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GROUP LEGAL SERVICES AND CANON II

WILLIAM P. YOUNG, JR.*

The legal profession has an exclusive license to furnish legal services to the general public, and its understanding of this responsibility is set forth in Canon II of the Code of Professional Responsibility and its Ethical Considerations. The privilege carries with it the responsibility to make legal counsel available to all economic levels. Traditionally, the profession has discharged this duty through individual counseling, but changing conditions have called forth new arrangements in the delivery of legal services. New techniques, especially for the affluent and the poor have been developed. However, the huge middle segment of the American public, sometimes known as people of moderate means,

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1. Roscoe Pound has defined the legal profession as "a group of men pursuing a learned art as a common calling in the spirit of a public service." R. POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES 5 (1953) [hereinafter cited as POUND].

2. The practice of law or the performance of the services of an attorney-at-law in the absence of admission to the bar is prohibited by the State of Maryland. Md. ANN. CODE art. 10, §1 (1957, 1974 Cum. Supp.). The regulation of the practice of law has been held to be a judicial function. See Public Serv. Comm'n v. Hahn Transp., Inc., 253 Md. 571, 253 A.2d 845 (1969). Section 1 of Article 10, however, does define an attorney as a person who shall give legal advice, represent any person in the trial of any case at law or in equity, including the trial of any case before the District Court or any proceedings conducted in orphans' courts of the state, . . . or prepare any written instrument affecting title to real estate, or give advice in the administration of probate of estates of decedents in any of the orphans' courts of this state, for pay or reward.


4. While the poor have received increased attention from the bar, their needs have not been fully met, and indeed, have often been ignored. Recent advances are being eroded; see, e.g., the recent legislation regarding the federal funding of legal aid, the Legal Services Corp. Act, Pub. L. No. 93-355, 8 U.S. Code Cong. and Admin. News 2437 (1974). This statute prohibits lawyers in these federally funded programs from handling matters involving desegregation § 1007(b)(7), abortion § 1007(b)(8), selective service § 1007(b)(9), juvenile delinquency (when a parent disagrees with defense of a child) § 1007(b)(4), and habeas corpus and post-conviction procedures § 1007(b)(1). Also, no test cases or affirmative class action cases can be brought without prior approval of the project director § 1006(d)(5). REPORT OF THE AD HOC COMMITTEE RE PREPAID LEGAL COST INSURANCE at 8, quoting from COMMITTEE REPORT — GROUP LEGAL SERVICES, 39 J. ST. B. CALIF. 639, 661 (1964).
has been neglected. Group legal services have been proposed to correct this neglect. This article will examine the profession's attitude toward group legal services and the necessity of revising certain disciplinary rules for the implementation of group plans.

The Profession in Perspective

A review of English and American legal history discloses that lawyers have pursued their calling in the spirit of public service. This spirit created the atmosphere in which strong ethical traditions were nurtured and developed and were subsequently embodied in the Canons of Ethics and the Code of Professional Responsibility. While the legal profession has not consistently enjoyed public esteem and confidence, lawyers have had relatively high visibility in their communities. Most lawyers practiced in small communities, and professional reputation for integrity and competence was transmitted by means of a highly effective but informal internal communication system.

Although the average citizen was not very knowledgeable about his legal problems, those problems were limited and rela-

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5. The term “people of moderate means” describes that element of our population which is above the poverty level but is not classified as affluent. It is generally thought of as that group earning between $5,000 and $15,000 per year. In 1963, it was estimated that 60% of the nation's families, approximately 28 million family units, comprised that group.

B. Christensen, Lawyers for People of Moderate Means 5, n.4 (1970) [hereinafter cited as Christensen].

6. While there is no uniformly accepted definition of “group legal services,” the California Group Legal Service Report definition is widely recognized:

Legal services performed by an attorney for a group of individuals who have a common problem or problems, or who have joined together as a means of better bargaining for a predetermined position, or who have voluntarily formed, or become members of an association with the aim that such association shall perform a service to its members in a particular field or activity, or through common interests it appears that the organization can gain a benefit to the members as a whole.

Examples of such organizations are labor unions, employer organizations, trade associations, teachers' groups, civil service employees or any body politic, members of a social club or of an automobile club, fraternal organizations, and numerous other such associations. Included also may be groups who associate themselves for the purpose of establishing a plan of prepaid legal services to be rendered to individual members thereof, whether or not the members have a common interest in a certain field of activity.

7. For a brief discussion of the sanctions governing professional conduct and the history of the Canons of Ethics see H. Drinker, Legal Ethics 22 - 32 (1953) [hereinafter cited as Drinker].

8. Both the Canon of Ethics and the Code of Professional Responsibility were adopted in Maryland by the Court of Appeals in 1970. Md. R. 1230 (1971 Repl. Vol.).

9. Drinker, supra note 7, at 19.

10. Christensen, supra note 5, at 129; Drinker, supra note 7, at 215; Bartosic & Bernstein, Group Legal Services as a Fringe Benefit: Lawyers for Forgotten Clients through Collective Bargaining, 59 Va. L. Rev. 410, 418 (1973) [hereinafter cited as Bartosic & Bernstein].
tively simple," and could be adequately handled by the solo practitioner, who was readily accessible to the general community. The industrial revolution and the trend toward urbanization permanently altered these simplistic conditions, and the legal profession responded by developing new ways to deliver its services. Moderate and large size firms emerged in response to demands of the business community. The urban poor gave birth to legal aid. The profession aided in the development of the public defender program, the military assistance program, lawyers' referral, and liability insurance policy arrangements. None of these developments, however, reflected a recognition of the greatly expanded problems of the middle class which resulted from greater mobility and increased transactions involving property. And, the profession mistakenly believed that the small-town conditions which promoted a lawyer's visibility in the last century were present in the twentieth century.

GROWTH OF GROUP LEGAL SERVICES

During the late 1920's, lay competition in the form of intermediary arrangements seriously challenged the profession's method of exercising its exclusive license to provide legal services to the general public. Insurance companies, banks and trust

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11. CHRISTENSEN, supra note 5, at 129.
12. Id. at 226; ABA SPECIAL COMM. ON PREPAID LEGAL SERVICES, SPECIAL REPORT TO NATIONAL CONFERENCE ON PREPAID LEGAL SERVICES 5 (April 27-29, 1972) [hereinafter cited as ABA, SPEC. REP.].
13. CHRISTENSEN, supra note 5, at 227.
14. See CHEATHAM, A LAWYER WHEN NEEDED 59 et. seq. (1964); Cheatham, A Lawyer When Needed: Legal Services for the Middle Classes, 63 COLUM. L. REV. 973 (1963).
15. Christensen's elastic definition of "intermediary arrangements" probably includes most, if not all, arrangements having common characteristics:

[T]he term "intermediary arrangements" will be used to mean all arrangements in which legal services are rendered:
1. To individual members of an identifiable group (identifiable in terms of some common interest, even though it be nothing more than a shared desire or need for legal services);
2. By a lawyer or lawyers provided, secured, recommended, or otherwise selected by
   a. The group, its organization, or its officers, or
   b. Some other agency having an interest in obtaining legal services for members of the group.

CHRISTENSEN, supra note 5 at 232 (1970).

The terms "lay intermediaries" and "group legal services" are sometimes used interchangeably. Both terms are labels, and like most labels, they often say too much and sometimes not enough. For a definition of "group legal services," see note 6, supra.
16. Karl Llewellyn's incisive comments in The Bar's Troubles and Poultries — and Cures?, 5 LAW & CONTEMP. PROB. 104, 134 (1938), on the challenge of lay competition went unheeded by the profession:
companies, title companies, realtors, unions and other groups offered a variety of legal programs for their patrons and members. The continuing proliferation of these programs strongly suggests that the profession has not met certain public needs. There are four broad classifications of such intermediary arrangements; this study will focus on three individual schemes: the legal service programs of special purpose groups, automobile clubs, and labor unions.

Special Purpose Groups

One form of an intermediary arrangement is an association established primarily to place a test case before the courts to determine principles that will affect the entire membership.

Real progress toward cure lies in group action to reorganize the getting of business and the doing of it in keeping with the age: in standardizing, spreading, and lowering the price of service. Once Service is sure, the Bar can out-publicize any lay competitor — whereever its Service can itself compete; but let Service fail, and the flank attack that opens can cripple and kill.

The problem of unauthorized practice of the law is a problem of using the processes of the law to define and protect a monopoly . . . . Id. at 104. If laymen can do some jobs better or more cheaply and rapidly than lawyers, and they are specialized jobs, with articulate interests behind them, can a lawyer's monopoly — by law — stand up? Id. at 107.

17. See generally Lewis, Corporate Capacity to Practice Law — A Study in Legal Hocus Pocus, 2 Md. L. Rev. 342 (1938). See Annot., 73 A.L.R. 1327 (1931); Annot., 105 A.L.R. 1364 (1936); and Annot., 157 A.L.R. 282 (1945). For a survey of cases dealing with the right of a corporation to perform or to hold itself out as ready to perform functions in the nature of legal services.

18. Christensen defines these classifications as follows: charitable and public service programs, such as civil rights programs, legal and charitable programs, governmental programs, and bar association programs; programs conducted by profit-making organizations, such as banks, savings and loan institutions, trust companies which provide legal services to their members, and title companies; insurance programs, such as liability insurance, automobile club benefits as insurance, and legal expense insurance proposals; and membership programs. Christensen, supra note 5, at 233-50.


19. Christensen, supra note 5, at 242.
Taxpayer associations which work for the equitable taxation of real estate are one special purpose group.

The Association of Real Estate Tax Payers in Illinois was formed in 1930 for the purpose of preventing the inequitable distribution of tax burdens on real estate. The Association solicited memberships through the mail. Membership costs were fixed at one percent of the individual's 1929 tax assessment and included a charge for legal services based upon the individual's tax bill. Each member authorized the Association to protest any inequitable tax assessments through the Association's counsel, to take appropriate action to protect the member's property from tax sale or forfeiture, and to take any action deemed necessary to prevent the collection of any inequitable or exorbitant tax. The State's Attorney for Cook County petitioned the courts to halt the Association's legal program because the program constituted the unauthorized practice of law.\(^20\) While the courts failed to find any specific detriment flowing from the lack of a "relation of trust and confidence essential to the relation of attorney and client. . . .," and ignored the fact that members could secure judicial review of significant legal problems at a minimal cost, it found that the Association was engaged in the unauthorized practice of law.\(^21\)

**Automobile Clubs**

The automobile created the need for clubs which offered their members a variety of travel services that included, in some cases, legal representation. Some associations offered legal services directly through staff attorneys or retained counsel in outlying areas.\(^22\) Other clubs maintained a legal staff and recommended specific attorneys located in distant parts of the state. A third group recommended specific lawyers in selected communities in a geographical area of the United States.\(^23\) While there was no obligation to employ either the staff or pre-selected attorney,

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22. People ex rel. Chicago Bar Ass'n v. Motorists' Ass'n of Ill., 354 Ill. 595, 188 N.E. 827, 828 (1933); People ex rel. Chicago Bar Ass'n v. Chicago Motor Club, 362 Ill. 50, 199 N.E. 1, 3 (1935).
23. Seawell v. Carolina Motor Club, 209 N.C. 624, 184 S.E. 540, 541 (1936); In re Maclub of America, Inc., 295 Mass. 45, 3 N.E.2d 272, 273 (1936). But cf. In re Thibodeau, 295 Mass. 374, 3 N.E.2d 749, 750-51 (1936). While the Thibodeau court found that the association's activity did not constitute the unauthorized practice of law, there seems to be no recognizable difference in the activities of the two associations. Both were paying fees to selected lawyers from approved lists.
any member who used this service could expect his legal fees to be paid by the club.

This incidental service was challenged by the legal profession as unauthorized practice of law. In almost every case, the courts mechanically applied a statute prohibiting unauthorized practice without determining the precise "evil" that threatened the integrity of the attorney-client relationship. As a result, automobile clubs dropped such arrangements in favor of legal insurance which reimbursed its members for legal expenses.

Labor Unions

The Brotherhood of Railroad Trainmen Plan is probably the most well-known group legal service program. The plan is rooted in the history and development of its fraternal and mutual benefit society, The Safety Appliance Act of 1893, and The Federal Employers' Liability Act of 1908. By 1928, the various locals had received numerous complaints by members of overreaching by claims agents, incompetent counsel, and exorbitant fees. The President of the Brotherhood of Railroad Trainmen directed his General Counsel to investigate some of these complaints. The General Counsel concluded that: "the men were getting absolutely no legal advice and were relying entirely upon the railroads furnishing them with information as to their rights, with the result that settlements were being made which were in [his] judgment unconscionable." Based on these findings, a legal aid department was formed which sought out experienced personal injury lawyers to prosecute members' claims for less than the customary contingent fee and set up regional counsel in each territorial zone. Members and their families were urged, but not required, to employ them. In addition, the department established an investigative service in order to furnish regional counsel with sufficient evidence to support a member's claim. The re-

24. See notes 22 and 23, supra.
regional counsel employment contract permitted attorneys to charge a twenty percent contingent fee. A portion of that fee was returned to the Brotherhood to fund the operation of a legal aid department. Although the contingent fee and service charges in these contracts were subsequently modified, the basic arrangement between the Brotherhood, its members, and regional counsel was not changed.

The Profession's Response

The profession vigorously attacked the Brotherhood's and other unions' membership plans as the unauthorized practice of law. Research of the case law prior to 1964 discloses but one exception to the express judicial disapproval of these union legal service plans.

The legal profession alleged that these non-traditional programs were tainted by at least one or more of the "seven deadly sins": maintenance, champerty, barratry, advertising and solicitation, lay intermediaries and corporate practice, and conflict of interest. Too few asked whether the violations were harmful to either the profession or to the public. Some thoughtful critics questioned the wisdom of restrictions which prevented

32. Id. See Hulse v. Brotherhood of R.R. Trainmen, 340 S.W. 2d 404, 405-10 (Mo. 1960) for a history of the Brotherhood plan.
35. Maintenance is the unauthorized and officious interference in a suit in which the offender has no interest, to assist one of the parties to it, against the other, with money or advice to prosecute or defend the action. BLACK'S LAW DICTIONARY 1106 (4th ed. 1951).
36. Champerty is a bargain by a stranger with a party to a suit, by which such third person undertakes to carry on the litigation at his own cost and risk, in consideration of receiving, if successful, a part of the proceeds or subject sought to be recovered. BLACK'S LAW DICTIONARY 292 (4th ed. 1951).
37. Barratry is the offense of frequently exciting and stirring up quarrels and suits. BLACK'S LAW DICTIONARY 190 (4th ed. 1951). See Disciplinary Rule 2-104, ABA CODE OF PROFESSIONAL RESPONSIBILITY.
38. See Ethical Consideration 2-9, ABA CODE OF PROFESSIONAL RESPONSIBILITY; DRINKER, supra note 7, at 215-18.
the public from obtaining legal services on a group basis. In spite of these apt criticisms, the profession was unmoved.

Four United States Supreme Court cases caused the profession to reconsider its official position concerning group legal services as well as its commitment to make legal counsel available to all segments of the public. The profession expressed little alarm over *NAACP v. Button* because it was understood as a civil rights case and a reaffirmation of the protection accorded to political expression. Nevertheless, this case has been interpreted as imposing "a fundamental and potentially absolute constitutional restriction upon the power of the state to regulate the practice of law."43

In *Brotherhood of Railroad Trainmen v. Virginia ex rel Virginia State Bar,* the Supreme Court held "[a] State could not, by invoking the power to regulate the professional conduct of attorneys, infringe in any way the right of individuals and the public to be fairly represented in lawsuits authorized by Congress.

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41. In 1934, Professor Weihofen asked:

Why is it that individuals may band together to provide themselves with cheaper insurance, cheaper groceries, higher wages, better prices, easier credit, lower taxes, better health, — everything, except better or cheaper legal advice and aid?


Later, Drinker observed:

It is not believed that the Canon will prevent the labor unions from finding lawyers to advise their members. The whole modern tendency is in favor of such arrangements, including particularly employer and cooperative health services, the principles of which, if applied to legal services would materially lower and spread the total cost to the lower income groups. The real argument against their approval by the bar is believed to be loss of income to the lawyers and concentration of service in hands of fewer lawyers. These features do not commend the profession to the public.

*Drinker, supra* note 7, at 167.

More recently, the following comment was made:

The idea that the old rules of legal ethics should affect contemporary legal practice at all seems strange. So many of them emerged when the legal profession was a small, elite, compact community. . . . Many of the so-called rules of legal ethics were really rules of etiquette designed more to keep the group congenial than to benefit the public. The mid-twentieth century legal profession resembles its ancestor only in romantic fancy.

*Zemroth, supra* note 39, at 968.


to effectuate a basic public interest." The profession was totally unprepared for this pronouncement. Although the American Bar Association, forty-four state and four local bar associations petitioned the Supreme Court to reconsider its decision, the petition was denied.

Following Trainmen, the group legal service controversy intensified. In 1964, the State Bar of California Group Legal Services Committee released its report which specifically endorsed group legal services, subject to appropriate restrictions, and recommended that the California rules of professional conduct be amended to permit the operation of such plans. The following year, the House of Delegates of the American Bar Association adopted a resolution which recognized that the profession had a duty to "develop more effective means for assuring that legal services are in fact available at reasonable cost for all who need them."

In 1967, the Supreme Court in United Mine Workers v. Illinois State Bar Association, agreed to consider whether the Button and Brotherhood principles extended to an arrangement by which a labor union could provide the services of a salaried attorney to assist individual members with their workmen's compensation claims. The Court held that "the freedom of speech, assembly, and petition guaranteed by the First and Fourteenth Amendments gives petitioner the right to hire attorneys on a salary basis to assist its members in the assertion of their legal rights." Although there was a shift in the profession's perception

45. Brotherhood, 377 U.S. at 7.
48. The Committee recommended an increase in the permissible forms of group legal service plans and concluded that the public interest required that such plans not be limited to particular types of non-profit associations. The report suggested that the following restrictions be imposed:

(1) A group which undertakes to provide legal services cannot be organized solely for this purpose; (2) There may be no group control over the attorney in areas usually reserved for the attorney and client; (3) There may be no direct or indirect kick-backs between the attorney and the group; (4) There must be scrupulous observance of the conflicting interest rules; (5) Limitations are imposed upon the methods of publicizing the attorney and his availability.

Schwartz, supra note 44, at 297.
49. The Committee's recommendation that the California Rules of Professional Conduct be amended was not followed. See Christensen, supra note 5, at 228 n.7.
52. Id. at 221-22.
of its responsibility after the decision, there was still considerable resistance on the part of the organized bar. That resistance brought the case of United Transportation Union v. The State Bar of Michigan to the Supreme Court. The Court held:

The common thread running through our decisions in NAACP v. Button, Trainmen, and United Mine Workers is that collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment. However, that right would be a hollow promise if courts could deny associations of workers or others the means of enabling their members to meet the cost of legal representation.

Although these decisions apparently have compelled the profession to fulfill its primary function of providing legal services to all who need them, the profession knows very little about that need. Existing surveys have limited utility and are outdated. Even though the profession lacks actuarial data to prove the existence of the gap between “need” and “satisfaction,” the extensive “unauthorized practice” litigation clearly dramatizes the necessity for legal services. It is more important to understand the conditions which create the unmet need, and a review of several

53. In 1969, the California State Bar considered and adopted rule changes which would permit the operation of group legal services under certain limited conditions and subject to specific safeguards. Christensen, supra note 5, at 228. For additional comment see Moscone & Reed, The Legal Profession on Trial — Group Legal Services, 2 Loyola U. of L. A. L. Rev. 12 (1969).


56. ABA Spec. Rep., supra note 12, at 5. The following private surveys are representative of the statistical information available to the bar:

1. Clerical-Worker Members of New York District of American Federation of State, County and Municipal Employees (1972) 89% would use a lawyer if available through the union

2. Prentice-Hall Survey—The Missouri Bar (1968-69) (professional survey of 2,500 Missouri residents) 64% had used a lawyer at one time or another in their lifetime

3. The Koos Survey (1952) 41.6% of middle-class families in larger cities reported having had a legal problem within the previous twelve months

4. Fireman’s Fund (California) 21-35% of population “believe legal insurance would fulfill a valuable economic function”
group programs may furnish us with a greater appreciation of these conditions.

MEMBERSHIP PROGRAMS PROVIDING GROUP LEGAL SERVICES—OPEN PANEL

Legal service programs which allow completely free selection of attorneys by potential clients are generally referred to as open panel plans. The following is a review of some of these plans.

The Shreveport Experiment

The Shreveport program came into existence after two years of intensive planning on the part of the American, Louisiana and Shreveport Bar Associations. The plan was a reimbursement arrangement whereby eligible members of a union local of unskilled laborers made advance payments of two cents per hour

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5. University of Michigan, Center for Research on Social Organization (1967) (Detroit SMSA) 74% of $7,000-$14,999 income bracket had sought a lawyer's advice. Of this group who had seen a lawyer, 46% had a problem with buying, selling or building a house; 16% concerned a will; 17% an estate; 16% business; 19% an insurance claim; 13% domestic relations; 13% contract; 6% tax; 5% traffic ticket; 4% neighborhood; 4% crime; 2% employer-employee; 2% landlord-tenant.


ABA Compilation of Reference Materials on Prepaid Legal Services, Surveys Section (Dec. 1973). The ABA has done a national survey to determine both legal needs and present utilization; however, the results are not yet available.

Some experts in this area feel that determining need and utilization to formulate an insurance risk factor is not facing the critical issue because legal care for the middle class is "more a plan for prepaying or budgeting the expense of legal services than it is a device for pooling the risk of heavy loss through insurance." Stolz, supra note 18, at 422. See Christensen, supra note 5, at 66; Brickman, Expansion of the Lawyering Process Through New Delivery System: The Emergence and State of Legal Paraprofessionalism, 71 COLUM. L. REV. 1153, 1165-69 (1971).

Another position is attractively simple: you know there is need that that's enough! Christensen, supra note 5, at 18-20.

57. Shreveport was selected by the ABA because the state insurance commissioner was willing to cooperate, the local bar association was interested, and there was a ready-made group of potential recipients available. Yancey, The Shreveport Experiment in Group Legal Services, 44 PA. BAR ASS'N Q. 236 (1971) [hereinafter cited as Yancey].

58. The following is a statistical profile of the union members using the Shreveport Plan:

Sample: 600 members of Laborer's International Union of North American, Local 339.

Race:
Black - 98.2%
to the Shreveport Legal Service Corporation. These contributions were supplemented by the American Bar Association and the Ford Foundation grants.

Eligible members and their dependents were entitled to program benefits which included advice, consultation, office work, and representation in judicial and administrative proceedings, as well as out-of-pocket expenses and costs. The plan allowed $100 per year, per family for consultative services not to exceed $25 per visit. If the initial consultation disclosed that the member or his dependent needed additional work such as drafting of documents, research, conferences or negotiations, the plan provided for maximum family benefits of $250 per year. If a lawyer represented a member in a judicial or administrative proceeding, the program allowed $325 for the preparation and filing of pleadings and briefs, and attendance at hearings; up to $40 for court costs and witness fees; and $150 for such expenses as depositions and long distance telephone calls. If the member was the moving party, he must have made an initial payment of $25 before the above benefits become available. When the covered member was either a defendant or respondent, he was entitled to the above litigation benefits plus eighty percent of the next $1,000 of expenses subject to certain exclusions.

Family unit usage has remained constant at approximately fourteen percent or better. When this percentage of usage is compared to early statistical data which suggested that members went to lawyers only as a last resort, and then only for the better-

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White - 1.8%
Median age: 49
Median education: 6th grade
Marital status: 87% presently married
Median number of dependents per respondent: between 2 & 3
Median family income: $4,000.00

PLI, PRE-PAID LEGAL PLANS 54, exhibit 6 (1973) [hereinafter cited as PLI PLANS].


60. Eligible dependents are an eligible employee's lawful wife and each unmarried child who has not reached his 19th birthday. Shreveport Bar Association Construction and General Laborers Local Union 229 Prepaid Legal Service Plan, Section IV at 15, and Section V at 20 [hereinafter cited as Shreveport Plan].

61. Shreveport Plan, supra note 60, at 1-19.

62. PLI, PRE-PAID LEGAL PLANS 2d, 17 (1974) [hereinafter cited as PLI PLANS 2d], discloses the following significant data on the Shreveport operation:
known legal services, the results are certainly not disappointing. Moreover, the successfulness of the program was reflected in the union's decision to continue to provide legal service to its mem-

SHREVEPORT PLAN
SUMMARY

January 1971 - January 1974

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<th>1972</th>
<th>1973</th>
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CATEGORIES OF CASES

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<tr>
<td>(K) Real Property</td>
<td>(13)</td>
<td>12%</td>
<td>(6)</td>
<td>8%</td>
</tr>
<tr>
<td>(L) General Contract Problems</td>
<td>---</td>
<td>(1)</td>
<td>1%</td>
<td>--- (1)</td>
</tr>
<tr>
<td>(M) Insurance (other than auto)</td>
<td>(1)</td>
<td>1%</td>
<td>(1)</td>
<td>1%</td>
</tr>
<tr>
<td>(N) Administrative Law</td>
<td>---</td>
<td>(1)</td>
<td>1%</td>
<td>--- (1)</td>
</tr>
<tr>
<td>(O) Other (Profit Sharing)</td>
<td>---</td>
<td>(1)</td>
<td>1%</td>
<td>--- (1)</td>
</tr>
<tr>
<td>(P) Unknown</td>
<td>(2)</td>
<td>2%</td>
<td>---</td>
<td>--- (2)</td>
</tr>
<tr>
<td>(108)</td>
<td>100%</td>
<td>(76)</td>
<td>100% (80)</td>
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CATEGORIES OF USERS

<table>
<thead>
<tr>
<th></th>
<th>1971</th>
<th>1972</th>
<th>1973</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A) Male Members</td>
<td>(66)</td>
<td>61%</td>
<td>(68)</td>
</tr>
<tr>
<td>(B) Female Members</td>
<td>(30)</td>
<td>28%</td>
<td>(1)</td>
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<tr>
<td>(C) Male Dependents</td>
<td>(4)</td>
<td>4%</td>
<td>(1)</td>
</tr>
<tr>
<td>(D) Female Dependents</td>
<td>(8)</td>
<td>7%</td>
<td>(6)</td>
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CATEGORIES OF BENEFITS

<table>
<thead>
<tr>
<th></th>
<th>1971</th>
<th>1972</th>
<th>1973</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A) Advice and Consultation</td>
<td>($ 175)</td>
<td>3%</td>
<td>($ 75)</td>
</tr>
<tr>
<td>(B) Office Work</td>
<td>($1,425)</td>
<td>22%</td>
<td>($3,754)</td>
</tr>
<tr>
<td>(C) Judicial/Administrative Proceedings</td>
<td>($4,760)</td>
<td>75%</td>
<td>($8,310)</td>
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<tr>
<td>(D) Major Legal</td>
<td>---</td>
<td>(3%</td>
<td>($2,946)</td>
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63. ABA, REVISED HANDBOOK ON PREPAID LEGAL SERVICES 254 (1972).
bers through this open panel plan even after the termination of the experimental program in January 1974.°

The California Plan

In 1971, the Board of Governors of the California State Bar Association charged an ad hoc committee with determining whether and to what extent the State Bar should be involved in the development of prepaid programs, and with developing a model program if appropriate. The Committee recommended that the State Bar promptly initiate a professionally sponsored program of prepaid legal services.°° The Board of Governors adopted the Committee's recommendation. With ABA support, the Board polled its membership and discovered that seventy percent of those who responded expressed a desire to participate. With this backing, the Association introduced and obtained the passage of legislation that authorized a not-for-profit-legal service corporation managed by a board of at least nine directors aided by an advisory committee and staff.°°° All attorneys who are active members of the State Bar, maintain adequate malpractice coverage, agree to participate in this program as distinct from any other program for a period of not less than one year, pay the initial enrollment fee, and abide by the plan's regulations, are eligible to participate.°°°°

The plan's primary purpose is to assist individuals in obtaining legal services. The plan does not indemnify the covered member for the cost of those services furnished by either the participating or non-participating attorney.°°°°° Individuals can select from one of seven programs. The basic program provides for a specific number of hours for consultation and advice. The second and third supplement the basic program by committing the attorney to perform additional legal work at either a set hourly rate or a scheduled rate; however, the participant must pay for the

64. Remarks by Henry A. Politz, Esq., during PLI Pre-paid Plans Seminar, New York City on November 21, 1974.
65. REPORT OF THE AD HOC COMMITTEE RE PREPAID LEGAL COST INSURANCE TO THE BOARD OF GOVERNORS OF THE CALIFORNIA BAR ASSOCIATION 5 (Sept. 1971) [hereinafter cited as AD HOC REP.].
66. Id. at 26.
67. Id. at 35-37.
68. Id. at 37-38. One of the plan's regulations will require the participating attorney to look only to the plan's fund, perhaps on a pro-rata basis, for payment of covered services. The proposed by-laws authorize the Board of Directors to assess the membership a charge not in excess of $50.00 per year in the event that the corporation requires additional funds.
69. Id. at 34-35.
additional services. The fourth program joins the basic program with a number of services that will be performed at a fixed rate. The fifth adds the basic coverage to an unlimited amount of additional work at a fixed rate. The sixth program joins the basic coverage and the participating attorney’s commitment under the second and third with the provision that the plan will pay eighty percent of all billings for the additional legal services up to but not exceeding $1,000. The seventh program is similar to the sixth but extends payment to include eighty percent of all costs that are not included under the basic and the fourth plans. The California plan excludes those services for which other sources of payment are normally available, such as contingent fee cases; matters against public policy such as the payment of fines and penalties; services more economically performed by non-lawyers; and matters too expensive for the plan to handle and too uncertain actuarially to justify the risk.\(^\text{70}\)

The designers projected these funding requirements: an initial cash distribution of $50,000, plus funds for office space and materials. The planners estimated that during the first year of operation, the program would require an additional $350,000. The State Bar was identified as the source for start-up expenses, and foundations and enrollment fees were to provide for on-going administrative costs.\(^\text{71}\)

The California program is not yet operational. On March 22, 1973, the California Lawyer’s Service requested that the United States Department of Justice issue a business review letter concerning the antitrust implications of its program. This request was subsequently revised March 5, 1974. Although the Department recognized that prepaid legal service programs are an “important development” in the delivery of legal services, it found that the Bar’s retention of control over the program, even during its initial three-year stage, would create “serious competitive risks”. Further, the Department found that the California disciplinary rules’ discrimination between open and closed panel programs and their prohibition against advertising and solicitation were anticompetitive in nature. The Department observed that

\(^{70}\) *Id.* at 40-42; PLI PLANS, *supra* note 58, at 235, 258-62.

\(^{71}\) AD HOC REP., *supra* note 65, at 40.

The IRS recently gave a “Tentatively Unfavorable” Ruling to the California Lawyers’ Service. That Service had hoped to fund its scientific and educational work in support of prepaid legal services through donations. Such donations are tax deductible by the donor, only if they qualify as business expenses. Randolph, *What Bars Should Consider in Prepaid Legal Services Plans*, 60 A.B.A.J. 797 (1974).
it would consider a favorable business review letter if these and other anti-competitive features in the plan were eliminated.

During the marketing of the plan before the Justice Department letter, many groups expressed interest, but there were no real buyers. Many explanations could be offered to explain this lack of success, but clearly not that it was monopolistic in the economic sense, as suggested by the Justice Department.

Other Bar-Sponsored Programs

(1) The New Jersey "Blues".

The New Jersey State Bar Association elected to sponsor a prepaid legal service insurance program administered under the auspices of the State's Blue Cross Organization. The plan will be operated by a corporation having no special interest except customer service. The program will pay the "usual and customary fees" so that lawyers can bill on the basis of normal charges. However, the corporation will impose an undisclosed ceiling on the fees that it will pay. If an attorney's statement exceeds that ceiling, the governing body will inform the attorney that his bill exceeds the maximum permissible payment and request a reconsideration. If the attorney refuses to reconsider, he will be removed from the panel of participating attorneys.

(2) The Philadelphia Plan—INA. The Philadelphia Bar Association and the Insurance Company of North America have developed a program which was approved by the Insurance Commissioner of Pennsylvania, in November, 1974. This pilot program contemplates spreading cost through group participation in the form of monthly prepayments. The program is geared for

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72. Another possible anticompetitive feature is the proposed fee schedule which binds all participating attorneys. The fee schedule is based on data from other schedules used in California. The schedule establishes only the relative value of the fee expressed in units of service. The dollar value will be determined by actual operating experience. PLI PLANS, supra note 58, at 191-92, and AD HOC REPORT, supra note 65, at 42.

73. The Department's comments were contained in a letter from Thomas E. Kauper to Peter F. Sloss, Esq., dated August 5, 1974. PLI PLANS 2D, supra note 62, at 119-26. For a fuller discussion of the antitrust problems in prepaid legal plans, see Applying the Sherman Act to the Restrictive Practices of the Legal Profession, 34 MD. L. REV. (1975).

74. ABA, SPEC. REP., supra note 12, at 13, col. 1. See also remarks of Emanuel A. Honig, A Bar Sponsored Program in Conjunction with a Blue Cross Organization, TRANSCRIPT OF PROCEEDINGS: NATIONAL CONFERENCE ON PREPAID SERVICES 105 (April 27-29, 1972) [hereinafter cited as Honig, TRANSCRIPT OF PROCEEDINGS].

75. ABA SPEC. REP., supra note 12, at 13, col. 1.

middle income groups and individual employee groups. It will provide two basic coverages: litigation and preventive legal assistance in the form of document preparation and consultation. Litigation benefits include the defense of criminal actions and those civil actions not covered by other insurance programs. The program excludes class actions, claims that are normally covered by contingent fee arrangements, and other standard exclusions. The preventive legal program provides for a specific number of consultations and document preparation sessions. The program covers the insured, his dependent relatives who live with him, and dependent children up to the age of twenty-one regardless of where they reside. The insured is free to select his own lawyer. The Association and INA have not yet resolved the question of coverage where there are conflicting claims between the insured and members of the household.77

(3) The Monroe County, New York, Plan. The New York State Bar Association has been studying various insured plans which will provide litigation and preventive law benefits.78 As a result of this work, in February, 1973, the Monroe County Bar Association adopted a legal service plan administered solely by a not-for-profit corporation. Although the plan will not regulate hourly fees, it will impose ceilings on the maximum dollar benefits payable in any one year. The plan grants a basic consultation benefit and a litigation benefit. If the covered member is the initiating party, the schedule of benefits is subject to $50 deductible. The plan contains the standard exclusions and does not include such services as preparation of tax returns or estate administration fees and expenses. The designers purposely limited the flexibility of this program in order to provide coverage for all countians. However, the program will permit an increased coverage when the corporation has acquired more actuarial data on items such as use versus non-use and average claims paid.79

Summary

As the above plans illustrate, bar-sponsored programs, including those funded through commercial insurance carriers,80

78. Gasperini & Schorr, Prepaid Group Legal Services -- Where We Are, 45 N.Y. St. B.J. 69, 70-71 (1973).
80. There is considerable disagreement about the definition of "legal insurance,"
generally provide both preventive-consultation benefits and litigation benefits subject to standard exclusions. These open panel programs encourage the free selection of lawyers; however,

and the manner in which it should be regulated. A model act has been proposed by the National Association of Insurance Commissioners which contains a broad definition of the term legal insurance:

"Legal insurance" means the assumption of a contractual obligation to provide specified legal services or reimbursement for legal expenses in consideration of a specified payment for an interval of time, regardless of whether the payment is made by the beneficiaries individually or by a third person for them, in such a manner that the total cost incurred by assuming the obligation is to be spread directly or indirectly among a group of persons. . . .

PLI PLANS 2d, supra note 62, at 226-27.

Insurance programs have been heavily criticized because they can only indemnify, and cannot offer any assistance in lawyer identification or selection. Nor do such programs provide any assurance as to what portion of the lawyer's fee will be paid. These uncertainties have been considered real barriers to greater use of lawyers by people of moderate means. See Foster, TRANSCRIPT OF PROCEEDINGS, supra note 18 at 111-17; Jaworski, The Responsibility of the Legal Profession to Provide Legal Services, 44 Pa. Bar Ass'n Q. 231 (1973); TRANSCRIPT OF PROCEEDINGS: NATIONAL CONFERENCE ON PREPAID LEGAL SERVICES 1 (April 27-29, 1972); Schloss, The California Prepaid Legal Services Program, 44 Pa. B. Ass'n Q. 241 (1973); STOLTZ, supra note 18; Van Pelt, TRANSCRIPT OF PROCEEDINGS, supra note 18, at 143-63. As of March, 1975, five companies have been authorized by the Maryland Insurance Commission to offer prepaid legal insurance programs.

81. In February, 1974, the House of Delegates of the American Bar Association adopted Ethical Consideration 2-33 which states the ABA's reasons for favoring the open plans:

EC 2-33 Several Supreme Court decisions apparently give Constitutional protection to certain organizations which furnish certain legal services to their members under legal service plans which do not provide free choice in the selection of attorneys. The basic tenets of the profession, according to EC 1-1 are independence, integrity and competence of the lawyer and total devotion to the interests of the client. There is substantial danger that lawyers rendering services under legal service plans which do not permit the beneficiaries to select their own attorneys will not be able to meet these standards. The independence of the lawyer may be seriously affected by the fact that he is employed by the group and by virtue of that employment cannot give his full devotion to the interest of the member he represents. The group which employs the attorney will inevitably have the characteristic of a "lay intermediary" because of its control over the attorney inherent in the employment relationship. It is probably that attorneys employed by groups will be directed as to what cases they may handle and in the manner in which they handle the cases referred to them. It is also possible that the standards of the profession and quality of legal service to the public will suffer because consideration for economy rather than experience and competence will determine the attorneys to be employed by the group. An attorney interested in maintaining the historic traditions of the profession and preserving the function of a lawyer as a trusted and independent advisor to individual members of society should carefully consider the risks involved before accepting employment by groups under plans which do not provide their members with a free choice of counsel.

However, in February, 1975, the ABA revised the Houston version of EC 2-33 by adopting an EC 2-33 which, while reaffirming the ABA's traditional stance on a lawyer's independence, would seem to give some endorsement to a lawyer's participation in closed plans:

Ethical Consideration
members are given little if any assistance in lawyer selection. Participants are left to their own devices or are permitted to "let their fingers do the walking" in the yellow pages. While some programs attempt to place acceptable controls on fees, a number allow the lawyer and the client wide latitude in negotiating fees. Open panel programs do not impose any form of quality control on participating attorneys and do not furnish specialty services. While bar-sponsored open panel programs can be criticized for these shortcomings, they represent a vital and valuable alternative to closed panel programs sponsored by unions and large membership groups.

Membership Programs Providing Group Legal Services—Closed Panel

In closed panel programs, client members are limited in their selection of an attorney to one or more attorneys employed or retained by the group. Generally speaking, the legal profession has judged harshly some consumer-designed programs serviced

EC 2-33 As a part of the legal profession's commitment to the principle that high quality legal services should be available to all, attorneys are encouraged to cooperate with qualified legal assistance organizations providing pre-paid legal services. Such participation should at all times be in accordance with the basic tenets of the profession: independence, integrity, competence and devotion to the interests of individual clients. An attorney so participating should make certain that his relationship with a qualified legal assistance organization in no way interferes with his independent, professional representation of the interests of the individual client. An attorney should avoid situations in which officials of the organization who are not lawyers attempt to direct attorneys concerning the manner in which legal services are performed for individual members, and should also avoid situations in which considerations of economy are given undue weight in determining the attorneys employed by an organization or the legal services to be performed for the member or beneficiary rather than competence and quality of service. An attorney interested in maintaining the historic traditions of the profession and preserving the function of a lawyer as a trusted and independent advisor to individual members of society should carefully assess such factors when accepting employment by, or otherwise participating in, a particular qualified legal assistance organization, and while so participating should adhere to the highest professional standards of effort and competence.

82. This problem was recognized in the following remarks concerning insurance-funded programs at the National Conference on Prepaid Legal Services in Washington, D.C., in 1972:

I hasten to acknowledge, however, as many others have previously asserted, that such an open plan will not be adequate unless we provide a better method to help clients identify which lawyers have the competence and special expertise to serve their particular needs. The Yellow Pages and word of mouth recommendations are no longer viable ways to help the average person find good lawyers. Honig, Transcript of Proceedings, supra note 74, at 106.

83. But while the legal profession may judge closed panel plans harshly, a provision tucked away in the Employee Retirement Income Security Act (Pension Reform Act),
by preselected attorneys. A review of several of these programs may show whether they deserve the opprobrium cast on them.

The Amalgamated Clothing Worker, (ACW) Chicago, Plan

This plan resulted from an ACW social service program study which disclosed that approximately one-third of all its caseload involved legal or quasi-legal problems. The plan, which went into operation in April, 1972, with an enrollment of 7,000, operates in conjunction with the ACW Social Services Department. The Department screens all requests for assistance to insure that only those cases requiring legal skills are referred to a group of attorneys retained by the plan. Participating members who elect to utilize this program are not free to select their own attorney and must use one of the lawyers hired by the ACW if they want the benefits of the plan.44

The ACW plan is funded by its members’ voluntary payroll contributions channeled into an existing supplementary insurance fund. Relying upon its experience with other social insurance programs, the ACW projected an initial enrollment of 8,000 to 9,000 members, each paying fifty cents per month. Such an enrollment was expected to yield between $48,000 to $54,000 per year.85 Since ACW funds were limited, the program was restricted to such coverages as consumer transactions, domestic relations, and wills. The plan specifically excluded coverage for criminal matters (including traffic violations), collection suits for plaintiffs, paternity cases, commercial or income-producing realty matters, appellate proceedings, contested adoption matters, plaintiff personal injury claims, workmen’s compensation claims, and proceedings for deportation or change of status arising under

Pub. L. No. 93-406; 88 Stat. 829 (1974) forbids the bar from interfering with certain closed plans. The Senate “staged” legislative history to make its intent clear. As Senator Jacob Javits stated:

Since the plans subject to Federal supervision would include plans providing prepaid legal services, it is intended that State regulation—but not bar association ethical rules, guidelines or disciplinary actions—in regard to such plans be preempted. But the State, directly or indirectly through the bar, is preempted from regulating the form and content of a legal service plan, for example, open versus closed panels, in the guise of disciplinary or ethical rules or proceedings. 120 CONG. REC. 15758 (daily ed. Aug. 22, 1974).

84. ABA, SPEC. REP., supra note 12, at 6-7. See also, Finley, The Amalgamated Clothing Workers Plan, INST. OF IND. REL., TRANSCRIPT OF PROCEEDINGS: PREPAID LEGAL SERVICES 15 (U. OF CAL., NOV. 12-13, 1971).
85. Id.
the immigration laws. Members must pay all out-of-pocket costs and filing fees. The service is available to all active union members; however, dependents of covered members must make their own arrangements for representation except for the preparation of joint or mutual wills and suits filed under the family expense statute which could give rise to a judgment against the husband and the wife for family purchases.

Laborers, Local 423, Columbus, Ohio

This union local launched a comprehensive legal service program for its approximately 2,600 members in March, 1972. It is funded by a ten cents an hour dues check-off and is staffed with four attorneys who are employed by the local. Originally, the plan provided three basic benefits: advice and consultation, representation in workmen's and unemployment compensation cases, and eighty hours of legal services in all other matters arising within the jurisdiction of Local 423. Originally there were limitations on certain legal services; however, programatic changes have reduced many of these.

The following services are excluded: any business venture; and any judicial or administrative proceedings against another eligible member; an employer party to a collective bargaining agreement with Local 423, the plan or any employee or agent of the plan, the local or any of its health, welfare, pension or other fringe benefit program. The program contains a grievance proce-

86. ABA Spec. Ref., supra note 12, at 21-23.
87. Id.
88. Id.
89. Laborers' Local 423 Legal Service, 1972, (Pamphlet issued by Laborers' Local 423, 71 East State Street, Columbus, Ohio) [hereinafter cited as Ohio Laborers' Pamphlet].
91. Real estate matters are limited to legal services invoking a member's residence. Once service has been undertaken on behalf of a dependent spouse in divorce and separation matters, the member is not eligible for assistance. Each member is entitled to representation in one juvenile matter each calendar year for each of his minor children. Bail or collateral is available to an eligible member or dependent, in an amount not in excess of $500. Felony cases are handled only through the indictment. Ohio Laborers' Pamphlet, supra note 89, at 7-8.
92. The geographical coverage has been expanded to include any county where Local 423 has jurisdiction or where the covered member resides and passes to and from work. Bail or collateral is now available to an eligible member or dependent up to $1,000. Felony cases are handled through the appellate process; property damage claims in an amount not exceeding $5,000 are covered; and filing fees and court costs are paid by the plan. PLI Plans 2d, supra note 62, at 53.
93. Ohio Laborers' Pamphlet, supra note 89, at 8-9.
dure whereby members dissatisfied with the operation of the plan may complain to an advisory committee composed of bar, law school faculty, and community members. The chairman of the advisory committee is authorized to appoint a three-person panel to both investigate complaints and make specific recommendations. The report is then reviewed by the advisory committee and forwarded with appropriate recommendations to the Executive Board of the Local for final disposition. If the covered member is dissatisfied with the final ruling, he may submit his complaint to binding arbitration.  

From a developmental viewpoint, the most significant change in the structure of the plan has been the Laborers’ International Union—College of Law Group Legal Services Clinical Teaching Project. This project involves the employment by the Union of an attorney who will have the rank of Adjunct Professor at the Ohio State University College of Law. The attorney-adjunct will act as a special litigation attorney and be involved in clinical teaching of law students. Students will work on selected cases and also work in the Legal Center under the supervision of the attorney-adjunct and other staff attorneys to learn interviewing, counseling and investigative techniques.  

Laborers’ District Council of Washington, D.C. and Vicinity  

This program, funded by a four cents per hour dues check-off, is supervised by a steering committee composed of representatives from each participating local union and the Laborers’ District Council. The committee hires the Director of Legal Services who, in turn, hires all staff attorneys and administrative personnel. The plan provides two basic benefits: advice and

94. Id. at 9-11.  
95. PLI PLANS 2d, supra note 62, at 57-64.  
98. The initial program included legal advice and consultation, thirty hours of legal services in any three matters or proceedings, and some court or administrative costs and expenses. Members were required to consent to legal services for a dependent where there was any likelihood of a conflict of interest between the member and the dependent. Unavailable services included any business venture or other matter which would qualify for federal income tax purposes as a business expense; contingent fee matters and matters in which legal representation is furnished through insurance coverage; payment of fines
consultation, and limited representation in litigation matters. All plan members and their dependents qualify for advice and consultation services. Only retired members (and their dependents), and members who have worked for no less than 275 hours in any two of the three previous calendar quarters (and their dependents) qualify for both benefits.99

Unlike the plans discussed earlier, this plan possesses characteristics of both a closed and open panel. The plan is closed in Washington, D.C., and vicinity. Since the union's geographical jurisdiction includes the five southern Maryland counties, the entire state of Virginia, some areas of West Virginia and parts of New Jersey, Pennsylvania and North Carolina, staff attorneys cannot furnish adequate representation in all areas. The Director has honored, at least for the present, requests for individual counsel in those areas that cannot be effectively serviced by staff attorneys. However, if the member needs referral assistance, the Director will make direct referrals in those areas.100

The success of this plan, as reflected in its increased utilization,101 is due, perhaps, to the combination of open and closed panel characteristics. This could be seen as a demonstration that there is no one best approach to serve all groups in all circumstances.

Discussion of Open and Closed Programs

While the organized bar has very little reliable data on the or penalties; court appearances in connection with claims of less than $300; payment of the first $15 of filing fees; collections on behalf of members; court costs in excess of $50 in any domestic relations matter; any criminal matter other than traffic cases; and, matters involving any of the following as adverse parties: an eligible member of dependent; the plan or any employee of the plan; any labor union or its officers, agents or employees; any fringe benefit program in which any labor union participates or has an interest; and, any employer party to a collective bargaining agreement with a participating local of this union. Id. at 6-7. The contingent fee and criminal law exclusion have been eliminated. Remarks, Richard Scupi, Esq., Director, Laborers' District Council Legal Services Plan, at PLI Pre-Paid Legal Plans Seminar, New York, November 21, 1974.

In 1973, there were five significant changes in this plan. Each member is now entitled to thirty hours of legal services, and the three matters or proceedings limitation has been eliminated. Representation in court proceedings involving real estate is limited to the member's residence. The financial limitation on court appearances in connection with claims of less than $300 has been lowered to $200. Collection work on behalf of an eligible member or dependent is now authorized. The court-cost restrictions which formerly applied to domestic relations matters now apply to divorce, separation, name changes and bankruptcy. Most recently, the fee-generating case exclusion has been eliminated. D.C. LABORERS' PAMPHLET, supra note 92, at 4-6.

99. Id. at 4-5.
100. Interview with Richard Scupi, Esq., and Arnold L. Yochelson, Esq., supra note 96.
101. The following chart is taken from PLI PLANS 2d, supra note 62, at 77:
number of plans in operation, there are probably group programs operating in all fifty states. The plans probably vary from the sophisticated, like those discussed above, to informal unwritten understandings that the organized bar has accepted.102 Undoubt-

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### LEGAL SERVICES PLAN, Laborers' District Council of Washington, D.C. & Vicinity

Legal Matters Handled June 1, 1973 thru August 30, 1974

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| New Families Served | 190 187 211 212 206 1006 74% |
| Previous Families Served | 10 42 62 94 138 346 26% |

| Cases Closed During Quarter | 58 158 174 226 281 897 |
| Cases Pending at End of Quarter | 121 213 270 336 414 |

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102. For other group arrangements not discussed in this article, see Debuse, Private Plans Allowing Free Choice of Attorney: American Legal Aid, Inc., TRANSCRIPT OF PRO-
edly, the profession will learn more about operation of plans as bar associations develop other non-traditional methods for the delivery of legal services to all segments of the American public.

NEW DEVELOPMENTS

The amendment to the Taft-Hartley Act authorizing jointly trusteesed funds for the purpose of defraying the cost of legal services to employees guarantees the future of labor's legal service programs. Although the National Labor Relations Board...
(NLRB) has not yet ruled on whether this exception is a mandatory bargaining subject, earlier rulings on other exceptions strongly suggest that the NLRB and the courts will find that this exception is mandatory.\textsuperscript{106}

The Employee Retirement Income Security Act of September 2, 1974,\textsuperscript{107} is the most recent legislation affecting the development of group programs. Section 514(a) of that Act provides in part, that subject to the exception found in subsection (b) thereof, the provisions of the Act “shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan . . . .”\textsuperscript{108}

The development of prepaid programs will be delayed until several tax questions are resolved. While employer contributions to jointly trusteed funds are clearly deductible by the employer,\textsuperscript{109} it is equally certain that the Internal Revenue Service will characterize such benefits as gross income to the employee.\textsuperscript{110} Another problem is the tax status of jointly trusteed funds. Section 501 (c)(9) of the Internal Revenue Code grants tax-exempt status to voluntary employee beneficiary associations that provide “for the payment of life, sick, accident, or other benefits to the members of such associations or their dependents.” The Service’s “sufficiently similar” test and relevant case law indicate that this test will limit the interpretation of “other benefits” to accident benefits.\textsuperscript{111}

Congress has expressed considerable interest in the delivery of legal services. A new subcommittee, the Subcommittee on Representation of Citizen Interests, of the Committee on the Judiciary has been examining and evaluating existing methods of

\textsuperscript{106} See Bartosic & Bernstein, supra note 10, at 441-44.
\textsuperscript{108} Id.
\textsuperscript{109} INT. REV. CODE OF 1954, §162(a) (1).
\textsuperscript{110} INT. REV. CODE OF 1954, §61(a)(1); Treas. Reg. §1.62-2(d)(1) (1966). Representative Joseph Karth has recently introduced H.R. 3025 (94th. Cong., 1st Sess.) to amend INT. REV. CODE OF 1954, §§105 and 106, which provides that (a) the amounts paid as the employer’s contribution not be counted as income to the employee, and (b) the amount of benefit in excess of the employee’s contribution to the plan should not be counted as income.

The underlying premise of this bill is the analogy of medical insurance, with which §§105 and 106 deal. However, an admitted weakness in this analogy is that while medical expenses above a certain amount are deductible by everyone, legal expenses, with the exceptions of tax preparation and business legal expenses, are not. The effect of this bill would be to allow members of prepaid plans to deduct a part of their personal legal expenses.

\textsuperscript{111} 1958-2 Cum. Bull. 194 and 195. The Internal Revenue Service is considering a draft regulation which would exempt the jointly trusteed entity which pays out legal services benefits. There is no indication of when that regulation will be published.
furnishing legal services to all Americans, legal costs as they affect citizen access, and ways to increase use of the profession’s services. The hearings clearly indicate that the profession must encourage the development of new delivery systems to meet the legitimate needs of all segments of our society, by exploring, developing, and implementing business practices that will allow the profession to deliver its services in an economical manner, and by removing any barrier which prevents or hinders the public from obtaining information about where to go to get legal services and how much they will cost.

Consumer groups are also showing greater interest in the quality, efficiency, and costs of legal services. One such group is the National Consumer Center for Legal Services which is made up of labor, consumer, civil rights, student, farmer, church, and community service groups. This organization seeks to provide low and middle income Americans with access to effective legal representation through group prepaid programs. It is also working for the repeal of legal obstacles which inhibit the growth of such services. Finally, it is mobilizing consumer purchasing power to insure that prepaid systems deliver quality services at the lowest possible price.

PROPOSED MODIFICATIONS OF TWO DISCIPLINARY RULES

The use of legal services is growing through union and other membership group programs. Group interest, as well as the organizational structure, facilitate the dissemination of information concerning where to go, what services are offered, and what they will cost. They are not hindered by formal rules which prevent this flow of information. Perhaps it is appropriate to ask whether the bar’s criticism of such programs is truly justified when the profession itself has made so little effort to help the public locate appropriate counsel.

The American Bar Association adopted several controversial amendments to the Code of Professional Responsibility (com-

113. The Effect of Legal Fees on the Adequacy of Representation, 1973. Hearings before the Senate Subcomm. on Representation of Citizen Interest, Comm. on the Judiciary. This two volume work consists of four parts:
1. Consumer access to representation, minimum fee schedules.
2. Government regulation and subsidy of legal fees.
3. Court awards of attorney fees to prevailing parties in litigation.
4. Public Comments.
monly known as the Houston amendments) which in effect ne-
gated significant efforts made by the ABA leadership, prominent union leaders, and scores of dedicated bar associations, to solve the overall problem of making lawyers available.\textsuperscript{115}

Disciplinary Rule 2-101, as amended during the 1974 and 1975 mid-winter ABA meetings, still assumes that lawyers are clearly visible.\textsuperscript{116} The new disciplinary rule allows a qualified legal assistance organization to advertise its legal services, but individual lawyers are denied this privilege. The recent modifications of this rule suggest that the profession is frightened by the prospect of relaxing the traditional restrictions on publicity. If it is com-
mitted to making legal counsel available to the public, then its ethical considerations and disciplinary rules should be designed to encourage the free flow of information concerning lawyers, the law, and costs. These rules can include appropriate restrictions to avoid the "evils" connected with advertising and solicitation. There is no need or reason to prohibit all efforts to make the availability of lawyers and their services more widely known.\textsuperscript{117} A more flexible standard would increase the profession's visibility without diminishing its stature, and would aid it in meeting the legitimate consumer need to locate competent service.

The professional employment rule, Disciplinary Rule 2-
103,\textsuperscript{118} fails to address several serious problems. The rule contin-
ues the prohibition against a lawyer's requesting a person or or-

\textsuperscript{115} DR 2-101, 103, 104, ABA Code of Professional Responsibility.

\textsuperscript{116} In February, 1975 further revisions of these Disciplinary Rules were adopted, see notes 16 and 18, and accompanying text for a discussion of DR 2-101 and 103.

\textsuperscript{117} Comment, Solicitation by the Second Oldest Profession: Attorneys and Advertising, 8 HARV. CIV. RIGHTS CIV. LIB. L. REV. 77, 101 (1973); and Zemroth, supra note 39, at 983.

\textsuperscript{118} ABA, Code of Professional Responsibility, DR 2-103 (1975).
organization to promote the use of his services or those of his partners or associates. This restriction seemingly ignores the subtle methods by which lawyers have always obtained referrals and the so-called legitimate spheres of influence which many lawyers have established. The Houston rule and the 1975 amendment authorize a lawyer to assist a person or organization which pays for or furnishes legal services to others, provided his independent judgment is exercised on behalf of the client without interference or control of any organization or other person. This restriction seemingly disregards liability insurance and other lay intermediary arrangements, such as legal aid offices or public defender offices, and military legal assistance offices which represent both the lay intermediary and the beneficiary. The real problem is not the absence of any controls or interference but whether existing controls interfere with the lawyer's independent professional judgment or the integrity of the attorney-client relationship.119
Although the amended rules do not contain the discriminatory closed panel provisions found in the Houston Amendments,120 there are some subtle hangovers of discrimination which unnecessarily restrict the growth of group programs and the public's choice of lay intermediary arrangements.

Since the profession officially recognizes that lay intermediaries offer a valuable service to the public, it should allow any arrangement that seeks to furnish legal services so long as there is no serious conflict of interest between the intermediary, the recipient of the service, and the attorney; the attorney is free to exercise his independent professional judgment on behalf of his

119. Christensen, supra note 5, at 276-77; Christensen, supra note 40, at 242.  
120. See, DR 2-103(D)(4)(a) (1975) which replaces DR 2-103(D)(5)(a)(v) (1974) and its emphasis on free choice.

(8) "Qualified legal assistance organization" is an organization described in DR 2-103 (D) (1) through (4) or which recommends, furnishes, renders or pays for legal services to its members or beneficiaries under a plan operated, administered or funded by an insurance company or other organization which plan provides that the members or beneficiaries may select their counsel from lawyers representative of the general bar of the geographical area in which the plan is offered.

(8) "Qualified legal assistance organization" means an office or organization of one of the four types listed in DR 2-103 (d) (1) - (4), inclusive that meets all the requirements thereof.
client; and the arrangement has societal value. Such flexible standards would enable the profession to persuade the public that it offers appropriate services and desirable solutions for its legal problems.

CONCLUSIONS

This article has focused on the legal profession's perception of its duty to make counsel available to the public it serves. Until the Supreme Court characterized group activity to obtain meaningful access to the courts as a fundamental right within the protection of the Fourteenth Amendment to the U.S. Constitution, the profession had successfully opposed intermediary arrangements. A few far-sighted members of the profession, consumer groups, and Congress have generated many viable alternatives. Although there are legal obstacles which will slow the growth of such programs, the profession ought to relax its own current restrictions on advertising and solicitation. It should develop an overall standard which will encourage the free flow of information concerning the very nature of the profession itself.

The profession is duty bound to encourage any group arrangement so long as it creates no serious conflicts of interest, the attorney retains his professional independence, and the program has societal value. Rededication to the fundamental principle of making legal counsel available to all will help to restore the public's confidence and guarantee the future vitality of the legal profession.

(9) "Lawyers representative of the general bar of the geographical area in which the plan is offered" are lawyers in good standing numbering not less than the greater of three hundred or twenty percent of those licensed to practice in the geographical area.

121. CHRISTENSEN, supra note 5, at 253.