

1972

Professional Responsibility and the Availability of Legal Services

Stephen H. Lewis

University of Nebraska College of Law, stephenhl@aol.com

Follow this and additional works at: <https://digitalcommons.unl.edu/nlr>

Recommended Citation

Stephen H. Lewis, *Professional Responsibility and the Availability of Legal Services*, 51 Neb. L. Rev. 502 (1972)

Available at: <https://digitalcommons.unl.edu/nlr/vol51/iss3/10>

This Article is brought to you for free and open access by the Law, College of at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Nebraska Law Review by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

BOOK REVIEW

PROFESSIONAL RESPONSIBILITY AND THE AVAILABILITY OF LEGAL SERVICES

Lawyers for People of Moderate Means,¹ by Barlow F. Christenson, presents some of the problems of making legal services available to a greater number of people. Mr. Christenson notes that while the wealthy have no difficulty in obtaining counsel, and legal services are available to the poor through various legal aid programs, people who are unable to qualify for legal aid but who can not afford the services of an attorney must go without one. To remedy this situation Christenson suggests methods to make it economically feasible to provide counsel to these people. He argues that in many instances the bar has placed its own self-interests above the public's interest in the greater availability of legal counsel, which raises the old and basic question of the professional responsibility of the bar to the public.

Christenson's approach to the problem of providing attorneys to people of moderate means is twofold. First, he suggests methods to increase the efficiency of the private attorney's practice and thus reduce the cost of legal service. These methods include the greater use of non-lawyer personnel, a re-evaluation of the restrictions on solicitation, organizing lawyers into more efficient units, the use of technological innovations in office management, and specialization by attorneys. Christenson argues that even though specialization would result in greater efficiency, the concept still encounters much opposition. Although specialization would present problems regarding qualifications and the regulation of those claiming to be specialists, most of the opposition to the concept has come from the solo-practitioner and from small general practice firms whose economic interests would be threatened. In Christenson's view arguments based on the economic health of the bar are untenable.

Secondly, Christenson suggests alternatives to the traditional private practice such as the use of group legal services, better lawyer referral programs, and experimentation with various types of specialized law offices for people of moderate means. The bar's self-interests, however, have interfered with its support of these alternatives also.

¹ *Lawyers for People of Moderate Means*, by Barlow F. Christenson; American Bar Foundation, 1970; xii + 313, paperbound \$5.00, clothbound \$7.50. For a review which deals specifically with the author's proposals, rather than questions of professional responsibility see Fisch, *Book Review*, 36 *Mo. L. Rev.* 602 (1971).

The bar's opposition to group legal services² is well known, although various state court and U.S. Supreme Court opinions have upheld the concept.³ Christenson characterizes this opposition as a manifestation of the desire to uphold the traditional lawyer-client relationship, a "highly personal relationship involving elements of fidelity, confidentiality, individual responsibility, and professional independence."⁴ He argues, however, that restrictions on group services should be considered in light of "the ability of lawyers to discharge their primary obligation to the public,"⁵ and that group legal services would not interfere with this function.

According to Christenson the lawyer referral services have failed as a result of the bar's lack of active support. The programs have had little effect on the price of legal services, have not been used to insure that clients are sent to competent counsel, and have reached only a small portion of the people who need attorneys. The programs began as a response to the demand for group legal services and have failed because of "the bar's traditional conservatism and resistance to change."⁶

The author suggests three types of special legal offices for people of moderate means. The first is a private office which is given a subsidy and promotional privileges to enable it to operate profitably. The second and third models also involve private firms, either on a volunteer basis or under contract with a governmental unit. Christenson argues that none of these plans is as likely to succeed as group legal services, and all of them can expect opposition from the bar because of the competitive advantage afforded some attorneys and the expected reduction of income and the minimum fees charged by the special offices.

In summary, *Lawyers for People of Moderate Means* was written for the practicing bar and not academicians. It was written with the expressed hope that the legal profession can "come to understand itself better and to apply this understanding to the essential problem" of increasing the availability of legal services.⁷ The author does not suggest innovative alternatives to the traditional

² See Comment, *Are Legal Aid Societies, Lawyer Referral Services and Group Legal Services Adequate Under the Code of Professional Responsibility?*, 51 NEB. L. REV. 486 (1972).

³ E.g., *Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1 (1964).

⁴ B. CHRISTENSON, *LAWYERS FOR PEOPLE OF MODERATE MEANS* 225 (1970).

⁵ *Id.* at 230.

⁶ *Id.* at 202.

⁷ *Id.* at xiv.

practices of law, but rather considers previous proposals in light of their effect on the accessibility of lawyers to people of moderate means. Christenson's words regarding the bar's opposition to specialization can be applied to the opposition of any of the reforms he suggests. He argues: "[E]conomic self-interest can never be more than an incidental factor in the bar's decisions about specialization. Opposition to specialization is conscionable only if some paramount *public* interest requires that the public be denied its benefits."⁸

The bar's professional responsibility flows not only to individual clients but to the public as a whole. Furthermore, as Christenson notes:

[R]egardless of the self-protective walls erected by the profession, the only sure way to preserve lawyers as effective elements in society is to see that they remain responsive to society's demands. Therefore, the interests of the profession . . . seem to be best served by extending and expanding the capacity of lawyers to serve the public and by increasing the public's use of lawyer's services.⁹

Stephen H. Lewis '73

⁸ *Id.* at 91.

⁹ *Id.* at 291.