BOOK REVIEW

Lawyers for People of Moderate Means: Some Problems of Availability of Legal Services. BARLOW F. CHRISTENSEN. American Bar Foundation, Chicago, Illinois, 1970. Pp. xviii, 313. $7.50.

> How's your car?
> Well, it's hard to start, expensive to run, and the brakes don't work, but—it's paid for!

In a similar vein, Barlow Christensen, staff writer for the American Bar Foundation, dissects and exposes the inadequacies of legal services that are available to the general public, but—without indignation. Using the economic model of effective competition as his springboard, the author documents his conclusions that lawyers are inaccessible to the average American, that the services they do render are inadequate, and the prices they charge, excessive. This condition exists largely because the people in power do not need the general public as clientele. The Code of Professional Responsibility, and prior to this the Canons of Professional Ethics, guarantees to the larger law firms a monopoly of the "property and commercial clients." Unfortunately, the organized Bar and the courts are as indifferent to people of moderate means as they were in previous years to the problems of the poor.

These conclusions seem to suggest such radical action as the "socialization" of the profession, or at least regulation through legislation by the public rather than by the Bar itself. No, Mr. Christensen calls for such token improvements as increasing law office efficiency, encouraging larger practice units, setting up specialization pilot programs, developing paraprofessionals, granting counsel fees to the winning party, arranging new financing for legal services (including legal insurance), improving lawyer referral services, enlarging the boundaries of permitted solicitation, and the creation of special and group legal service offices. In other words, get a tune-up, have the brakes relined and stop worrying about the price.

Such blandness is surprising. Is the American mood no longer, "I'm going to trade the damn thing in!"? The American mood has not changed. Rather, the problem is that the American people do not control the issue of whether or not the present legal system should be traded in, or overhauled. Imagine if control over the decision to keep or sell a used car were in the hands of your local gas station operator.

Nevertheless, *Lawyers for People of Moderate Means* is an excel-

lent source book for revolution. Initially, we must remember that there is an enormous need for lawyers, even without a program of diagnostic legal checkups and systematic preventive law.

> [T]he demand for lawyers' services [is] highly elastic. When a particular service obtainable from a lawyer is responsive to the problem of a potential client, the demand for that service will depend upon the potential client's knowledge about law, lawyers, and legal services and upon the quality, price, and accessibility of the service—as compared with alternative solutions to the problem.

Consider the profession's response to that demand: the solo or small firm office, consisting of two lawyers, an older one with "contacts" and a younger "worker." They make the claim to be omnicompetent, both do everything that comes along from admiralty to zoning, neither has had any systematic post-graduate training, and they employ no specially trained laymen. Buried in the medieval close of a downtown skyscraper in a decaying city, they live in the suburbs and try to "stimulate" business by engaging in political and socially-oriented activities. Consequently, every task for which they are employed will be, for the most part, inadequately pleaded, researched and managed, while their adversary, who is employed by the government, a big corporation, or a wealthy individual, will have the time, money and resources to adequately plead, research and manage his case. Who suffers?

Would anyone like to arrange bank financing or legal insurance for, or make agency referral to, this allegedly omnicompetent duo? A recent classified ad in the *New Jersey Law Journal* offered $15,000.00 to $20,000.00 as a starting salary,

> IF YOU CAN
> 1. Prepare a negligence case for trial and then try it;
> 2. Draft a contract for the purchase of real estate and then handle the closing;
> 3. Listen to the woes of a mistreated wife, then prepare the divorce complaint and try the case;
> 4. Prepare a Will, probate it and handle the estate;
> 5. Form a corporation and draft a buy-sell agreement.

As Mr. Christensen dryly puts it, "some lawyers may be afraid to acknowledge that they cannot do everything for fear the public will think that they cannot do anything. And so they cling to a pose of omnicompetence in the hope that no one will discover their fallibility." He goes on to make a very important point about the resistance to specialization and association in larger, specialist assemblages.

> The lawyer plays a fundamental role in the adversary system. Under it, disputes are resolved through a kind of formalized forensic battle, from which the tribunal is supposed to be able to discover the truth of the matter being fought out. But the validity of this system of forensic contest rests upon a presupposition that the advocates are equal; the system would be intolerable if the results were to depend not upon the merits but upon the abilities of the advocates. Abandonment of the egalitarian ethic would appear as a denial of this presupposition and thus of the validity of both the adversary system and the lawyer's role as an advocate. Lawyers simply could not accept their function in the system without some assurance that they are, in fact, instruments of justice rather than injustice.

But let's take a look at the $15,000.00 to $20,000.00-a-year lawyer that the Middlesex County firm who placed the ad is about to hire. On one agonizing day he is served detailed medical interrogatories in a "heavy" negligence case, finds an unforeclosed tax sale certificate in a chain of title, must draft an order for a *ne exeat* to keep a defaulting husband from fleeing to Canberra, must devise an estate plan for the owner of a closely-held business which has radically appreciated in value, reply to the telephone call of an adversary who wants to know why the minority stockholders should go along with a Subchapter S election, and is told that his associate is sick and that he must cover for him that night on a contested subdivision application. He will earn his salary that day! And if he does it reasonably well—he better be made a partner tomorrow.

Lawyers for People of Moderate Means rises nearest to indignation in its treatment of the no-solicitation rule. In a small town at the turn of the century, prospective clients recognized the problems a lawyer could deal with since these problems were relatively few. The automobile, federal income tax, urbanization, accelerated social communication and change, and the growth of government intervention and regulation, were all ahead of us, as were the problems of a mushrooming population, and the radical growth and broad distribution of wealth and credit. The world of President Taft was the setting for the theory that "[a] lawyer should obtain his clients through a deserved reputation for competence and integrity." Today the

> passive system tends naturally to serve the interests of those prospective litigants who have sufficient knowledge and power to make effective use of it.
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> Thus, the practical effect of the old belief about the evil nature of all litigation was to limit the use of the litigative mechanism to the strong, the wealthy, and the knowledgeable.

The book weakly concludes that what is needed is the "gearing up" of stronger group projects and small firms, suburban shopping center locations, and the listing of specializations in the Yellow Pages. This seems an incredible prescription for the sicknesses of delay, incompetence, undue bother, excessive costs and downright injustice as diagnosed by Mr. Christensen. He comes close to parody in his description of the genteelly ineffective lawyer-referral agencies; he admires the ability of the Office of Economic Opportunity legal service projects to serve poor clients; he sees the great potential in lawyers who serve the poor by use of class suits, test cases, and intense specialization in dealing with government and landlords and credit businesses. He dryly observes that the lawyers are willing to let a private firm of laymen grant the accolade of "a.v." in law list publications, but will not allow any direct layman "tampering" with the present structure of legal practice. He recognizes that the traditions and amenities of the professional "style" and milieu must go, but does not conclude that the public must see that they go now.

Property and commercial clients will continue to be served by the private specialist firms employing top legal talent. The rest of society needs lawyers trained by, employed by, and allocated by the public. As the author recognizes—but flinches from the conclusion just stated—"[t]he profitable handling of small cases for low fees, if possible at all, would probably require a greater change in the style of law practice than most lawyers are willing to accept." He rejects the Philadelphia Neighborhood Law Office program as ineffective. "The entire lawyer ethos, the dream that drives young men through law school and sustains older lawyers in what are often difficult practice situations, is something far removed from the mass production of routine remedies for trivial cases." He observes how the lawyer with a marginal practice —not necessarily but often a marginal talent himself—takes the trivial case in the hope that "better" business will be derived from it. Such lawyers would most resent the competitive incursion of a low-cost legal service bureau with an access to advertising, publicity and public-support status. They would be forced to be employed workers with only slight prospects of even getting the "big money." They would be institutionalized and therefore not "real" lawyers.

To this, Mr. Christensen cannot say "So what?". His answers include the funding of legal service programs by the large firms, lending their young lawyers on a part-time basis, and the private contracting of large firms for governmentally subsidized programs. However, he is con-

cerned about the independent-minded solo practitioner who could not and probably would not try to fit into such an institutional setting. He is also concerned about the large firm and its inability to obtain, even with public funds, an override commensurate with the managerial nightmare of multiple local low-cost branches. He at once projects and despairs of providing legal services on a private enterprise basis. In short, he founders on the rock of privatism.

If the public were to demand publicly controlled law offices, then thousands of lawyers would be either forced, unwillingly, into an institutional mold or into other employment. Some would face poverty. As a result of *N.A.A.C.P. v. Button*, 371 U.S. 415 (1963), and *Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1 (1964), attrition by virtue of labor unions, voluntary membership groups and legal service projects is happening on a small scale already. Additionally, insurance companies, bank trust departments, real estate brokers, and accountants are performing legal services, and such efforts are extensive and expanding. Apparently lawyers or legally trained persons readily accept this type of institutional employment.

The issue is whether the Bar or the public should have the final say. As Mr. Christensen puts it, "[t]he public is not obliged to prove its need; the legal profession is obliged to justify the restrictions." The Bar will parade a series of hypothetical conflicts of interest in opposition to regulatory and group practice schemes, although it has voiced no protest to representation of insureds by carrier-employed counsel. The gut issue is money. If lawyers must be exceptional to obtain employment with the large firms, at least they are well paid for becoming institutionalized specialists. Public control will be fought bitterly by the average and below-average lawyer. For him, private practice serves key ends: it maximizes his freedom and earnings, it hides his relative incompetence from supervision, and it preserves his status in society as a member higher than the "wage slaves." Anything that subverts these goals is "Communism" or "commercialization."

Mr. Christensen recognizes this dilemma but cannot bring himself to trade the lawyers in for a new model. He concludes that private practice is "obsolete." He issues a challenge—"to a more meaningful perspective," and urges more research and empirical data. But he stops short at calling for legislation, preferably, in this reviewer's judgment, by Congress, which would regulate, finance and guide, through an independent agency, the whole business of admission to and practice of law. One suspects that he knows that all of what he calls "intermediary

arrangements" are really tune-ups, new brake linings and a philosophical approach to the cost of gas. One suspects also that he knows he has written the manual for the new car.

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