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## Investigation of Unauthorized Practice of Law by Omnibus Proceeding: The Ohio Method

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## NOTES

### INVESTIGATION OF UNAUTHORIZED PRACTICE OF LAW BY OMNIBUS PROCEEDING: THE OHIO METHOD

The practice of law is impressed with a public interest. Whether by representation in a judicial proceeding or by advice on a legal problem, the lawyer renders professional service to the public.<sup>1</sup> Preserving client confidences, assuring unquestioned loyalty, and rendering expert counsel are typical obligations of the legal profession. Another responsibility of lawyers is that of protecting the public from legal practice by unqualified laymen.<sup>2</sup> Three areas of activity are involved in preventing unauthorized practice of law.<sup>3</sup> Lawyers and public officials must define the practice of law,<sup>4</sup> investigate and prosecute unlicensed practitioners, and by judicial remedy prohibit further unauthorized practice.<sup>5</sup> Although each of these three areas makes a necessary contribution to the ultimate control of unauthorized legal practice, the problems of making preliminary investigation and initiating legal action are perhaps the most important. To facilitate unauthorized practice suits, Ohio has developed a unique investigatory system. Since this procedure can eventuate in an action for an injunction, the most popular and effective of the various remedies employed in unauthorized practice litigation,<sup>6</sup> it is a particularly significant innovation and one which may induce procedural modification in other jurisdictions.<sup>7</sup>

<sup>1</sup> See Vom Baur, *An Historical Sketch of the Unauthorized Practice of Law*, *Unauthorized Practice News*, Fall 1958, p. 1.

<sup>2</sup> See Adler, *Unauthorized Practice: A Continuing Campaign in the Public Interest*, 44 *A.B.A.J.* 649 (1958); Davis, *Unauthorized Practice of Law and the Public Interest in the Qualified Lawyer*, *Unauthorized Practice News*, Dec. 1955, p. 4.

<sup>3</sup> This term of art has been defined by the American Bar Association as follows: "Unauthorized practice of law is the attempt by laymen and corporations to make it a business for profit of giving the public, as a substitute, the services of unqualified and unprofessional persons, or to employ or furnish for profit, directly or indirectly, the services of lawyers who may be willing to sabotage professional ethics in order to secure employment." 66 *A.B.A. REP.* 268 (1941).

<sup>4</sup> By definition, law practice is usually said to include the representation of others, advising others on legal questions, and the drafting of legal instruments. Statutes variously define the practice of law in general terms (*e.g.*, *MO. REV. STAT.* § 484.010 (1949); *R.I. GEN. LAWS ANN.* § 11-27-2 (1956)), in terms of what an attorney may do (*e.g.*, *CONN. GEN. STAT. ANN.* § 51-88 (1958); *MINN. STAT.* § 481.02 (1957)), or by specific enumeration of activities which comprise the practice of law (*e.g.*, *CAL. FIN. CODE* § 12327; *N.Y. PEN. LAW* § 280). All states have statutes which establish standards for the practice of law, but in most instances detailed application is left to the courts or the state bar association. See generally *AMERICAN BAR FOUNDATION, UNAUTHORIZED PRACTICE STATUTE BOOK* (1961).

<sup>5</sup> Available remedies include criminal prosecution, contempt, injunction, quo warranto, and declaratory judgment. For a detailed description and evaluation of each remedy, see Comment, 62 *COLUM. L. REV.* 501 (1962). See generally 7 *AM. JUR. 2d Attorneys at Law* § 90 (1963).

<sup>6</sup> See Comment, 62 *COLUM. L. REV.* 501, 505 (1962).

<sup>7</sup> A substantial part of the factual material for this note was drawn from interviews the author conducted in Cleveland and Columbus, Ohio, and in Ann Arbor and Detroit, Michigan. A special note of gratitude is expressed to Judge Earl R. Hoover of the Cuyahoga County, Ohio, Court of Common Pleas, who stimulated the author's interest in the Ohio approach and whose encouragement and assistance made this note possible.

In injunctive suits, the responsibility for discovering and prosecuting unauthorized practice has traditionally rested either with individual lawyers who seek to prevent infringement upon their legal practice, or with bar association grievance committees.<sup>8</sup> Individual lawyers and bar committees, however, have often been uninformed and disinterested in unauthorized practice and thus remiss in their duty to the public and to the legal profession. Furthermore, local law and court rules may not permit an individual lawyer or representative of a bar committee to protect his licensed profession by an injunctive action.<sup>9</sup> Even where individual actions are permitted, they occur sporadically and consequently produce only an uncoordinated attack on unauthorized practice. Prior to 1955, Ohio was similarly dependent upon the initiative of its lawyers or bar committees.<sup>10</sup> In that year, the court's committee system,<sup>11</sup> often referred to as the Ohio method, was initiated.<sup>12</sup>

The Ohio method is based on the inherent power of the judiciary,<sup>13</sup> and not on statutory authority. Since lawyers do not seek relief for themselves individually or as a class, the procedure is not adversary in nature. On the contrary, Ohio regards unauthorized practice as an infringement

<sup>8</sup> See Otterbourg, *A Study of Unauthorized Practice of Law*, *Unauthorized Practice News*, Sept. 1951, p. 29.

<sup>9</sup> The respondent may often successfully challenge either individuals or associations as being improper parties in interest. See, e.g., *Delaware Optometric Corp. v. Sherwood*, 36 Del. Ch. 223 (Sup. Ct. 1957); *New Jersey State Bar Ass'n v. Northern New Jersey Mortgage Associates*, 22 N.J. 184, 123 A.2d 498 (1956). Cf. *Dworken v. Apartment House Owners Ass'n*, 38 Ohio App. 265, 176 N.E. 577 (1931). See generally Norford, *Is Injunction the Proper Remedy for Curbing Unauthorized Practice of Law?*, *Unauthorized Practice News*, March 1957, p. 58.

<sup>10</sup> See, e.g., *Belden v. Stott*, 150 Ohio St. 393, 83 N.E.2d 58 (1948) (grievance committee); *Gustafson v. V.C. Taylor & Sons*, 31 Ohio L. Abs. 562 (C.P. 1940) (lawyer); *Goodman v. Provident Credit Co.*, 25 Ohio L. Abs. 492 (C.P. 1937) (bar committee); *Land Title Abstract & Trust Co. v. Dworken*, 129 Ohio St. 23 (1934) (lawyer). It should be noted at the outset that Ohio is one of the 23 states which do not have an integrated bar. Those states which have an integrated bar require that lawyers be active members of the state bar association in order to practice law. For a list of those states which have integrated bar associations, see AMERICAN BAR FOUNDATION, *op. cit. supra* note 4.

<sup>11</sup> For a description of the court's committee system by the former counsel for the Ohio Bar Association, see Folk, *The Investigation, Preparation, and Trial of an Unauthorized Practice of Law Case*, in TEXT OF ADDRESSES, 1962 NATIONAL CONFERENCE ON THE UNAUTHORIZED PRACTICE OF LAW 68.

<sup>12</sup> See *In re Unauthorized Practice of Law in Lucas County*, 73 Ohio L. Abs. 343 (C.P. 1955), *aff'd sub nom. In re Bailey*, 73 Ohio L. Abs. 347 (App. Div. 1956).

<sup>13</sup> E.g., *Green v. Brown*, 173 Ohio St. 114, 115 (1962); *Lattin v. McMillen*, 104 Ohio App. 449, 453, 150 N.E.2d 84, 88 (1958). It is generally assumed by courts in the United States that the supervision and control of the practice of law is within the inherent power of the judiciary. See, e.g., *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 406, 312 P.2d 998, 1002 (1957); *People v. Peoples Stockyards State Bank*, 344 Ill. 462, 472, 176 N.E. 901, 906 (1931); *Indiana State Bar Ass'n v. Indiana Real Estate Ass'n*, 191 N.E.2d 711, 713 (Ind. 1963); *Washington State Bar Ass'n v. Washington Ass'n of Realtors*, 41 Wash. 2d 697, 699, 251 P.2d 619, 620 (1952); cf. *In the Matter of McKenna*, 16 Cal. 2d 610, 612, 107 P.2d 258, 259 (1940); *In the Matter of N.Y. County Lawyers' Ass'n*, 299 N.Y. 728, 729, 87 N.E.2d 451, 452 (1949). See generally Note, 27 N.Y.U.L. Rev. 829, 834-37 (1952).

upon the court's authority to license attorneys and as a derogation from the court's exclusive power to supervise and control the practice of law.<sup>14</sup>

The initial step in the Ohio procedure is to call the court's attention to alleged unlicensed legal activities. The petition, which to date has been filed only by lawyers as officers of the court, is usually prompted by specific acts of unauthorized practice. It does not, however, request the court to enjoin these acts, but merely asks the court to investigate the alleged existence of unauthorized practice. The petition suggests that the court appoint a committee, consisting of officers of the court, to inquire into alleged acts of unlawful practice and bring them to the court's attention. The petitioners request that the court, through use of its inherent powers, allow the committee to subpoena witnesses, compel the production of records, and take testimony under oath concerning unauthorized practice in the county.<sup>15</sup> Although specific circumstances motivate the initial petition, the action taken by the court establishes a permanent procedure directed at unauthorized practice in general.

By journal entry,<sup>16</sup> the court appoints thirteen lawyers, designating one as chairman, to serve as the court's committee to inquire into activities of laymen who purport to render legal services or advice. This entry commences an omnibus proceeding which pends indefinitely and which, though only a preliminary investigative proceeding, employs the full powers of the trial court. As in grand jury proceedings, the court remains apart from any specific inquiry conducted by the committee.<sup>17</sup> Within the omnibus proceeding, the committee can file supplemental applications for authority

<sup>14</sup> The court controls membership in the bar by prescribing the character and educational standards required for admission. Guided by the *Canons of Professional Ethics of the American Bar Association*, the court also regulates activities of lawyers by disciplining or discharging them. However, the court can neither examine the qualifications of the unauthorized practitioner nor supervise his activities as an officer of the court.

<sup>15</sup> The application filed by the Cleveland Bar Association to establish a court's committee expounds the theory of the Ohio system. It states in part:

"The unauthorized practice of law . . . is contrary to the public policy of this State, and is an interference with the administration of justice in Cuyahoga County and in Ohio, and . . . persons, firms or corporations so acting are, by their activities and conduct, unlawfully and illegally usurping the powers of this Court and the Supreme Court of Ohio, and, by reason thereof, they are committing a fraud upon the public to the extent of doing harm [and] causing irreparable damage to the members thereof . . . .

"In the interest of the proper administration of justice in Cuyahoga County and the State of Ohio, for and on behalf of all persons, including the officers of the Court, this Court should, through use of its inherent powers, investigate and inquire into any and all acts, conduct or activities constituting the unauthorized practice of law in Cuyahoga County, or appoint one or more officers of this Court to conduct such investigation for and on behalf of this Court . . . and to otherwise act for and on behalf of this Court and under its direction. . . ." In the Matter of the Unauthorized Practice of Law in Cuyahoga County, Application 715293, Oct. 17, 1958, on file with Court of Common Pleas, Cuyahoga County.

<sup>16</sup> The journal entry used in Cuyahoga County has recently been published in its entirety. See In the Matter of the Unauthorized Practice of Law, 25 Ohio Op. 2d 197 (C.P. 1963).

<sup>17</sup> Interview with Judge Earl R. Hoover of the Cuyahoga County, Ohio, Court of Common Pleas, in Cleveland, Ohio, Jan. 29, 1964.

to exercise typical judicial powers. Thus, when authorized by the court, the committee can subpoena witnesses to appear before it in closed session and testify in the presence of an official court reporter concerning alleged unlawful practice. By use of the subpoena duces tecum, the committee can compel the production of documents and other data necessary to the inquiry. During the omnibus proceeding respondents are entitled to counsel and may request a public hearing, but they are subject to the contempt power of the court if they fail to cooperate with the committee.<sup>18</sup>

If testimony shows that unauthorized practice exists, the committee seeks to obtain a consent injunction. Although the injunction, if obtained, is entered in the journal, it is executed within the protective secrecy of the omnibus proceeding. If the committee fails to obtain a voluntary injunction against persisting acts of unauthorized practice, the committee applies to the court for a temporary restraining order. This is the first publicized action of the committee and concludes the investigation of that specific offense within the omnibus proceeding. Even though the committee continues to investigate other unlicensed practice, a separate and distinct charge of unauthorized practice in regard to that specific offense is presented to the court on behalf of the court's committee. The committee itself, as a representative of the public interest and as an investigatory arm of the court, commences this injunctive action. Except for requesting the court to appoint counsel to represent it, the committee acts much like a typical petitioner in an equity action to enjoin an alleged unauthorized practitioner. During trial of the specific suit in the Court of Common Pleas, the general trial court in Ohio, the committee introduces the record of its hearings or, alternatively, recalls its previous witnesses to testify concerning the unlicensed legal activities. The trial court, sitting without a jury, conducts a hearing in which it finds the facts, draws conclusions of law, and, if necessary, permanently enjoins the offender.<sup>19</sup>

Although the court's committee system is not uniformly used in Ohio, a 1963 survey indicated that at least fifteen of the eighty-eight counties utilize the omnibus proceeding.<sup>20</sup> Significantly, the larger bar associations, which account for most unauthorized practice litigation, employ the omnibus procedure. This unique investigatory proceeding was recently reviewed by the Ohio Supreme Court in *In re Brown, Weiss & Wohl*,<sup>21</sup> a case which

<sup>18</sup> *Ibid.*

<sup>19</sup> See, e.g., *In re Brown, Weiss & Wohl*, 24 Ohio Op. 2d 408 (C.P. 1962); *In re Shields*, 157 N.E.2d 923 (Ohio C.P. 1958).

<sup>20</sup> Questionnaires were sent to 92 bar associations in October 1963 by John Welch, Counsel for the State Bar of Ohio. Thirty responses were received, of which 15 indicated that the court's committee system was used. Survey on file, Office of the Ohio State Bar, Columbus Ohio.

<sup>21</sup> 175 Ohio St. 149, 192 N.E.2d 54 (1963), *cert. denied sub nom. Brown v. Unauthorized Practice of Law Comm.*, 84 Sup. Ct. 1136 (1964). In this case three laymen—an automobile dealer, a furniture store operator, and a food wholesaler—were enjoined from processing claims before the Ohio Bureau of Workmen's Compensation. None were licensed attorneys, but in 1961 their office processed over 600 claims with potential contingent fees of nearly \$80,000. Brief for the Ohio State Bar Association as Amicus Curiae, p. 1.

had been prosecuted by the Cuyahoga County committee. At least tacit approval was given to the omnibus procedure when the court described the system in its opinion without noting any objection to it. Nevertheless, a critical evaluation of the Ohio method seems appropriate.

The Ohio method has several procedural advantages. Unlike the ordinary equitable injunction, where lawyers assert personal claims against unlicensed practice in an adversary proceeding and must satisfy a clear and convincing standard of proof, the omnibus suit makes unauthorized practice of law the concern of the court, which can impose an injunction if the committee proves by a mere preponderance of evidence that unlawful practice exists.<sup>22</sup> The power and prestige of the court directly contributes to the effectiveness of the inquiry. At the same time, public expense is minimized and court personnel are not required to devote extensive amounts of time to unauthorized practice litigation. Neither the preliminary inquiries nor the committee proceedings are publicized. None of the evidence, not even that which the committee obtains by use of its subpoena power, is disclosed during the investigation. Thus the reputation of an innocent suspect is not harmed by committee action. This is in direct contrast to the publicity which results from direct court action and customary judicial discovery.

Flexibility characterizes the activities of the court's committee. In Cuyahoga County the twelve regular members of the committee (excluding the chairman) are divided into four groups, each of which meets four times a year.<sup>23</sup> Each three-member group independently initiates inquiries, and reports are made to the full committee when formal investigation seems necessary. Many activities suspected of constituting unauthorized practice are restrained by action within the structure of the committee proceedings through conferences<sup>24</sup> or by formal consent decrees. Realizing that the court has empowered the committee to conduct a general investigation, groups which are typically challenged for unauthorized practice may voluntarily

<sup>22</sup> Interview with Phillip K. Folk, former counsel for the Ohio Bar Association, in Columbus, Ohio, Jan. 30, 1964.

<sup>23</sup> Interview with Elmer C. Myers, President of the Cuyahoga County Bar Association, in Cleveland, Ohio, Jan. 30, 1964.

<sup>24</sup> The conference technique employed in the omnibus proceeding is intended to eliminate unauthorized practice of law through discussion. It should be distinguished from the "conference approach" used by the American Bar Association, the objective of which is to hold discussions with lay organizations and together with these organizations draw up written statements of principles that indicate the areas of activity within which each group should operate. See *Statements of Principles With Regard to the Practice of Law*, 3 MARTINDALE-HUBBELL LAW DIRECTORY 109A-113A (1958). To further supplement judicial delineation of rules and principles, and thus further define the content of unauthorized practice, the A.B.A. Committee on Unauthorized Practice of Law began in 1936 to issue advisory opinions relating to the various areas of unauthorized practice. For a collection of these opinions, see AMERICAN BAR ASSOCIATION, *INFORMATIVE OPINIONS* (1960). Each of these methods, whether utilized on the local, state, or national level, is founded upon the belief that the public interest is best served by preventing rather than punishing unauthorized practice.

cooperate with the committee and consent to refrain from objectionable practices.<sup>25</sup> If the investigation leads to court action, the committee can request that it be represented by counsel specializing in the area of law involved in the suit. The combination of expertise and direct personal interest obtained as a result of employing counsel whose area of practice is being infringed upon would seem to assure highly effective prosecution.<sup>26</sup>

Political considerations and possible favoritism, which can detract from the effectiveness of unauthorized practice committees that are appointed yearly by bar associations, are minimized under Ohio's court committee system. Attorneys who are concerned with the problem of unauthorized practice and who will actively participate in committee activities can be appointed indefinitely, and the appointment is made by a judge rather than the bar association. Likewise, the court's committee unifies local endeavors<sup>27</sup> and provides a degree of continuity seldom possible in systems which rely upon individual or bar committee action.

Notwithstanding its many favorable qualities, the success of the Ohio system is inordinately dependent upon the cooperation of the local trial court. Since eliminating unauthorized practice is regarded as a problem primarily for the judiciary, the court must willingly assist in the establishment of the court's committee. Continuing guidance and assistance from the court in the functioning of the committee is equally necessary. In addition, even those who have been active members of a court's committee recognize that abuses might result from the investigation of individuals personally disliked by members of the committee.<sup>28</sup> To minimize the possibility of unwarranted investigation and other activities beyond the scope of the committee's authority, the Cuyahoga County procedure requires the approval of three Common Pleas judges before any kind of subpoena is issued. To guard further against abuse, the Cuyahoga committee has instituted certain internal procedures, including the requirement of a majority vote prior to the commencement of a formal investigation.<sup>29</sup>

In order to induce timely and judicious decisions in the area of the unauthorized practice of law, it is necessary to select cases for prosecution

<sup>25</sup> Interview with Gilbert Weil, in Cleveland, Ohio, Jan. 30, 1964. Mr. Weil reports that in a total of approximately twenty investigations, 60% of the collection agencies cooperated in the preliminary stages of investigation and made the procedural reforms required to eliminate unlawful legal activity.

<sup>26</sup> In the *Wohl* case, Mr. Weil, who specializes in workmen's compensation practice, was appointed as counsel for the court's committee. See note 21 *supra* and accompanying text. His personal experience in workmen's compensation facilitated preparation of the case and contributed to the elimination of non-lawyer practice before an important administrative agency.

<sup>27</sup> In Cuyahoga County separate petitions, each requesting the establishment of a court's committee, were filed by the Cleveland Bar Association and the Cuyahoga County Bar Association. These were consolidated into one application, and united action in the Cleveland area, not possible before the formation of the court's committee, was initiated.

<sup>28</sup> Interview with Gilbert Weil, in Cleveland, Ohio, Jan. 30, 1964.

<sup>29</sup> *Ibid.*

carefully. A test case may affect an entire area of traditional legal practice.<sup>30</sup> Likewise, suits on frivolous complaints only result in the criticism that lawyers are enforcing their "monopoly" in the practice of law.<sup>31</sup> Investigation and prosecution on the state level, a method used in Michigan,<sup>32</sup> assures selectivity in prosecution as well as consistency and uniformity of action unattainable by committees with restricted local jurisdiction. Also, committee action may be subjected to local community pressures. Some members of a court's committee might be reluctant to prosecute influential members of their community or those with whom they have personal or professional associations. This, however, is equally possible under any system of local action. Counsel for a state bar association, on the other hand, would probably be less influenced by community relationships and thus could prosecute with greater fairness and objectivity.<sup>33</sup> In addition, state bar counsel is paid for his services and, when it is necessary, can devote his entire attention to the prosecution of unauthorized practice. The Ohio procedure, by comparison, depends upon the interest and voluntary efforts of lawyers engaged in full-time private practice.

Despite the possible shortcomings of the Ohio method,<sup>34</sup> including the danger of the uncoordinated operation of numerous court committees throughout the state, the system has brought about a substantial improvement in the preliminary investigation of the unauthorized practice of law. The overall effectiveness of a campaign against unlicensed practitioners depends largely upon the adequacy of preliminary investigation. Indeed, without adequate investigatory procedures, many acts of unauthorized practice will not be discovered and thus never eliminated. It is not surpris-

<sup>30</sup> The Arizona experience is illustrative. In the consolidated cases of *Lohse v. Hoffman and State Bar v. Arizona Land Title & Trust Co.*, 90 Ariz. 76, 366 P.2d 1 (1961), the Supreme Court of Arizona banned the preparation of legal documents by realtors and title companies. In reaction to this decision, real estate agents secured a constitutional amendment permitting them to prepare legal documents incident to their trade. ARIZ. CONST. art. XXVI. See generally Riggs, *Unauthorized Practice and the Public Interest: Arizona's Recent Constitutional Amendment*, 37 So. CAL. L. REV. 1 (1964).

<sup>31</sup> See Otterbourg, *supra* note 8, at 52.

<sup>32</sup> The Michigan court rule relating to unauthorized practice of law provides as follows: "Section 1. The State Bar of Michigan is hereby authorized and empowered to investigate matters pertaining to the unauthorized practice of law and, with the authority of its board of commissioners, to file and prosecute actions and proceedings with regard to such matters. Section 2. The general counsel of the State Bar of Michigan shall assist said board in relation to the powers hereby conferred. MICH. SUP. CR. R. 17.

<sup>33</sup> Interview with J. Cameron Hall, counsel for the State Bar of Michigan, in Detroit, Michigan, Feb. 3, 1964.

<sup>34</sup> In addition to the deficiencies described above, the question might be raised whether the omnibus proceeding and the injunction action may be utilized in a jurisdiction which also imposes criminal sanctions for unauthorized practice. However, presence of a penal statute in Ohio has not restricted use of the omnibus proceeding. OHIO REV. CODE ANN. § 4705.99 (Supp. 1963). Also, other jurisdictions have permitted use of an injunction even though the act enjoined was criminally punishable. See, e.g., *Fitchette v. Taylor*, 191 Minn. 582, 254 N.W. 910 (1934); *In re Epter*, 178 Misc. 907, 36 N.Y.S.2d 952 (Sup. Ct. 1942). Therefore, it appears that the Ohio method could be fully effective even where criminal penalties are available.



ing, therefore, that the Ohio method has created considerable interest in other states.<sup>35</sup> It has been suggested that other states could adopt the omnibus procedure without special legislation, under the rule-making power of the highest state court or by a sua sponte journal entry in a lower court of general jurisdiction.<sup>36</sup> Either suggestion would probably be acceptable, for most jurisdictions recognize the inherent power of the courts to proscribe the unauthorized practice of law.<sup>37</sup>

Two deficiencies of the Ohio method, which is presently initiated and guided solely by the lower court, could be corrected by issuance of a supreme court rule to supplement existing practice.<sup>38</sup> First, such a rule could compel use of the Ohio method throughout the state. In view of the extensive advantages inherent in the system and its proven success since its inception in 1955, such a step would be fully warranted. Second, lack of judicial cooperation in the initiation and execution of the system would be overcome in large part by a state supreme court rule endorsing it and imposing upon trial court judges an affirmative duty to support and enforce it. In addition to eliminating existing defects in the committee system, a court rule could incorporate the administrative advantages of the Michigan system by concentrating control of prosecution in the counsel for the state bar association.<sup>39</sup> This suggested combination of the Ohio system of investigation with the Michigan mode of prosecution would assure both aggressive and effective investigation on the local level through the court's committee, and centralized, coordinated prosecution on the state level by skillful and fully compensated counsel.

The success of the Ohio system, like any approach to the problem of

<sup>35</sup> Several inquiries have been directed to Judge Hoover of the Cuyahoga County Court of Common Pleas. Among those requesting further information about the Ohio system were the Office of the Attorney General of Indiana, the New Jersey Bar Association, and the Unauthorized Practice Committee of New Mexico.

<sup>36</sup> Letter from Judge Earl R. Hoover to Chairman of the Unauthorized Practice of Law Committee, New Jersey State Bar Association, Jan. 29, 1964, on file with the *Michigan Law Review*.

<sup>37</sup> See note 13 *supra*.

<sup>38</sup> A supreme court rule is recommended in preference to legislation because the justices who are the final arbiters of bar rules and practices are apt to be more appreciative of the advantages of the Ohio method, and because it would probably be easier to put a new rule into effect than to have special legislation passed. In those states not permitting such a court rule, the system could, of course, be established through legislation.

<sup>39</sup> Control of prosecution would be advanced either by having counsel for the state bar prosecute all unauthorized practice actions himself or by requiring his approval before the initiation of litigation by various court committees. Although it might be thought burdensome for the state bar counsel to prosecute all actions, current practice in Michigan does not reveal this to be so. Michigan and California are said to prosecute the greatest number of unauthorized practice suits. Yet the counsel for the Michigan State Bar now participates in all suits involving unauthorized practice. Interview with J. Cameron Hall, counsel for the State Bar of Michigan, in Detroit, Michigan, Feb. 3, 1964. It is therefore suggested that counsel be appointed for the bar association in each state, whether integrated or not, and that he be ultimately responsible for all prosecution of unauthorized practice of law in his state.

unauthorized practice, is predicated on community awareness.<sup>40</sup> Both the public and the members of the legal profession must recognize the consequences of unregulated practice. Only through identifying and reporting suspected unauthorized practice can any system function efficiently. The Ohio method is probably the most important advancement in the prosecution of the unauthorized practice of law in recent years. Courts in other jurisdictions could improve the fairness and effectiveness of their present procedures by adopting the Ohio method, and the highest court of each state, even in Ohio, would greatly aid the public as well as the legal profession by issuing appropriate court rules to implement the system.

*Jerome M. Smith*

<sup>40</sup> See generally Otterbourg, *Study of Unauthorized Practice of Law*, *Unauthorized Practice News*, Sept. 1951, pp. 46-49; Resh, *Safeguarding the Administration of Justice From Illegal Practice*, 42 *MARQ. L. REV.* 484 (1959).