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UNAUTHORIZED PRACTICE OF LAW—Union Program of Hiring Attorneys Is Unauthorized Practice of Law—*Illinois State Bar Ass'n v. United Mine Workers of America**

District 12 of the United Mine Workers (UMW) employed an attorney on a salary basis to prosecute members' claims under the Workmen's Compensation Act. Members were free to employ other counsel, but if they sought help from the union lawyer, the union agreed not to interfere with the attorney-client relationship. The attorney prepared his case from filed reports of the accidents, and, generally, his first contact with the union member was when they appeared before the Commission.[1] Since the attorney was compensated by the union, the entire amount received in award or settlement went to the member. The Illinois Bar Association brought suit to restrain the UMW from continuing this program, alleging that the hiring of an attorney by a lay organization for the purpose of prosecuting individuals' claims constituted the unauthorized practice of law. Over the UMW's objections that the first and fourteenth amendments protected the plan, the Circuit Court of Sangamon County granted the relief sought. On appeal to the Illinois Supreme Court, *held*, affirmed. Unions who hire attorneys to prosecute members' claims are engaged in the unauthorized practice of law and such activity is not protected by the first and fourteenth amendments.[2]

The legal profession has long struggled to prevent lay organizations from injecting themselves into the practice of law by recommending to or hiring for other parties attorneys who would give legal advice or perform other legal services. Repeatedly, courts have held such lay intermediary organizations to be engaged in the unauthorized practice of law particularly when there were financial connections between the organization and the attorneys.[3] One of

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* 219 N.E.2d 503 (Ill. 1966) [hereinafter referred to as principal case].

1. The attorney is available for conferences on certain days at particular locations, but as a general rule the members do not take advantage of this. Principal case at 505.

2. The power to regulate and define the practice of law is a prerogative of the judicial department as one of the three divisions of government created by the Constitution. People v. Goodman, 366 Ill. 346, 8 N.E.2d 941 (1937).

3. *E.g.*, American Auto. Ass'n v. Merrick, 117 F.2d 23 (D.C. Cir. 1940); Columbus Bar Ass'n v. Potts, 175 Ohio St. 101, 191 N.E.2d 728 (1963); Cleveland Bar Ass'n v. Fleck, 172 Ohio St. 467, 178 N.E.2d 782 (1961), *cert. denied*, 369 U.S. 861 (1962). The practices connected with lay intermediaries also violate Canons 27, 28, 35, and 47 of the American Bar Association Canons of Professional Ethics:

> Canon 27. *Advertising, Direct or Indirect:*
> It is unprofessional to solicit professional employment by circulars, advertisements, through touters or by personal communications or interviews not warranted by personal relations. . . .
> Canon 28. *Stirring Up Litigation, Directly or Through Agents:*
> It is unprofessional for a lawyer to volunteer advice to bring a lawsuit, except

the early programs of a lay organization was established during the depression by the Brotherhood of Railroad Trainmen.[4] Prior to the program, union members who were injured on the job were often either induced to make a quick settlement by the claim adjuster for the employer or fell prey to an incompetent attorney who, eager to make a quick dollar, would take an inadequate settlement.[5] In an effort to promote their members' chances for a fair recovery, the Brotherhood instituted a program of recommending particular attorneys to the injured union member. In 1958, the Illinois Supreme

in rare cases where ties of blood, relationship or trust make it his duty to do so. . . . It is disreputable . . . to breed litigation by seeking out those with claims for personal injuries . . . in order to secure them as clients, or to employ agents or runners for like purposes, or to pay or reward, directly or indirectly, those who bring or influence the bringing of such cases to his office . . . .

Canon 35. *Intermediaries:*

The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries.

A lawyer may accept employment from any organization, such as an association, club or trade organization, to render legal services in any matter in which the organization, as an entity, is interested, but this employment should not include the rendering of legal services to the members of such an organization in respect to their individual affairs.

Canon 47. *Aiding the Unauthorized Practice of Law:*

No lawyer shall permit his professional services, or his name, to be used in the aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate.

4. Under the Brotherhood's plan, the United States is divided into 16 regions. The Brotherhood selects a lawyer in each region with a reputation of skill in railroad injury litigation. When there is an accident, the secretary of the local lodge urges the injured member or his family to retain the designated counsel. See Bodle, *Group Legal Services: The Case for BRT*, 12 U.C.L.A.L. REV. 306, 310-11 (1965).

5. Brotherhood of R.R. Trainmen v. Virginia *ex rel.* Va. State Bar, 377 U.S. 1, 3-4, *rehearing denied*, 377 U.S. 960 (1964). However, it is questionable whether this reason for the Brotherhood's extensive arrangement is as strong today. See Note, 59 Nw. U.L. REV. 821, 831 (1965), where the author points out that "the pool of competent counsel is much greater than in 1930 when the program was instituted and systems for advising low-income, uninformed persons of the availability of legal assistance are much more developed. Most metropolitan areas have a lawyer referral service." Mr. Justice Clark made a similar observation in his dissent in *Brotherhood*. After noting the seriousness of calling the legal profession incompetent, he stated:

> In the cases that I have passed on here—numbering about 177 during the past 15 years—I dare say that counsel for the railroad employee has exhibited advocacy not inferior to that of his opponent (although I do not remember that any one of the 16 approved attorneys appeared in these cases). Indeed, the railroad employee has prevailed in practically all of the cases and the recoveries have ranged as high as $625,000.

377 U.S. 1, 9-10 (1964) (Clark, J., dissenting). The economic advantages of the program still exist and inure to the members, however, since it is apparent that when one handles numerous cases concerning the same legal matter, each case becomes less expensive and consequently the attorney can charge the client a smaller fee. Schwartz, *Foreword to Group Legal Services in Perspective*, 12 U.C.L.A.L. REV. 279, 285-86 (1965); Comment, 23 LEGAL AID BRIEF CASE 72 (1964).

Court had an opportunity to consider one variation of the Brotherhood's program.[6] At that time, the union attorneys were not compensated by a salary, but rather were required to charge a contingent fee established by the union; in addition, the attorneys were to advance all costs related to the disposition of the claim, finance the union's legal aid department, and compensate local lodge members who investigated accidents and urged injured members to consult the regional counsel.[7] The court did not enjoin operation of the entire program, but it did restrict its scope as follows: (1) The Brotherhood could maintain an investigative staff, conduct investigations, and make reports available to the members, but such investigations had to be financed directly by the union membership; (2) it could inform the members of the advisability of obtaining legal advice before making a settlement and could furnish names of competent attorneys; (3) it could not have any financial connection with the attorneys, nor could it fix the fees to be charged; and (4) when it discovered non-union-approved attorneys engaging in such unethical practices as soliciting injured members or charging excessive fees, the Brotherhood would have to file a complaint with the grievance committee of the local bar association rather than establishing a competitive union-approved solicitation program. The court believed that if the Brotherhood were to adhere to these restrictions, it would be able to accomplish its objective of providing adequate legal assistance for its members without engaging in the practice of law.[8]

Each court that had considered the Brotherhood's program while there was a financial connection between the attorney and the union had, like the Illinois Supreme Court, condemned the arrangement.[9] Subsequently, the Brotherhood revised its plan so as to eliminate any financial connection between the union and attorney in accordance with the Illinois court's guidelines. As revised, the Brother-

6. *In re* Brotherhood of R.R. Trainmen, 13 Ill. 2d 391, 150 N.E.2d 163 (1958).

7. For a factual history of the Brotherhood's plan, see Hulse v. Brotherhood of R.R. Trainmen, 340 S.W.2d 404 (Mo. 1960).

8. 13 Ill. 2d at 397-98, 150 N.E.2d at 167-68.

9. Atchison, T. & S. F. Ry. v. Jackson, 235 F.2d 390 (10th Cir 1956); *In re* O'Neill, 5 F. Supp. 465 (E.D.N.Y. 1933); Hildebrand v. State Bar, 36 Cal. 2d 504, 225 P.2d 508 (1950); *In re* Brotherhood of R.R. Trainmen, 13 Ill. 2d 391, 150 N.E.2d 163 (1958); Hulse v. Brotherhood of R.R. Trainmen, 340 S.W.2d 404 (Mo. 1960); Doughty v. Grills, 37 Tenn. App. 63, 260 S.W.2d 379 (1952). *But see* Dombey, Tyler, Richard & Grieser v. Detroit, T. & I. R.R., 226 F. Supp. 345 (S.D. Ohio 1964); Ryan v. Pennsylvania R.R., 268 Ill. App. 364 (1932). Since these latter cases dealt primarily with the right of the designated attorney to collect his contingent fee, they considered the legal aid arrangement only to the extent that it affected recovery. Both courts allowed the attorney to recover, and *Ryan* expressed approval of the plan, although this dictum was immediately repudiated by statute, ILL. REV. STAT. ch. 13, § 15 (1957), and later by *In re* Brotherhood of R.R. Trainmen, *supra*.

hood's plan was still enjoined in Virginia.[10] On appeal to the United States Supreme Court,[11] the union contended that its constitutional rights had been violated by that portion of the Richmond Chancery Court's decree which prohibited it from recommending attorneys and giving advice as to the prosecution of claims.[12] The Court, accepting this argument, held that the rights of the railroad workers to associate, help, and advise one another in asserting their rights under the Safety Appliance Act[13] and Federal Employers' Liability Act[14] were protected from state interference by the first and fourteenth amendment freedoms of speech, petition and assembly.[15] The Court admitted that Virginia had broad powers to regulate the practice of law, but found that they were not broad enough to foreclose constitutional rights.[16] Indeed, since neither the union nor the lawyers were engaged in any solicitation, Virginia was not even halting the commercialization of the legal profession, which the Court conceded "might threaten the moral and ethical fabric of the administration of justice."[17] On remand, the Richmond Chancery Court revised its original decree so as to conform with the Supreme Court's holding, but it interpreted the holding as protecting only the right to advise and recommend, not solicitation and commercialization.[18] However, the Virginia Supreme Court of Appeals rejected this interpretation of *Brotherhood*, for it found that the Supreme Court had not made any distinction between rec-

10. Virginia State Bar v. Brotherhood of R.R. Trainmen, (Richmond, Va. Ch., Jan. 29, 1962). On appeal to the United States Supreme Court, the Brotherhood maintained and the Supreme Court accepted the contention that since 1959 the Brotherhood had no financial connection with the designated attorneys. Brotherhood of R.R. Trainmen v. Virginia *ex rel.* Va. State Bar, 377 U.S. 1 n.9 (1964).

11. Brotherhood of R.R. Trainmen v. Virginia *ex rel.* Va. State Bar, *supra* note 10.

12. The Brotherhood objected specifically to the provision which enjoined it from holding out lawyers selected by it as the only approved lawyers to aid the members or their families; . . . or in any other manner soliciting or encouraging such legal employment of the selected lawyers; . . . and from doing any act or combination of acts, and from formulating and putting into practice any plan, pattern or design, the result of which is to channel legal employment to any particular lawyer or group of lawyers . . . .

Id. at 4-5.

13. 27 Stat. 531 (1893), as amended, 45 U.S.C. §§ 1-16, 26, 27 (1964).

14. 35 Stat. 65 (1908), as amended, 45 U.S.C. §§ 51-59 (1964).

15. We hold that the First and Fourteenth Amendments protect the right of the members through their Brotherhood to maintain and carry out their plan for advising workers who are injured to obtain legal advice and for recommending specific lawyers. Since the part of the decree to which the Brotherhood objects infringes those rights, it cannot stand; and to the extent any other part of the decree forbids these activities it too must fall.

377 U.S. at 8; see Bates v. City of Little Rock, 361 U.S. 516, 522-23 (1960), where the Court stated that it is beyond dispute that freedom of association is protected from state interference by the fourteenth amendment.

16. 377 U.S. at 6.

17. *Id.* at 6-7.

18. Virginia State Bar v. Railroad Trainmen, 33 U.S.L. WEEK 2387 (Richmond, Va. Ch., Jan. 15, 1965); see Simpson, *Group Legal Services: The Case for Caution*, 12, U.C.L.A.L. REV. 327 (1965).

ommendation and solicitation and that consequently both were protected.[19]

Assuming, *arguendo,* that solicitation and commercialization are rights which fall within the protections of the first and fourteenth amendments, these rights are not absolute.[20] If the state can show that solicitation and commercialization pose a threat to an appreciable public interest, abridgement of these rights may be permitted to the extent necessary to protect the public interest.[21] While the Supreme Court has used different tests to determine whether the requisite state interest is sufficient to justify regulation of the rights,[22] in *Brotherhood* it appears to adopt the "balancing" test, that is, balancing associational rights against the state's interest in regulating its legal profession.[23] Thus, if the state can show specific evils flowing from the type of associational conduct under question, which Virginia was unable to do in *Brotherhood,* it can, to the extent necessary to protect the public interest, regulate or prohibit such conduct.[24]

The decision in the principal case is consistent with the court's earlier decision regarding the Brotherhood[25] and although it enjoined the present plan, it is not inconsistent with the previously discussed Supreme Court decision[26] since the UMW went beyond solicitation by employing an attorney on a salary basis. However, the fact that the UMW paid an attorney's salary is not necessarily sufficient to justify invalidating the program. In *NAACP v. Button,*[27] the Supreme Court upheld an arrangement whereby the NAACP paid attorneys on a daily basis to represent individual members in court proceedings that were aimed at either establishing or protecting the members' civil rights. Although some of the indi-

19. Brotherhood of R.R. Trainmen v. Virginia *ex rel.* Va. State Bar, 207 Va. 182, 149 S.E.2d 265 (1966) (Carrico, J., dissenting).

20. *E.g.,* Bates v. City of Little Rock, 361 U.S. 516, 524 (1960); NAACP v. Alabama *ex rel.* Patterson, 357 U.S. 449, 463-66 (1958); American Communications Ass'n v. Douds, 339 U.S. 382, 394-95 (1950).

21. See Bates v. City of Little Rock, *supra* note 20; NAACP v. Alabama *ex rel.* Patterson, *supra* note 20.

22. See, *e.g.,* Barenblatt v. United States, 360 U.S. 109, 141 (1959) (Black, J., dissenting) ("absolute" test); American Communications Ass'n v. Douds, 339 U.S. 382 (1950) ("balancing" test); Gitlow v. New York, 268 U.S. 652 (1925) ("bad tendency" test); Schenck v. United States, 249 U.S. 47 (1919) ("clear and present danger" test).

23. See 377 U.S. at 8. Mr. Justice Black suggests that the failure of Virginia "to show any appreciable public interest in preventing the Brotherhood from carrying out its plan" is crucial to the invalidity of the injunction. Thus, although Mr. Justice Black is considered an absolutist with respect to first amendment rights, he appears to have adopted the "balancing" test here. See generally Note, 51 VA. L. REV. 1693 (1965).

24. See American Communications Ass'n v. Douds, 339 U.S. 382, 398-400 (1950); Cox v. New Hampshire, 312 U.S. 569, 574 (1941).

25. *In re* Brotherhood of R.R. Trainmen, 13 Ill. 2d 391, 150 N.E.2d 163 (1958).

26. 377 U.S. 1 (1964).

27. 371 U.S. 415 (1963).

viduals who were represented by the NAACP attorneys requested counsel, the NAACP usually solicited and urged aggrieved Negroes to allow the attorneys to help them. The Court held that these activities were a form of political expression and a type of association protected by the first and fourteenth amendments.[28] Consequently, Virginia could not restrain this program under the guise of regulating the legal profession since it had failed to advance any substantial regulatory interest, in the form of substantive evils flowing from the NAACP's activities, which would justify the regulation imposed.[29]

While it is arguable that the UMW program is similarly privileged, *Button* may be distinguished from the principal case on four separate grounds. First, the legal services provided by the NAACP in *Button* were designed to effectuate a group purpose[30] and it is well established that a group may hire an attorney to represent an individual where the interests of the entire group or a substantial part thereof are involved.[31] In such a situation, there can be no conflict of interest between the group and the individual since their goals are identical.[32] However, the UMW program is designed primarily for the benefit of the individual member, and in certain instances, the union's interests might conflict with those of the individual. For example, in an attempt to improve employer relations, a union might promote lower out-of-court settlements which could be detrimental to the injured party.[33] Second, the litigation in *Button* was a form of constitutionally-protected expression, for only through the judicial process was the Negro able to protect his constitutional rights.[34] No such right is associated with personal injury

28. *Id.* at 429.

29. *Id.* at 444.

30. See Note, *Group Legal Services: The Bench, the Bar, and the Brotherhood*, 17 VAND. L. REV. 1490 (1964).

31. American Auto. Ass'n v. Merrick, 117 F.2d 23 (D.C. Cir. 1940); see Maurer, *Ethical and Legal Problems of the Corporate Counsel in the Rendering of Personal Advice to Company Officers and Employees*, 21 BUS. LAW. 817-18 (1966).

32. *But see* 371 U.S. 415, 461-63 (1963) (Harlan, J., dissenting). Mr. Justice Harlan feels there is potential conflict between the objectives of the NAACP and the individual Negro.

33. Additional instances of a possible conflict between the union's interest and that of the individual can readily be found. Consider, for example, that a union might wish to establish a series of spectacular recoveries in order to demonstrate the success of its program; consequently it might try to exert pressure on a regional counsel to settle all cases which do not promise favorable publicity. Similarly, if an injured member brings a suit and wants to call a fellow employee as a witness, the union may believe that in order to protect the witness' job, it should discourage such testimony. See Comment, 11 STAN. L. REV. 394 (1959); Note, 43 TEXAS L. REV. 254 (1964); Note, 51 VA. L. REV. 1693 (1965).

34. In the context of NAACP objectives, litigation is not a technique of resolving private differences; it is a means for achieving the lawful objectives of equality of treatment by all government, federal, state, and local, for members of the Negro community in this country. It is thus a form of political expression. 371 U.S. at 429.

litigation.[35] Third, abuses that normally accompany solicitation and lay intermediaries, such as pecuniary gain and the commercialization of the legal profession, were absent in *Button*[36] whereas the UMW plan contains both abuses since the sole objective of the attorney is monetary reward and as a by-product of his relationship with the union, he is supplied with a fertile field for clients in areas other than workmen's compensation. Finally, in *Button*, the Court suggests first that Virginia's motive was to stifle the Civil Rights movement by preventing the Negro from using the one potent weapon he possessed—litigation in the courts,[37] and second that there was a dearth of attorneys who were willing to represent the Negro.[38] In the situation posed by the principal case, Illinois is not trying to inhibit the granting of workmen's compensation awards and there is no indication that attorneys are unwilling to handle these lucrative claims.

Despite the fact that the arrangement in *Button* is factually distinguishable from that in the principal case, there are three factors which indicate that the UMW program could be legitimately upheld. First, although the Supreme Court emphasized that the plan in *Button* was a constitutionally-privileged means of expression which was used to secure guaranteed civil rights,[39] it refused to use this factor to distinguish *Brotherhood* from *Button*. Indeed, in holding that the Brotherhood's legal aid plan was protected by the first amendment, the Court relied heavily on *Button* and did not deem significant the fact that *Brotherhood* did not involve a form of political expression.[40] Consequently, it should be equally insignificant that the principal case does not involve a type of political expression. Second, in *Brotherhood* the Court alluded to the British system whereby the unions retain counsel to prosecute members' claims.[41] Because of the differences between the legal professions in Britain and the United States, it cannot be said with certainty that the Court meant to condone such a system.[42] However, the appar-

35. "Personal injury litigation is not a form of political expression, but rather a procedure for the settlement of damage claims. No guaranteed civil right is involved." Brotherhood of R.R. Trainmen v. Virginia *ex rel.* Va. State Bar, 377 U.S. 1, 10 (1964) (Clark, J., dissenting). *But see* Gaines, *Conduct of Attorneys: Group Practice and Representation, and Significant Developments in Ohio Disciplinary Matters*, 16 W. RES. L. REV. 893 (1965).

36. The *per diem* payment to the NAACP attorney is smaller than that ordinarily received for equivalent private professional work. 371 U.S. at 420-21. *But see id.* at 457-60 (Harlan J., dissenting).

37. *Id.* at 435-36.

38. *Id.* at 443.

39. *Id.* at 428-42.

40. 377 U.S. at 6, 10.

41. *Id.* at 7.

42. The British legal profession differs in two significant ways: (1) The contingent fee is forbidden so that legal assistance would often be unavailable to the average

ently favorable reference would seem to indicate that the Court did not find such a system, which is similar to the UMW program, unpalatable.[43] Third, the Brotherhood's goal of promoting the welfare of its members is consistent with the interests of the individual members, and one of the ways to accomplish this goal is to establish a program that assures all members adequate compensation for injuries suffered.

Although it is thus unclear whether the Supreme Court would uphold a program such as the one in the principal case, the problems and abuses which could result from such a program appear sufficiently serious to justify the decision of the Illinois Supreme Court. The foremost of the possible abuses is the threatened demise of the attorney-client relationship. That the demise of the relationship is an actual result of this type of arrangement and not just a theoretical possibility was evidenced by the fact that the attorney does not discuss the accident with the client prior to the filing of a claim with the Industrial Commission, but rather prepares his case from filed reports. However, a personal attorney-client relationship based on trust and confidence is thought to be a bulwark against the legal profession's degenerating into the mere money making trade it had become before the turn of the century.[44] Furthermore, as a consequence of the procedural aspects of the UMW plan, the attorney might miss facts that would have an important bearing on the case,[45] and viewed from the other perspective, since he receives the same salary regardless of the adequacy of the settlement of the claim, the attorney might lack the incentive to devote the extra effort which may be required in order to obtain a better settlement for his client.[46] Finally, although theoretically the union

injury victim in absence of a legal aid program, Shipley, *The Contingent Fee*, 23 D.C.B.A.J. 651, 656 (1956); and (2) The legal profession is partially socialized, see CHEATHAM, CASES ON THE LEGAL PROFESSION 517 (2d ed. 1955). These two factors suggest the reason if not the justification for British leniency toward such programs.

43. See Bodle, *supra* note 4, at 323, where the author suggests that the Court did comment favorably on the British plan.

44. DRINKER, LEGAL ETHICS 24-25 (1953); Note, 10 VILL. L. REV. 370 (1965).

45. Times were set aside for consultation with the attorney, but apparently they were not used. If such consultation periods had been utilized, perhaps the problem would have been alleviated. See note 1 *supra*.

46. It has been suggested that there are also abuses to the contingent fee system. Thus, a lawyer might settle rather than litigate if the larger award derived from litigation is not proportionately great enough to outweigh the additional time the attorney must spend preparing for such litigation. Also, where workmen's compensation claims or other personal injury actions are involved, frequently one attorney has a number of claims against one company or one insurer. In such situations, bargaining frequently takes the form of "lump sum settlement," that is, negotiation of all cases with no breakdown for each individual case. Such settlements, by their very nature, tend to make the aggregate recovery inadequate, and opportunity for abuse is provided by the necessity of apportioning the total sum among the clients involved. Furthermore, the merits of each case may get only a cursory appraisal resulting in

is not to interfere with the relationship, it does pay the attorney and in light of other instances wherein unions have readily sacrificed the rights of an individual for the good of the union,[47] it would seem that interference may be more probable than not.

The second abuse is the possible commercialization of the legal profession. Not only can the attorney use the union to supply him with clients in areas other than workmen's compensation, but the union also has an opportunity to capitalize on these legal services. By spreading the cost of the attorney's salary over the entire membership, the union could theoretically gain monetarily if it assesses its members a greater amount than it pays to the attorney. However, the union's real profit will come from its advertising of legal services and spectacular recoveries as inducements for joining the union.[48] It would also be possible for the union to exploit its influential position regarding the prosecution of injury claims in its dealings with the employer. It is known that unions will trade certain employee grievances for the satisfaction of others and that every employee may not have the opportunity to have his grievance heard by the arbitrator.[49] Thus, in return for the employer's agreement to satisfy certain grievances in which the union has a special interest, the union might agree to see that the union attorney did not push the prosecution of a specific injury claim. Using legal services as a tool to accomplish these selfish ends degrades the legal profession and impairs the public's confidence in it.

Certainly injured union members need, and the union has an

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inadequate recovery for some clients. See Luther, *Legal Ethics: The Problem of Solicitation*, 44 A.B.A.J. 554, 555 (1958). This is most likely to happen when workmen's compensation claims are involved for two reasons: (1) an attorney is very likely to have a number of claims against one employer or insurer; and (2) since the attorney's fee is usually fixed by the Commission, the attorney must engage in "mass production" settlement of claims in order to make the work most lucrative.

47. See, *e.g.*, Gainey v. Brotherhood of Ry. & S.S. Clerks, 313 F.2d 318 (3d Cir. 1963); Union News Co. v. Hildreth, 295 F.2d 658 (6th Cir. 1961).

48. In a survey by a committee of the California State Bar on group legal services, many instances were found when union newspapers advertised the availability of legal services to union members. Whether this advertising was done with or without the knowledge or permission of the attorney involved was not known. An example of one such advertisement is as follows:

> One of the little known rights arising by reason of . . . union membership is the right to the services of our legal staff for advice on legal affairs that are strictly personal problems, and to secure this, the average worker quite properly believes the cost would probably outweigh the value received from the advice given. In our union, the right to such legal advice is part of the value of the benefits that the union membership brings you. If upon consultation with the attorney, you wish him to act for you in any legal action, you make your own arrangements in the financial way as you see fit but the initial advice is taken care of in our retainer fee with the attorney.

Standing Committee Report on Group Legal Services, *Report*, 39 CALIF. S.B.J. 639, 675 (1964).

49. See SLICHTER, HEALY & LIVERNASH, THE IMPACT OF COLLECTIVE BARGAINING ON MANAGEMENT 761 (1960).

interest in, adequate legal services. Indeed, the courts have recognized and relied upon the existence of these policy reasons for upholding such programs as the Brotherhood's. Judge Traynor observed in his dissent in *Hildebrand v. State Bar* that the primary duty of the legal profession is to serve the public, and while the program of hiring attorneys may violate the language of the legal canons, it is consistent with their purpose of providing counsel to all who need it.[50] However, if the unions were to confine themselves to those plans which conform to the requirements set out by the Illinois Supreme Court in *Brotherhood of R.R. Trainmen*,[51] they should be able to accomplish their desired end without putting themselves in such an imposing and influential position.

50. 36 Cal. 2d 504, 522, 225 P.2d 508, 519 (1950) (Traynor, J., dissenting).
51. 13 Ill. 2d 391, 150 N.E.2d 163 (1958).