

LAWYER OBLIGATIONS TO MODERATE-INCOME PERSONS

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Lawyers are underserving or overcharging many persons of moderate income who are in need of legal services. This can be unfortunate for the client group affected. It also has major ethical implications. The bar, a profession with semi-monopoly privileges, has an ethical obligation, in return for its professional status and monopoly benefits, to make its services available at a fair price to all needing legal services who can afford to pay. The ethical obligation is enhanced by the fact that if lawyers do not serve moderate-income persons in need of their help, others less qualified are likely to provide the needed services. The bar very properly has been greatly concerned with the ethical standards and behavior of individual lawyers and law firms. It should be equally concerned with the profession's overall ethical obligation to the society at large and to major groups within the society.

Moderate-income persons, for purposes of this discussion, are those with incomes just above what will qualify them for legal aid up to average middle-income. Depending on the locality, this income range currently is somewhere between ten and fifteen thousand dollars per year at the bottom up to forty to fifty thousand dollars at the top. Those of moderate income obviously constitute a large proportion of the American population.

Moderate-income persons can afford to pay reasonable legal fees. This being so, why the problem? The answer is twofold: frequent consumer resistance to fees being charged and frequent lack of consumer knowledge about the help lawyers can provide. Many moderate-income individuals refuse to seek help from lawyers because lawyers' fees are considered too high. Many others retain lawyers but complain bitterly about fees charged, and such complaints seem to be increasingly numerous. Still, others are unaware that they have legal problems needing a lawyer's attention or how to find a lawyer suitable to their needs.

Is there any merit to the market resistance and fee objections by moderate-income persons? The answer advanced here is yes to the extent that lawyers' fees can and should be cut back. Troublesome,

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too, is the aspect of the problem involving lack of consumer knowledge. But both aspects, to continue using a business term, raise marketing problems: providing services that consumers want at a price they will pay; and making consumers aware of where needed services can be obtained and, when possible, at what price. Whether lawyers like it or not, and many lawyers find it very disturbing, legal services are a market item delivered in an increasingly competitive market setting.

In dealing with market resistance to lawyers' services by those of moderate income, the focus should be on relatively routine and repetitive types of legal matters most likely to be encountered by ordinary people. It is here that lawyers have the potential, without subsidy, to reduce fees. These matters are largely civil rather than criminal; generally are uncontested or not aggressively contested; and many do not involve court proceedings, but if they do, they are usually not very complicated. The kinds of matters referred to cover a wide spectrum of legal services, including most family law problems, principally divorce but also family member support, child custody, and adoption; name change; simple wills; administration of small decedents' estates; landlord-tenant, from leasing to eviction; typical conveyancing of homes and farms, from contract of sale to closing; small personal injury or property damage claims, commonly involving insurance; setting up partnerships or corporations for small business; less complicated bankruptcies; social security, medicare, and private health insurance claims; and many workers' compensation claims. Most matters in this long and expandable list are not difficult or complex for knowledgeable lawyers, and if lawyers who concentrate on such matters properly organize their practices and efficiently market their services, their fees can be reduced without impairing the quality of their work or their take-home compensation. Moreover, their clients would benefit from such action and much of the market resistance by moderate-income persons would disappear.

The position expressed above is neither new nor original. There has long been concern within the legal profession over fee charges to ordinary people and how extensively and satisfactorily moderate-income persons are being served by lawyers.¹ However, a movement

1. See, e.g., these American Bar Foundation publications: BARLOW CHRISTENSEN, *LAWYERS FOR PEOPLE OF MODERATE MEANS* (1970); BARBARA CURRAN, *THE LEGAL NEEDS OF THE PUBLIC* (1977) and *REPORT ON THE 1989 SURVEY OF THE PUBLIC'S USE OF LEGAL SERVICES* (1989); and PREBLE STOLZ, *LEGAL NEEDS AND THE PUBLIC* (1968). See also Elliot E. Cheatham, *A Lawyer When Needed: Legal Services for the Middle Classes*, 63 COLUM. L. REV. 973 (1963).

that has recently emerged and is now under way adds new significance and urgency to the moderate-income legal services issue. This movement is to license or register lay legal technicians and to permit them to practice law independently in a number of specialty fields. The movement has major potential consequences for lawyers as well as for moderate-income persons, as the principal prospective client group is likely to be affected. Although the terms are not always used consistently, by the prevailing usage, legal technicians are lay persons licensed or registered to practice law independently, which means without being supervised by a lawyer, and paralegals are lay persons who perform legal service tasks under the supervision of a lawyer.²

Over the past few years, the legal technician movement has been gaining momentum, with legislative or court rule proposals being pushed in a number of states. Most efforts have been directed to state legislatures and the most relevant legislative bills have been introduced in the past two years. The legislative proposals generally have been more comprehensive and permit broader lay practice than the court rules, either proposed or adopted. So far, with but one exception,³ no legal technician bills have been enacted, but they have received strong support, a great deal of publicity, and their proponents seem bound to keep pushing in future legislative sessions and in additional states. This seems to be a movement likely to both continue and grow. Anti-lawyer citizen action groups have been prominent in efforts to obtain licensed legal technician legislation, with HALT (Help Abolish Legal Tyranny) the most visible of these groups. Last year, significantly, one of the two national paralegal organizations, the National Federation of Paralegal Associations (NFPA), came out in favor of legally permitting delivery of legal services directly to the public by selected lay persons. This was a sharp change of position.⁴

Legislative proposals for authorizing legal technicians to practice law generally follow much the same pattern. Legal technicians are to be licensed by the state and when licensed, may practice law independently. Registration without licensing may give independent practice rights under some proposals, the objectives of

2. A synonym for paralegal widely used, for example in American Bar Association publications, is legal assistant.

3. Enacted in 1991 as MINN. STAT. ANN. § 481.02(14) (West Supp. 1992).

4. The positions on legal technicians of NFPA and the other major paralegal organization, the National Association of Legal Assistants, are discussed and the NFPA resolution on regulation of legal technicians is set forth in Moscrip, *Update of the Paralegal Profession*, THE PARALEGAL EDUCATOR, June-July 1991, at 7.

such registration apparently being to provide a means for excluding applicants with records of dishonest behavior or for excluding those persons who, once registered, fail to comply with state-imposed requirements. However, whether licensed or registered, practice under most bills is restricted to a specialty field as to which the technician has passed a state board-administered examination or has been registered by the board. The state board, usually not controlled by the bar or the courts, also is charged with monitoring and enforcing board and statutory requirements as to who may practice as a legal technician and with what limitations. Before a candidate may take the legal technician examination, education or experience prerequisites, or both, must be met. The license specialty fields are specified in most proposals, and in some instances, the board has the discretion to expand the number of fields. The licensing proposals are somewhat similar to those in effect for lawyers. However, educational prerequisites for legal technicians will be less demanding than those now in effect for lawyers and the examinations will be narrower and presumably much less stringent. Of course, a legal technician can practice only in a particular listed specialty, but if qualified in more than one specialty, may practice in multiple specialties.

The number and scope of designated legal technician specialties vary considerably among the bills that have been introduced. A California legislative bill, A.B.168, which was introduced in late 1990 and gained substantial support, lists these sixteen specialties: immigration and naturalization law, family law, housing law, public benefits law, litigation support law, conservatorship and guardianship law, real estate law, liability law, estate administration law, consumer law, corporate/business law, intellectual property law, estate planning law, bankruptcy law, employment law, and education law.⁵ The bill provides for a Board of Legal Technicians within the State Department of Consumer Affairs to administer the legal technician program. Among the board's powers is the ability to approve legal technicians for practice in some designated specialty fields without examination, if properly registered with the board. In other specialties, a board-administered licensing examination must be passed to practice as a legal technician. In determining which specialties require licensure and which merely require registration, the bill states: "The board shall require licensure only for those substantive areas or tasks in which it finds there is a substantial likelihood of irreparable harm to

5. A.B.168, Cal. Regular Session, 1991-92, art. 2(c)(2). The bill proposes to add §§ 6250-6296 to the California Business and Professions Code.

consumers, the ability of consumers to evaluate the quality of legal technicians' work is low, and mistakes cannot be easily corrected or remedied."⁶ The board is also authorized to add designated specialties and to shift specialties from requiring licensure to mere registration and vice versa.⁷

Because California Bill A.B.168 received such strong support and represents the regulatory preferences of many who favor the right of lay legal technicians to practice law independently, the bill's legislative findings provisions merit being stated in full. They concisely set forth typical rationalizations for legislation of this kind, clearly reflecting a strong consumer protection orientation. They are as follows,

(a) Indigent persons and persons of moderate income are generally unable to afford to hire lawyers to provide needed legal assistance. Studies have shown that roughly 80 percent of the legal needs of low-income Americans go unmet, and 130 million middle-income Americans are unable to get help with civil legal problems when they need it because they cannot afford it. This has resulted in a two-tiered system of justice, with only the very rich able to afford legal services and the vast majority being shut out of the legal system.

(b) The factors chiefly to blame for the high cost of legal services are the high costs involved in becoming a lawyer and the profession's monopoly over delivery of service. The time and money necessary to enter the field (college, law school, and bar exam passage) involve high costs which, unless mitigated by a presence of competition, are inevitably passed on to the consumer.

(c) New and innovative approaches to meet this overwhelming need are required because traditional solutions, such as government-funded legal aid and voluntary efforts by the bar to provide free legal services, even when operating optimally, can accommodate only a very small fraction of that need. Permitting nonlawyer legal technicians to provide services directly to the public for out-of-court legal matters is just such an approach,⁸ and its advocates

6. *Id.* art. 2(c)(1).

7. *Id.* art. 2(c)(3).

8. However, the bill permits legal technicians to appear before any federal, state or local tribunal or court. *Id.* art. 1 § 6251(a)(1) and (b)(1)(C).

include consumer representatives, bar groups, and legal scholars.

(d) If a regulatory scheme is to serve the public interest, it must adequately balance the public's need for protection from incompetence and fraud with the public's need for affordable access. The current licensing scheme applicable to lawyers focuses only on the former and virtually ignores the latter. No regulatory scheme, no matter how extensive, can immunize the public from harm. Instead, the providers of legal services should be freed to provide the widest possible range of services, with the least burdensome and least costly regulatory scheme available, consistent with effective and meaningful public protection. By balancing the public's needs, the Legislature concludes that the benefit of delivering low-cost legal services to a majority of the population justifies some risk of harm.

(e) Just as with the regulation of other businesses and occupations, legal consumers have a strong interest in access to consumer protection and redress mechanisms that are publicly controlled and publicly accountable, such as those available from the Department of Consumer Affairs.⁹

Other states have recently introduced legal technician legislation including Oregon,¹⁰ Illinois,¹¹ Washington,¹² Maryland,¹³ and Minnesota.¹⁴ Additional California bills have also been introduced.¹⁵

9. A.B. 168, *supra* note 5, at art. 1.

10. S.B. 1068, Or. Regular Session, 1991-92. This bill is known as the Affordable Legal Services Bill.

11. S.B. 776, 87th Gen. Assembly Ill. Regular Session, 1991-92.

12. H. B. 1975, 52d Legis., Wash. Regular Session, 1992.

13. H.B.1029, Md. introduced Feb. 5, 1988.

14. Enacted in 1991 as MINN. STAT. ANN. § 481.02(14) (West Supp. 1992).

15. One of the California bills, A.B. 683, Ca. Regular Session, 1991-92, provides for registration by a state agency of nonlawyers who provide legal assistance to others for compensation and includes experience, education, and practice examination prerequisites to registration. Registration is by specialty and there are seven service specialties in which practice is permitted: family, consumer, real estate and housing, immigration and naturalization, estate planning and administration, public benefits, and conservatorships and guardianships. The program to be established is referred to as a legal access pilot program, to be operative for five years, during which time its effectiveness would be evaluated by legislative research analysts. An objective of the bill is to

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Most of the bills resemble, in important particulars, California Bill A.B.168, with the Oregon bill being almost identical. However, some bills provide for fewer authorized legal technician specialties;¹⁶ a Washington bill applies to nonlawyers who perform work of a legal nature for compensation, whether acting independently or under a lawyer's supervision;¹⁷ an Illinois bill has more demanding educational and experience prerequisites;¹⁸ and some bills require, as a prerequisite to practicing independently, that all legal technicians pass a licensing examination, as registration alone will not suffice.¹⁹

regulate and evaluate the different types of lay legal service specialists currently operating in California. Many of these lay specialists, the bill states in its findings section, are providing competent and cost effective legal services, especially in the areas of domestic violence, child support and custody, divorce, bankruptcies, guardianships, wills, and immigration. Presumably, if the evaluation reports are favorable, those backing this bill would expect the program to be continued.

Another California bill, P.S.B. 1, Ca. Regular Session 1991-92, is similar to A.B. 168, but with important differences that include limiting specialties to the seven listed in A.B. 683. Although the state board may add to the list, to practice any specialty, a candidate must pass a state board-administered license and the Judicial Council must approve board rules permitting licensees to participate in judicial proceedings.

16. For example, two of the California bills, A.B. 683 and P.S.B. 1, provide for seven specialties, and Illinois Senate Bill 776 provides for five specialties: administrative law, real estate law, bankruptcy law, family law, and immigration and naturalization law.

17. Washington H.B. 1975 refers to all such persons as paralegals and does not use the term legal technician. The bill states that work of a legal nature "includes, but is not limited to, giving legal advice regarding the laws governing bankruptcy, divorce, custody or maintenance, and wills or trusts and estates, or the preparation of any legal document for a fee." Maryland H.B. 1029 also does not use the term legal technician, referring instead to paralegal/legal assistants. The bill would license such persons "to perform for a law office, attorney, government agency, or the general public as an independent contractor, substantive legal work requiring knowledge of legal concepts customarily, but not exclusively, performed by an attorney." The Minnesota statute uses the term legal assistant, not legal technician. MINN. STAT. ANN. § 481.02(14) (West Supp. 1992).

18. The educational and experience requirements of Illinois S.B. 776 range from a bachelor's degree in paralegal studies plus two years experience as a paralegal in the applied for specialty under a lawyer's supervision to six years experience as a paralegal in the applied for specialty under a lawyer's supervision.

19. These bills include California bills A.B. 683 and P.S.B. 1; Illinois S.B. 776; and Washington H.B. 1975. Maryland H.B. 1029 exempts from examination

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Despite the recent interest and support for legislative proposals that permit legal technicians to practice law independently, only Minnesota has enacted a statute authorizing such practice, and the Minnesota statute is equivocal. In effect, it approves the legal technician concept but passes responsibility for action on the matter to the state supreme court.²⁰ So far, the court has not acted other than to appoint a study committee to report by October 1993, on whether there is need for specialty licensure of legal assistants and whether such licensure would be in the best interests of consumers of legal services.

There are also examples of courts that, by court rule, have recently moved to validate independent lay law practices serving third parties, although it is quite restrictive when compared to what legislatures are being asked to do. One such rule was adopted by the Washington Supreme Court in 1983.²¹ It establishes a system for examining and certifying lay closing officers who may, without being employed or supervised by lawyers, prepare legal documents pertaining to the sale of real or personal property. A board selected by the court is responsible for the certification and examination of these officers.²² The background of the Washington court rule is of interest. In 1979, the Washington Legislature passed a statute permitting lenders, escrow agents, and title insurers to prepare most legal documents pertaining to the sale of real or personal property.²³ In 1981, the Washington Supreme Court held the statute unconstitutional on separation of powers grounds, stating that "regulation of the practice of law is within the sole province of the judiciary. . . ."²⁴ The court then adopted its closing officer rule thereby permitting limited lay preparation of real and personal property legal documents under the court's control. The court appears

those with three years of experience as a paralegal/legal assistant and who have completed a prescribed training program.

20. Enacted as an amendment to a statutory section on unauthorized practice, the statute declares, "The provisions of this section shall not prohibit . . . (14) the delivery of legal services by a specialized legal assistant in accordance with a specialty license issued by the supreme court before July 1, 1995." MINN. STAT. ANN. § 481.02(14) (West Supp. 1992).

21. WASH. SUP. CT., ADMISSION TO PRACTICE RULES R. 12.

22. The board is also responsible for approving forms that closing officers must use in their document preparation. *Id.* at (b)(2). Closing officers, however, may not be advocates for the parties nor give legal advice on how the documents affect the parties. *Id.* at (e)(2)(i)(v).

23. WASH. REV. CODE § 19.62.010 (1979).

24. *Bennion, Van Camp, Hagen & Ruhl v. Kassler Escrow, Inc.*, 635 P.2d 730, 736 (Wash. 1981).

to have acceded to public pressure but only on the court's terms and under its control.

Another significant court rule authorizing lay legal work is a 1987 rule of the Florida Supreme Court permitting lay persons to advise and assist others in the preparation of certain legal documents. The rule provides,

"[I]t shall not constitute the unauthorized practice of law for nonlawyers to engage in limited oral communications to assist individuals in the completion of legal forms approved by the Supreme Court of Florida. Oral communications by nonlawyers are restricted to those communications reasonably necessary to elicit factual information to complete the form and inform the individual how to file such form."²⁵

No examination or state certification is required of those acting under this rule. The Florida rule is of special interest as Florida traditionally has been unusually rigorous in applying unauthorized practice of law restrictions.²⁶

What is the significance to lawyers of the legal technician movement and related efforts to expand the rights of lay persons to practice law independently? They certainly are strong evidence of popular dissatisfaction with the cost and unavailability of lawyers, especially to persons of moderate income. They also point to the extensive new competition that lawyers may soon be encountering in the moderate-income market. The legal technician movement possibly may have peaked and may shortly fade away, but this is unlikely. The greater possibility, so often true of popular movements of this sort, is that it will continue to escalate and, in the process, attract increased legislative backing and eventual legislative enactments. Moreover, if the movement continues to gain ground, it may result in an expansion of lawyers' competition from well-established businesses and occupations, not just from a scattering of legal technician solos or small firms. There are now a number of businesses and occupations that under one or another exemption from unauthorized practice laws are providing a limited range of legal

25. FLA. SUP. CT. RULES REGULATING THE BAR, R. 10-1.1(b).

26. An example of the strict position of the Florida courts on unauthorized practice is the widely publicized case of *Florida Bar v. Furman*, 451 So. 2d 808 (Fla. 1984), *appeal dismissed*, 469 U.S. 925 (1984), in which Rosemary Furman was sentenced to 30 days imprisonment for violating a court order enjoining legal services to customers of her secretarial service.

services to third parties. Commonly recognized legal grounds for these exemptions are that the services are incidental to the principal function of the lay provider; that the legal work involved does not raise difficult or doubtful legal problems so it may be handled by lay persons; or that the provider is really acting pro se with some fallout benefits to others. Among the many businesses and occupations that now compete to some extent with lawyers, within the limits of these exemptions are accountants, in their tax advice and tax return preparation; real estate brokers, in their preparation of leasing and conveyancing documents; title insurance companies, in their land title evaluations; and commercial banks, in advice and drafting by their trust and escrow departments. Permitting legal technicians to practice independently may lead to these various businesses and occupations gaining much wider access to the legal services market by hiring licensed or registered legal technicians to serve customers. It will be argued that if legal technicians are permitted to practice law, these businesses and occupations should be allowed to do so through legal technician employees, and to do so as fully as can the technicians. This will lead to an expansion of services beyond what most lay enterprises are presently authorized to perform.

Assuming the legal technician movement does sweep the country and independent lay practice becomes far more widely permissible, so what? In terms of the public interest, including client interest, what difference does it make? And what difference does it make as a matter of good public policy, if established lay businesses are filling much more of the demand for legal services? The answer to these questions is that it can make a substantial difference. Most significantly, lawyers are almost always better trained, better qualified, and more competent in the legal work they perform than are their lay competitors, particularly when lawyers are working in their specialties. Also, there are serious conflict of interest problems with the delivery of legal services by many lay providers, problems that are more acute and serious than are common with lawyers. Furthermore, there are serious risks of fraud, breach of confidences, and false advertising if legal services are provided by some lay groups, risks much greater than with lawyers.

How, then, should lawyers respond to the legal technician movement? And, for that matter, how should lawyers respond to the other appreciable competition they are presently subjected to from lay sources? The problem transcends the legal technician movement. There are three options. One is to do nothing. This too often has been the bar's response. The second option is to try to enforce and even expand the legal monopoly of lawyers over legal services. This approach, however, has become less and less effective since the 1960s. Monopolies are politically unpopular; the free market is a more

important ideology now than it has been for a long time. Antitrust restrictions are applicable to the professions, the legal profession included, and unauthorized practice cases brought by the bar or at the bar's instigation have become extremely expensive to litigate and increasingly difficult to win. Nor can much help be expected from legislatures; they having become increasingly anti-lawyer.

This leaves the third option as the best one: Lawyers should be more aggressively competitive with lay legal service groups. As to moderate-income clients, present or prospective, this means primarily lower and more competitive fees. But it also means educating much of the moderate-income market on when lawyers' services are needed, what the benefits of such services provided by lawyers are, and how to seek out the best lawyers' services

Given the legal profession as generally structured today, reducing the fees charged moderate-income persons and expanding demand from this group are very difficult objectives to achieve. Many lawyers do not want to change or to admit that times are changing, that the practice of law is less professional in traditional ways than what it was, and that costs, price, profits, and marketing are crucial elements of being a modern professional. However, despite these difficulties, it is possible for lawyers to compete more effectively for moderate-income clients and to do so by lowering fees and expanding market share. Most of the models for doing so are known and there is some experience record with them.

The most promising model is to heavily concentrate more standardized and routine types of legal work in a smaller number of law offices. This means a steady and very substantial flow of relatively repetitive matters to specialists. Concentrating such work in specialist offices can enable economies of scale and lower fees. This is happening in medicine, it is happening in some of the larger legal aid offices, and it can happen in for-profit law offices. It was the objective of the law office clinic movement a decade or so ago, but the movement was never carried far enough and was handicapped by considerable opposition from within the bar. Systems can be developed for more efficiently handling repeat work, with paralegals and junior associate lawyers performing most of the routine tasks. Senior, more experienced and knowledgeable lawyers can develop the systems, monitor performance, be available for questions from subordinates, and take over the unusual or more difficult cases. If properly structured, such law offices can make money from many small matters. Marketing efforts will also attract occasional nonroutine matters with bigger fee possibilities.

A major problem is how to attract a steady and substantial volume of specialized matters to individual law offices. Medical institutions achieve volume concentration largely by a referral system;

specialists, who restrict themselves exclusively to their specialties, receive referrals in volume from generalists and other kinds of specialists. There is some of this in the legal profession. But, among lawyers, those to whom referrals might be made often cannot be trusted to not steal the clients. This risk deters referrals. Also, there are more practice specialties in law than medicine, the limits of specialties are often less certain, and demand often fluctuates with fluctuations in the economy. These considerations make it more difficult to create and stabilize referral patterns.

Probably the most effective way to attract volume concentration of repetitive-type legal work, especially for clients of moderate-income, is by promotional efforts, mostly advertising and solicitation. Promotional efforts are expensive, generally requiring major capital input if substantial results are to be achieved. Moreover, the bar's standards of professional responsibility still restrict promotional efforts, especially in-person solicitation, and in some states lawyer advertising is still extensively limited. If needed volume concentration of legal work is to be achieved, most of the limits on lawyers' promotional efforts may have to be lifted. This is especially applicable to advertising. For needed specialty concentration to develop, there should be little or no legal restriction on advertising by lawyers, other than it must not be false or misleading. The so-called dignity limitations should be dropped where they still are in effect. As the Supreme Court of Connecticut said a few years ago in holding as permissible a law firm's television advertisements using humorous skits:

The advertisements inform the listener of the value of professional legal assistance in certain situations and make known that the defendants are willing and able to provide such services. Thus they are informative and in no way misleading or deceptive. If some members of the audience find them distasteful, such consumers might very well react by shunning the service offered, thereby imposing an informal sanction more effective than any formal regulation. We hold, therefore, that the defendants did not violate the disciplinary rules by the use of these commercials.²⁷

Still another way of increasing volume concentration of routine kinds of legal work for moderate-income persons is by group legal

27. Grievance Comm. for the Hartford-New Britain Judicial Dist. v. Trantolo, 470 A.2d 228, 234 (Conn. 1984).

service plans. Among the most effective of these in achieving volume concentration are closed-panel plans set up by large employers or their unions to take care of individual employee's common legal service needs at little or no cost to the employee clients. Some large employers support these plans financially, in some instances as benefits granted in collective bargaining agreements with trade unions. The result can be extensive legal service specialty concentrations in a very efficient law office, with staff lawyers specialized to the more common legal needs of the moderate-income employees who are the usual clients of such an office.

Another approach of some help in building high volume specialty law practices, and often useful in channeling clients, especially moderate-income clients, to appropriate specialists, is the properly structured lawyer referral service. Those most likely to be of some value in increasing volume concentration of routine kinds of legal work are those in which referrals are made to proven specialists, the schemes are well-publicized, and the screening staffs are competent. Most of the centralized services that handle inquiries and make referrals are nonprofit, and many limit what the referred-to lawyer may charge for an initial client conference to a modest sum. In some instances, this amount is limited to as low as twenty dollars. Referrals usually are on a rotating basis among lawyers on the referral list. These lawyers apply to be on the list and usually pay an annual fee for the listing privilege. The problem with lawyer referral as a means of building high volume specialist law practices is that no one lawyer or law office is likely to receive a substantial volume of referrals from the service. There are too many panel members, or not enough requests, or both, for this to happen.

Despite the difficulties, it is quite evident that lawyers can become substantially more competitive in the moderate-income legal services market. What can and should the organized bar be doing to strengthen the position of lawyers in this market? The organized bar is a very powerful force in determining the work obligations of lawyers and it can be a powerful force in reshaping the profession to accommodate more adequately the needs of persons of moderate income. Moreover, in its frequent role as the collective conscience of the profession, the bar should be making more serious efforts to serve better those of moderate income. Tokenism should not suffice. There are a number of quite conventional moves that the organized bar could constructively make in this direction, and the organized bar in this context means principally the bar associations. One of these moves is to push strongly the message that lawyers have an obligation to more satisfactorily serve persons of moderate-income. And, in particular, lawyers should make efforts to do this by increasing their efficiency and that of their employees, thereby enabling lower fees.

Bar associations and their leaders have been persistent in stressing with lawyers their obligations to serve the poor. Equal persistence is needed in stressing lawyers' obligations to the next higher income group.

Another step bar associations could take is a major educational effort, media advertising included, directed primarily to the moderate-income public, stressing those situations in which a lawyer's help is needed and the risks of not seeking such help. Some of this has been done, but much more is needed. These informational efforts might be directed to the moderate-income public generally or to subgroups. The organized bar in some communities has directed its information efforts to such subgroups as the elderly and military personnel, with backup assistance offered. Additional subgroups could be identified and approached, for instance prospective home buyers, persons planning to start up their own small businesses, women owed child support by fathers of their children, and persons contemplating divorce. Still another bar association approach that could be taken is continuing legal education directed to those lawyers now representing moderate-income persons who desire to move toward a high-volume, lower fee practice, concentrating on routine matters. Those with creative ideas and experience in practices of this sort should be featured as instructors and advisors, whether they be from enterprising solo operations or from large multistate chains such as Jacoby & Meyers or Hyatt Legal Services. Innovators, in particular, should be welcomed rather than shunned, the latter too frequently having been the organized bar's response in the past. A further move that the bar associations could take to facilitate better service to those of moderate means is to revise the standards of lawyers' professional responsibility that unreasonably inhibit better service to moderate-income persons in particular. Advertising restrictions in the Rules of Professional Conduct or Code of Professional Responsibility of some states are among changes that need to be made, and, a more radical suggestion, in-person solicitation restrictions need to be eased. The American Bar Association and the state bar associations have assumed primary responsibility for the drafting and amending of the Rules and the Code and should be responsive to such needed revisions.

In concluding these remarks, a summation may be helpful. Very briefly, the position taken is that the bar can and should do better in providing legal services to that large segment of the population, persons of moderate means. Presently, many of these people in need of legal services are not being served; are being served by nonlawyers, generally less qualified than lawyers to perform legal work; or are being served by lawyers and charged more than is appropriate. The movement to permit lay legal technicians to practice

law independently threatens to reduce lawyers' share of the moderate-income legal services market and to increase the share of that market served by nonlawyers less qualified than members of the bar. The answer to how the bar should respond to the moderate-income market situation is for lawyers serving that market to become more aggressive and competitive in attracting and holding clients and, in the process, to reduce fees charged for routine types of relatively simple tasks. This more competitive approach should include better marketing of legal services by the lawyers concerned so as to attract a steady high volume of specialized routine work and should also include a substantial restructuring of office procedures to enable maximum efficiency in work performance and lower fees. The organized bar should cooperate in facilitating adjustments within the profession necessary to increase lawyers' competitiveness in better serving those of moderate means. This large segment of the population has been slighted or too much taken for granted by the bar in the past. In the public interest and its own interest, the bar should adapt to changing times.

