 219.

37. *Id.* at 256-257.

38. *Id.* at 222-224.

39. *Cf.* The Missouri Bar Survey summarized in 38 J. ST. BAR CAL. 395 (1963) suggesting that personal experience with a lawyer leads to a higher opinion of one's own lawyer but a lower opinion of lawyers in general.

40. Revised Handbook, *supra* note 25, at 254-255.

41. Stolz, *supra* note 20, at 420.

use of intermediary arrangements to those allowed under DR2-103(D), it is appropriate to re-examine these restrictions.

Present day ethical restrictions on advertising and solicitation find their origins in the common law misdemeanors of maintenance, champerty and barratry. Maintenance was officious intermeddling in a suit by maintaining or assisting another in its prosecution.[42] Champerty was a bargain by a volunteer with a party to a law suit which gave the champertor a share of the award in exchange for his paying the expenses of the suit.[43] Barratry was the practice of exciting and stirring up suits, and required at least three instances of maintenance for conviction.[44]

Although the influence of the common law misdemeanors yet remains,[45] the ABA Code of Professional Responsibility recognizes in broad, sweeping language that "A Lawyer Should Assist the Legal Profession in Fulfilling Its Duty to Make Legal Counsel Available."[46] Furthermore, advising another to take legal action may be proper if "motivated by a desire to protect one . . . who is ignorant of his legal rights . . ." but improper if "motivated by a desire to obtain personal benefit . . . or cause litigation to be brought namely to harass or injure another."[47] Thus it would seem that the profession at last has heeded Max Radin's plea made 37 years ago:

> We must . . . discard . . . the assumption of Medieval Society, that a law suit is an evil in itself. It is hard to see how either the legal profession or our court machinery can justify its existence, if we go on the assumption that it is always better to suffer a wrong than to redress it by litigation . . . .[48]

In view of the sweeping recognition of a duty to "make legal counsel available," the rationale for the stifling restrictions on group legal plans contained in DR2-103(D) must be found in the fear that use of intermediary arrangements will weaken the lawyer's independence of judgment and undermine the attorney-client rela-

42. R. PERKINS, CRIMINAL LAW 522 (2d ed. 1969).
43. *Id.*
44. *Id.* at 523.
45. ABA CODE OF PROFESSIONAL RESPONSIBILITY, EC 2-9.
46. *Id.* CANON 2.
47. *Id.* EC 2-3.
48. Radin, *Maintenance by Champerty,* 24 CALIF. L. REV. 48, 72 (1935).

tionship.[49] There can be no doubt that such professional values are of inestimable benefit to the public. Indeed, the very concept of the adversary system is based on the assumption that the advocates will both vigorously advance the arguments most beneficial to their clients. The attorney's independence of judgment and his loyalty to his client will therefore be regarded as values to be preserved by restrictions on group legal services.

The ban on solicitation and advertising would not logically seem to serve this end. Henry S. Drinker observed that solicitation and advertising are different from the other activities restricted by ethical rules, characterizing the bans on these two activities as rules of professional "etiquette" rather than "ethics."[50] It is also interesting to note that the rules against solicitation and advertising have little effect upon that segment of the profession serving the needs of the wealthy and business clients, because such clients may now be solicited in Martindale-Hubbell and other law lists by attorneys "who want to tout themselves to potential clients."[51]

The final factor to be considered in regard to solicitation and advertising is the impact of the Supreme Court decisions on the constitutional ramifications. *National Association for the Advancement of Colored People v. Button*[52] held that active solicitation of civil rights clients by paid staff attorneys was an associational right protected by the first amendment. Thoughts that the decision was restricted to purely political activities were dispelled by *Brotherhood of Railroad Trainmen v. Virginia*,[53] where a union solicitation scheme that resulted in channeling most of the union members' personal injury claims to lawyers picked by the union was upheld on similar grounds. Subsequently, in *United Mine Workers v. Illinois State Bar Association*[54] and *United Transportation Union v. State Bar of Michigan*[55] the Court upheld plans involving representation of workers by an attorney employed by the union and an arrangement with attorneys to handle personal injury cases of union members for 25% of recovery, respectively. Fee splitting was said not to be involved in any of the four cases.

---

49. Nahstoll, *Limitations On Group Legal Services Arrangements Under the Code of Professional Responsibility, DR 2-103(D)(5): Stale Wine In New Bottles*, 48 TEX. L. REV. 334, 339 (1970).
50. H. DRINKER, LEGAL ETHICS, 211 (1953).
51. Freedman, Solicitation of Clients by Public Interest Lawyers, 2-3 (1971).
52. 371 U.S. 415, 420 (1963).
53. 377 U.S. 1 (1964).
54. 389 U.S. 217 (1967).
55. 401 U.S. 576 (1971).

Whether the Court has gone as far as it is going to go in this area is not known, although in defining the limits of DR2-103(D)(5) as those decreed by the Supreme Court, the ABA has apparently hoped that it has. However, in view of the fact that solicitation of clients, at least in the factual contexts presented, is constitutionally protected activity and the statement "that only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms,"[56] such an assumption seems unwarranted.[57] For if, as has been asserted, the restrictions on solicitation and advertising do not protect the independent judgment of the attorney or preserve the attorney-client relationship, then Christensen's observation that the rules are being used to preserve present patterns of competitive advantage within the profession[58] takes on added significance. Is protecting the economic interests of the bar really a "compelling state interest?"

It must be recognized, however, that other evils are sought to be prescribed by the ABA Code of Professional Responsibilities' ban on advertising and solicitation. EC 2-9 states in part that advertising would:

> [E]ncourage extravagant, artful, self-laudatory brashness in seeking business and thus could mislead the layman. Furthermore, it would inevitably produce unrealistic expectations in particular cases and bring about distrust of the law and lawyers. Thus, public confidence in our legal system would be impaired by such advertisements of professional services. The attorney-client relationship is personal and unique and should not be established as the result of pressures and deceptions. History has demonstrated that public confidence in the legal system is best preserved by strict, self-imposed controls over, rather than by unlimited, advertising.

This evil was considered by the Washington, D.C. Bar Association's Committee on Legal Ethics and Grievance in the first significant extension of the Supreme Court decisions on advertising and

56. N.A.A.C.P. v. Button, 371 U.S. 416, 438 (1963).

57. *See also* United Transportation Union v. State Bar of Michigan, 401 U.S. 576, 585 (1971) where the Court says ". . . the principle here involved cannot be limited to the facts of this case. . . . The common thread running through our decisions in *N.A.A.C.P. v. Button, Trainmen,* and *United Mine Workers* is that collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment."

58. CHRISTENSEN, *supra* note 18, at 148-50.

solicitation. The Stern Community Law Firm, then under the direction of Monroe Freedman, is funded through the Lincoln Temple of the United Church of Christ and the Stern Family Fund. Concerned that people who wished to adopt children were being turned away by the adoption agencies for arbitrary reasons, the firm ran an advertisement in local newspapers and radio stations and in two national magazines advising persons who wished to adopt children but had been rejected by the adoption agencies for enumerated reasons to contact the Firm for free legal assistance. A second advertisement published by the Firm listed the names of toys found by FDA to be hazardous, expressed the opinion that purchasers of such toys were entitled to return them for a refund, and advised the purchasers to contact the Firm if assistance were needed.[59]

Rejecting the invitation to scrap the rules against advertising, the Committee on Legal Ethics and Grievance of the Bar Association of the District of Columbia did find that the advertisements in question were praiseworthy, and "in keeping with the highest responsibilities of the legal profession."[60] The decision was predicated upon the assurance that once the attorney-client relationship was established, neither the church nor the attorney would attempt to control the case inconsistently with the best interests of the client.[61] Further limitations prohibited the use of individual attorneys' names in the advertisements and required that statements as to the legality of existing practices be asserted as the opinions of the Firm rather than as categorical facts.[62]

The ruling is significant not only because it is apparently the first approval of advertising addressed to the general public since the New Deal era's witness of formal approval of advertising by Liberty League lawyers seeking clients opposed to the establishment of the National Labor Relations Board,[63] but also because the Committee recognized that the good judgment and discretion of the attorneys were an adequate protection against the overreaching prescribed by EC 2-9. Such good judgment and discretion, coupled with the existing laws of fraud and the existence of civil liability for any failure of an attorney to perform as promised,

59. Memorandum on Solicitation Submitted to the Legal Ethics and Grievance Committee of the District of Columbia Bar Association by the Stern Community Law Firm.

60. In the matter of Advertising Conducted by Monroe H. Freedman and the Stern Community Law Firm, Report of the Committee on Legal Ethics and Grievance of the Bar Association of the District of Columbia, 1 (1971).

61. *Id.* at 2.

62. *Id.* at 3.

63. ABA COMM. ON PROFESSIONAL ETHICS, OPINIONS, No. 148 (1935).

would seem to offer adequate protection to the public from frivolous or exaggerated advertising by attorneys offering group legal services as well. Indeed, a contrary conclusion "impugns the basic integrity of the entire (legal) profession."[64]

## IV. BENEFITS OF GROUP LEGAL SERVICES

Prepaid legal services have primarily been urged as a form of insurance protection against little injustices and frequently occurring legal costs; its utility arising from its use as a budgeting device, and as a means of prepaying legal costs.[65] The theory seems to be that people will make more frequent use of legal services if they are allowed to pay for them in advance. This theory would seem to fly in the face of reality, for how can people be persuaded to pay in advance for legal services which they now do not even use? Thus, if group legal services are to become a useful tool, a critical look must be taken at the present fee structure by those offering prepaid or group legal services, both as it actually functions and, perhaps more importantly, as the public perceives it. In other words, if middle income people are to be induced to make greater use of legal services, the realities of the market place must be considered.[66]

That cost of legal services may be directly regulated by the group device has been most dramatically demonstrated by the Supreme Court decisions in *United Transportation Union v. State Bar of Michigan*[67] and *United Mine Workers v. Illinois State Bar Association*.[68] In the former, the union limited contingent fees to 25%, and the latter involved services to union members by a salaried attorney employed by the union.

It is submitted that such regulation of fees is a desirable result without adverse effects on the quality of the services. One benefit

64. CHRISTENSEN, *supra* note 18, at 141-42.
65. Stolz, *supra* note 20, at 425; Prepaid Legal Handbook, *supra* note 20, at 25-32.
66. This is perhaps the most valuable contribution of Barlow Christensen in *Lawyers for People of Moderate Means* (1970). While not advocating "commercialization" of the profession, he is among the few who have recognized that the competitive market place is a major factor to be considered when discussing the availability of legal services.
67. United Transportation Union v. Michigan, 401 U.S. 576 (1971).
68. 389 U.S. 217 (1967).

of group legal practice would be that the attorneys retained would soon become familiar with the types of problems encountered by the group, with the result being development of the ability to handle a greater number of problems in a routine manner.[69] Other measures to increase efficiency, and thus decrease cost, without adversely effecting the quality of the services have been suggested. Use of trained laymen under the control and supervision of the attorney to handle routine matters would save valuable lawyer time.[70] Management of the law office[71] is another area where increased efficiency could be passed on to people of moderate means in the form of lower costs. Increased use of specialization also has potential to increase efficiency and decrease cost,[72] with the additional benefit of making qualified specialists available to middle income people in contests with large institutions which now retain "a battery of experienced, well-financed specialists."[73]

Another way in which group legal services can reduce the cost of legal services to the individual is through the insurance principle of spreading the risk of legal catastrophe over the members of the group. This is the primary benefit of the ABA sponsored prepaid legal plans, and it appears that costs of legal services to the individual have been effectively reduced under the Shreveport plan without the necessity of substantially relying on available foundation funds.[74] It should be noted, however, that reliance on the insurance principle without alteration of the basic fee structure will actually result in higher total costs of services because of the expense of administering the plan.[75]

The group legal device also has potential to educate middle income people to recognize legal problems. Educational programs addressed to the group by its retained attorneys would go far toward apprising group members of the existence and extent of legal remedies. Social intercourse among group members would accomplish much the same purpose. The selection problem would also be alleviated in the group context because the attorneys would be selected by the group in a rational manner. And, in view of the fact that selection of a lawyer presently appears to be a major obstacle to utilization of legal services and generally is an irrational

69. CHRISTENSEN, *supra* note 18, at 45.
70. *Id.* at 46-53.
71. ABA PROCEEDINGS OF NATIONAL CONFERENCE ON LAW OFFICE ECONOMICS AND MANAGEMENT (1967).
72. CHRISTENSEN, *supra* note 18, at 82-127.
73. *Id.* at 101.
74. Revised Handbook, *supra* note 25 at 267.
75. ABA TRANSCRIPT OF PROCEEDINGS, NATIONAL CONFERENCE ON PREPAID LEGAL SERVICES, 129 (1972).

and random process, no serious objection can be raised to this method of selection.

## V. CONCLUSION

It has been recognized that middle income people are denied meaningful access to the legal system because of high cost of legal services, ignorance of legal rights and remedies, and the difficulty of finding a lawyer. It has also been urged that group legal services offer a means of alleviating these obstacles and of providing access to the system. In view of the ABA's recognition of a professional duty to make legal services available,[76] the following criteria for the regulation of group legal services are suggested.

Lawyers should be permitted to cooperate with any organized group that wishes to offer group legal services to its members. Efforts to restrict the types of groups which may offer legal services to its members to those specifically required by constitutional interpretations[77] should be abandoned as inconsistent with the broad sweep of Canon 2.[78]

The scope of permissible legal services should include all legal problems of individual members, limited only by the traditional conflict of interest considerations.[79] A more restrictive regulation would seriously curtail the educational advantages of group legal services and deprive members of the group of needed information and benefits.

Advertising the availability of legal services to group members and soliciting their use thereof must be permitted if maximum utilization of the services is to be realized. Educational programs advising members of legal rights and remedies are also necessary to full utilization of the system, and presentation of such programs by the retained attorneys should be allowed.

Although no instance of either group interference with the independence of the attorney's judgment or dilution of the attorney-

76. ABA CODE OF PROFESSIONAL RESPONSIBILITY, CANON 2.
77. *Id.*, DR 2-103(D).
78. *See* Stolz, *Sesame Street For Lawyers: A Dramatic Rendition of United Transportation Union v. The State Bar of Michigan,* 401 U.S. 576 (1971), 36 UNAUTH. PRAC. NEWS No. 2 (1971).
79. DR2-103(D)(5)(b) currently limits such services to those incidental to the primary purpose of the organization.

client relationship has been found,[80] and it would appear that present regulations seeking to preserve these values are sufficient in the group context, it is recommended that the requirement of DR2-103(D) that the independence of the attorney be preserved, should be retained for purposes of emphasis.

Finally, it is recommended that some method of peer evaluation and review be established over group practitioners. Programs should be registered with a regulatory authority, whose functions would include: monitoring advertising and solicitation activities to ensure against fraud and overreaching; ensuring that the attorney-client relationship is adequately preserved; and acting as an arbitration board to resolve possible disputes between the attorney, the group, and the individual client.[81]

STEVE SCHROEDER

80. *But see* United Transportation Union v. State Bar of Michigan, 401 U.S. 576, 598 (1971) (Harlan, J. dissenting).

81. CAL. BUS. & PROF. CODE § 6076, RULE 20 (West 1954), would seem to incorporate these criteria while rejecting the more rigid restrictions of DR2-103(D).