Vanderbilt Law Review

Volume 24
Issue 6 *Issue 6 - Symposium on Legal Paraprofessionals*

Article 3

11-1971

Paralegals: Should the Bar Employ Them?

Theodore Voorhees

Paralegals: Should the Bar Employ Them?

*Theodore Voorhees**

I. INTRODUCTION

For many years law offices have employed lay personnel to perform tasks on the fringe of the practice of law. Lawyers' secretaries have shared some of the confidences implicit in the lawyer-client relationship, clerks have demonstrated their abilities in countless ways, and law students have worked on legal problems well in advance of their admission to the bar. Moreover, until quite recently, the usefulness of the law office lay staff has been taken for granted, and no ethical question has been raised about their employment.[1] Conversely, the last four decades have witnessed a massive, nationwide effort by bar association committees on unauthorized practice of law to prevent laymen who are not employed in law offices from engaging in any aspect of the practice of law. The bar has contended, often successfully, that no one but a lawyer is qualified to handle the administration of estates,[2] to deal with questions of federal taxation,[3] to advise clients on real estate problems,[4] or to represent the public before administrative agencies.[5] Furthermore, as recently as 1969, advocates of this position within the American Bar Association House of Delegates rallied to defeat a proposal authorizing group legal services arguing that this form of practice would permit laymen to engage in the practice of law.[6]

In its campaigns against trust companies, banks, title companies, real estate agents, and accountants, the bar has loftily rested its unauthorized practice challenges on protection of the public interest by claim-

* Member of Philadelphia and District of Columbia Bar; A.B. 1926, Harvard; LL.B. 1929, University of Pennsylvania.

The author wishes to acknowledge the help he received in the preparation of this article from Richard J. Braemer, director of the Institute for Paralegal Training, Philadelphia, Pennsylvania, and Bernard A. Ryan, Jr., a former member of the ABA Special Committee on Lay Assistants for Lawyers.

1. There has, of course, been much criticism of plaintiffs' negligence attorneys who have employed investigators as ambulance chasers. Investigators serve many legitimate functions, however, and their employment in law offices seems to have become generally accepted.

2. Dacey v. Florida Bar, Inc., 427 F.2d 1292 (5th Cir. 1970).

3. *In re* Bercu, 273 App. Div. 524, 78 N.Y.S.2d 209 (1948).

4. State v. Bander, 106 N.J. Super. 196, 254 A.2d 552 (Monmouth County Ct. 1969).

5. Denver Bar Ass'n v. Public Util. Comm'n, 154 Colo. 273, 391 P.2d 467 (1964).

6. *See* Hourigan, *Group Legal Services—An Old Wine in a New Bottle*, 33 UNAUTHORIZED PRACTICE NEWS 20 (Winter 1967-68).

ing that lay personnel lack the trained legal skills of the lawyer.[7] On the other hand, counsel who have represented the targets of these attacks have maintained that the bar has been largely guided by self-interest arising from concern over the profession's loss of work as the public has tended more and more to accept the services of the lay practitioners. It has been evident throughout this controversy that lack of law school training does not necessarily mean that the layman is unskilled in his claimed area of proficiency. On the contrary, many accountants may be more experienced than the average lawyer in the problems of federal taxation, and a trust officer may know more than many attorneys about the administration of estates. If all lawyers specialized, there might be little argument as to the relative reliability of the attorney and his lay rival within the same area of competence, but the general practitioner, unfortunately, has difficulty in competing with both his legal and lay competitors in specialized fields. Consequently, the courts recently have tended to reject the claim that proficiency in legal matters is the exclusive property of the bar.[8]

At the root of the problem, the bar's loss of legal business is attributable primarily to the element of expense rather than comparability in the caliber of service. An accountant can and does prepare income tax returns for a fraction of what many lawyers must charge to cover their time investments,[9] and a real estate agent will represent his client at settlement without charge, accepting the sales commission as sufficient compensation for his entire service. Lawyers' charges in these and other areas, almost invariably large by comparison, discourage prospective clients who remain unimpressed by an explanation of the high expense involved in operating a law office.

The current cost differential has assumed such significance that some lawyers have concluded that they ought to take advantage of it by

7. ABA CODE OF PROFESSIONAL RESPONSIBILITY EC 3-1.

8. *See* United Transportation Union v. State Bar, 401 U.S. 576 (1971) (union may recommend selected attorneys to its members and make an agreement with those attorneys, establishing a maximum fee); UMW v. Illinois State Bar Ass'n, 389 U.S. 217 (1967) (union has a constitutional right to hire attorney on a salary basis to assist its members in assertion of their legal rights to workman's compensation); Brotherhood of R.R. Trainmen v. Virginia *ex rel* Virginia State Bar, 377 U.S. 1 (1964) (union may advise injured workers to obtain legal advice and recommend specific lawyers); NAACP v. Button, 371 U.S. 415 (1963) (NAACP has a constitutional right under first and fourteenth amendments to advise persons concerning infringement of their legal rights and refer them to a particular attorney or group of attorneys).

9. For a number of years, the majority of income tax returns have been prepared by non-lawyers. *In re* Bercu, 273 App. Div. 524, 78 N.Y.S.2d 209 (1948). Today many of the larger law offices refuse to prepare returns for clients, preferring to refer them to accountants or other tax specialists.

hiring trained laymen to reduce their cost of operation, and their charges to clients as well. This has resulted in the expansion of lay staffs and the creation of lay positions carrying new and greater responsibilities. The semiprofessional status of these employees has been recognized by designating them "paralegals," "paraprofessionals," or "legal assistants." In light of the continuing efforts by the bar to curtail the practice of law by lay agencies, the fact that the propriety of these developments is being challenged and that arguments used in the effort to discredit group legal services[10] are being heard again is not surprising. For example, it is said that the employment of paralegals will lead to commercialization of the profession and violation of the attorney-client relationship. Furthermore, the use of lay assistance is condemned as unfair and injurious to both the public and to lawyers.[11] This article will consider the validity of some of these fears and the long-term impact that the employment of paralegals may have on the profession.

II. PARALEGALS AND THE UNAUTHORIZED PRACTICE OF LAW

Canon 3 of the *Code of Professional Responsibility* provides that "[a] lawyer should assist in preventing the unauthorized practice of law."[12] While this canon, standing alone, sheds little light on whether a lawyer's utilization of the services of a paralegal is ethical, some explanation is provided by the relevant Ethical Considerations, which constitute an integral part of the Code. Ethical Consideration (EC) 3-1 expresses the basic policy that the practice of law should be confined to members of the legal profession, and EC 3-8 bolsters this policy by condemning both the practice of law in association with a layman and the sharing of legal fees with a layman. On the other hand, EC 3-6 recognizes that paralegals may be beneficial and their use lawful: "A lawyer often delegates tasks to clerks, secretaries, and other lay persons. Such delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product. This delegation enables a lawyer to render legal service more economically and efficiently."[13]

It is obvious that the current expansion in employment of paralegals by law offices is not confined to "clerks, secretaries, and other lay

10. *See Report of the Section of General Practice*, 94 A.B.A. REP. 893 (1969); Pitts, *Group Legal Services: A Plan to Huckster Professional Services*, 55 A.B.A.J. 633 (1969).

11. Selinger, *Functional Division of the American Legal Profession: The Legal Paraprofessional*, 22 J. LEGAL ED. 22 (1969).

12. ABA CODE OF PROFESSIONAL RESPONSIBILITY Canon 3.

13. ABA CODE OF PROFESSIONAL RESPONSIBILITY EC 3-6 (footnote omitted).

personnel," especially if the last term is interpreted in accord with the principle of *ejusdem generis*.[14] The ethical problem arises from the delegation of the lawyer's work—let's face it, his legal work—to accountants, investigators, conveyancers, computer technicians, and other trained assistants who may perform services considerably more sophisticated than those assigned to the office clerk of a generation, or even a decade ago.

In determining whether the employment of paralegals transgresses the bounds of professional ethics, three basic questions must be answered. First, what are the law office duties commonly carried out by the lay staff? Secondly, do the underlying policy considerations that have ruled out the unauthorized practice of law by laymen apply in the case of paralegals? Thirdly, how far can the lay employee go in the actual practice of law?

A. Tasks Performed by Lay Employees

A lawyer is so reliant on his secretary that the possibility of an unauthorized practice problem arising from her performance of routine legal tasks would never occur to him. As she becomes more skilled, she is entrusted with tasks such as the preparation of a deed, a court motion, or a simple will. Her employer usually gives her brief instructions, and if he is professionally responsible, he will review her work product carefully before it goes out of the office. The skilled secretary is in fact a paralegal, but as far as her work is concerned, there is for most of us no semblance of an ethical problem.[15]

The paralegals with whom we are primarily concerned go much further in the practice of law. A trained investigator does not need detailed instructions from his employer before checking out an accident, taking a statement from witnesses, or getting the facts about the accident from the client himself. He may merely present his employer with the results of his labor, returning to the witnesses for further information if the lawyer deems that necessary. A law office clerk trained in accounting may be entirely competent to keep the books for an estate, prepare a

14. *See* ABA COMM. ON PROFESSIONAL ETHICS, OPINIONS, No. 316 (1967, Supp. 1968).

15. Describing a conference among lawyers on the potential use of legal assistants, Siegfried Hesse reported: "For a considerable period many played 'My secretary is smarter than yours;' but when someone asked if the marvelous feats described didn't constitute unauthorized practice of law, there was a change in field which would have done justice to Red Grange. Instead of replying that what is done in a law office under the supervision of a lawyer is, on the contrary, authorized practice of law, one of the 'accused' suggested that his secretary really did nothing more than what a well-trained orangutang could easily aspire to." *General Practitioners and Legal Assistants: A Position Paper*, 36 UNAUTHORIZED PRACTICE NEWS 1 (1971).

court account, and draw up all the papers in connection with a court audit. Although the account and audit papers will be reviewed by the lawyer before they are presented to the court, a layman, nevertheless, will be performing legal services largely handled by lawyers in the past. So long as the work is performed under the theoretical supervision of a lawyer who accepts the responsibility for it, however, no unauthorized practice problem should be presented in light of EC 3-6. To go a step further with another type of paralegal, some law offices are now employing lay personnel who are capable of handling many of their corporate clients' legal affairs. These employees are trained to organize corporations, draft corporate minutes, prepare tax returns, and handle many routine legal matters that normally require a lawyer's attention.[16] While the layman may do this independently or even deal directly with the client, responsibility still rests with his lawyer-employer, who will be acting unprofessionally if he fails to review the work product before the corporate client accepts the paralegal's guidance.[17]

We still have much to learn in this regard from the English solicitor who for centuries has depended heavily upon his managing clerk, a skilled layman whose functions are almost as diverse as those of the solicitor himself. The articled clerk—an apprentice striving to become a solicitor—likewise participates in the handling of commercial and corporate work and the preparation of all types of legal instruments. The English legal profession would be astonished at any suggestion that the public might suffer from this employment of lay personnel or that the employment involved any impropriety.[18]

B. Applicability of Unauthorized Practice Considerations to the Utilization of Paralegals

One means of determining the propriety of the services rendered by a lay staff would be to test them against the basic evils that have served as the justification for suppression of unauthorized practice. The following dangers have been hypothesized by those concerned with this deve-

16. *But see* ABA STATEMENT OF PRINCIPLES WITH RESPECT TO THE PRACTICE OF THE LAW (1969), which provides: "Only a lawyer may prepare legal documents such as agreements, conveyances, trial instruments, wills, or corporate minutes, or give advice as to the legal sufficiency or effect thereof or take the necessary steps to create, amend or dissolve a partnership, corporation, trust or other legal entity."

17. A most persuasive case for the use of nonlawyer personnel and the absence of serious danger to the public in such use is contained in B. CHRISTENSEN, LAWYERS FOR PEOPLE OF MODERATE MEANS 46 (1970).

18. *See* Q. JOHNSTONE & D. HOPSON, LAWYERS AND THEIR WORK 399 (1967); Sproul, *Use of Lay Personnel in the Practice of the Law: Mid-1969*, 25 BUS. LAW. 11 (1969).

lopment: (1) that the lay practitioner, being untrained in the law, will mishandle the client's affairs and cause him irreparable injury; (2) that, not being an officer of the court, the layman is not responsible or accountable to any disclipinary authority; (3) that a layman's employment may be basically fraudulent, because his lack of legal education and professional skill frequently is concealed from the client; (4) that, unlike lawyers, a layman is free to advertise his services and consequently may engage in unfair competition; and (5) that the employment of laymen will endanger the lawyer-client relationship.[19]

Is there any real danger that the paralegal's lack of law school education will lead to a mishandling of the client's affairs and cause him irreparable injury? The answer could be yes if an accountant or business law clerk lacks skill in the narrow range of his activities[20] or if the supervising attorney fails to check his assistant's work. No one will be heard to champion the cause of an unskilled paralegal, however, since his entire usefulness rests upon his ability to perform his delegated tasks in an efficient and trustworthy manner. It is true that as the attorney gains faith in the skill and reliability of his lay employee, the degree of his review and general watchfulness may be relaxed. The paralegal can make a mistake, and the error may go undetected—an obviously embarrassing eventuality. On the other hand, the alternative of having all routine tasks of the office performed by associates who are law school graduates is not wholly satisfactory either. The lay specialist often will be more experienced in the performance of the narrow tasks assigned to him than an associate who is skilled or semi-skilled in much broader areas. Moreover, the mistakes made by associates also may escape a partner's watchful eye. As in the case of a paralegal, this is particularly apt to happen when the associate has shown himself to be trustworthy. Danger to the client is probably no greater in one case than in the other, and it would be difficult to say in which event the embarrassment of the person primarily at fault—the supervising lawyer—should be more acute.

Is accountability to the court a real factor? In a probate proceeding, the auditing judge knows that the account of a corporate fiduciary is prepared by a layman, but realizes that the responsibility for it rests with the fiduciary's counsel. When the fiduciary is an individual and the

19. REPORT OF THE STANDING COMMITTEE ON UNAUTHORIZED PRACTICE OF THE LAW, 88 A.B.A. REP. 243 (1963).

20. For a discussion of a legal assistant's acquisition of various skills see Statsky, *The Education of Legal Paraprofessionals: Myths, Realities, and Opportunities*, 24 VAND. L. REV. 1083 (1971).

account is prepared in the office of his counsel by a paralegal, there would appear to be no greater cause for judicial concern. The whole basis for worry over the inability of a court or the legal profession to control lay activity in this area should disappear when the layman works within a law office.[21]

There is undoubtedly a danger of misrepresentation. It would be reprehensible for a law firm to pretend that routine tasks performed by paralegals had, in fact, required the endless efforts of its professional members and, hence, warranted compensation at high hourly rates. Since a major purpose of using paralegals is to reduce the cost of legal services by freeing experienced practitioners from the performance of routine tasks, any reduction in cost should be passed on to the client, and he should be informed of the reduction. Failure to do this would be utterly self-defeating.[22] Every day it becomes more apparent that law offices which are not taking steps to reduce the cost of legal services are driving their clients to other firms with lower hourly rates or to lay specialists who operate outside law offices without lawyer supervision.

The unfair competition charge against the unauthorized practitioner has rested primarily on the fact that he can advertise his services, whereas a lawyer cannot. There is no advertising of lay services, however, when the paraprofessional accepts employment in a law office.[23]

Finally, we come to the contention that employment of paralegals will endanger the attorney-client relationship. This is the area in which the employing firm should display its greatest concern. If the employment of a legal assistant threatens a lawyer-client relationship, the fault will rest with the lawyer rather than with the layman. From the lawyer's perspective, assuming he has employed a competent and qualified assistant in whom he has confidence, there may be a temptation to allocate more and more responsibility to the paralegal, including increased client contact. This practice would not seem to compromise confidentiality[24] beyond currently acceptable limits because there is no reason why a

21. This principle is clearly recognized in the Preliminary Statement to the CODE OF PROFESSIONAL RESPONSIBILITY: "Obviously the Canons, Ethical Considerations, and Disciplinary Rules cannot apply to non-lawyers; however, they do define the type of ethical conduct that the public has a right to expect not only of lawyers but also of their non-professional employees and associates in all matters pertaining to professional employment. A lawyer should ultimately be responsible for the conduct of his employees and associates in the course of the professional representation of the client."

22. There are some situations, such as a case that carries a fixed fee, in which the reduction in cost should be for the benefit of the attorney rather than his client. Thus all the savings that are effected by the efficient use of paralegals are not for the benefit of the client alone.

23. ABA CODE OF PROFESSIONAL RESPONSIBILITY DR 2-101.

24. ABA CODE OF PROFESSIONAL RESPONSIBILITY Canon 4.

properly trained paralegal should be considered less trustworthy than the lawyer's secretary in preserving a client's secrets. On the other hand, if the client is not prepared in advance to deal with the assistant or believes it inappropriate for him to talk with anyone except a lawyer, problems may arise. These problems should disappear when the profession acquaints its clients with the role and usefulness of the legal assistant as well as with the advantages that will accrue to each client in terms of lower fees. Using the medical field as an analogy, few patients today object to receiving needles from a nurse instead of a doctor. There is no reason why a similar response cannot be developed in the legal field.

Interference with the lawyer-client relationship could occur if the assistant were not properly trained or supervised by the employing lawyer and if, as a result of overzealousness or poor judgment, the assistant began to assert himself with the client. In either case, the ultimate accountability would be the lawyer's alone. With the exception of these avoidable mistakes, however, there should be no reason why the employment of a layman would endanger the attorney-client relationship.

In summary, the main thrust of any criticism of the employment of legal assistants must be aimed at the lawyer-employer rather than the paralegal employee. Ethical Consideration 3-6 places upon the lawyer the duty to supervise the work and to take full professional responsibility for it. Since paralegals operate inside law offices, their work product is that of their lawyer-employer and not that of an unauthorized practitioner. Moreover, it is difficult to visualize any threatened injury to the public interest as a result of employing paralegals that would be similar to the type caused by the unauthorized practitioner. The paralegal is being trained both in specialized schools and in the office where he is employed. This training, coupled with competent supervision of his work, should guarantee that he will develop great expertise. Moreover, his relatively inexpensive services enable the client to obtain legal assistance at a considerable saving in cost. Thus there is substantial benefit to the public in this expanding employment, and the profession cannot brand it as unethical, unless the canons have been written for the purpose of maintaining the lawyer's monopoly of all forms of legal practice. Whatever the lower courts have said in the past, recent opinions of the Supreme Court have shown that it is unreceptive to this self-serving interpretation.[25]

C. *Paralegals Involvement in the Practice of Law*

As a fall-back position, those opposed to the employment of parale-

25. Cases cited note 8 *supra*.

gals have insisted that since legal assistants are not lawyers, their role must be curtailed so that they do not engage "in the practice of law." The following excerpt from a recent opinion of the ABA Committee on Professional Ethics supports this restriction:

> A lawyer can employ lay secretaries, lay investigators, lay detectives, lay researchers, accountants, lay scriveners, nonlawyer draftsmen or nonlawyer researchers. In fact, he may employ nonlawyers to do any task for him except counsel clients about law matters, *engage directly in the practice of law*, appear in court or appear in formal proceedings a part of the judicial process, so long as it is he who takes the work and vouches for it to the client and becomes responsible to the client.[26]

The Committee refused, however, to enumerate the functions performed by lawyers that would constitute the practice of law. While it would, indeed, be difficult to lay down a definition—exhaustive or otherwise—of what constitutes the practice of law, the prohibition against only "direct" engagement in it adds little if we are seeking precision. Since a lawyer is vitally concerned about whether he is conducting his office in an approved, ethical manner, it is clear that the Ethics Committee must be asked to give a more specific answer. This clarification should result in legitimatizing the legal assistant's activities, since an examination of the services in question demonstrates that they should not be banned because they involve either direct or indirect practice of law.

We must at once recognize the fact that lawyers delegate tasks to their secretaries which might readily be characterized as practicing law. The secretary may be asked to act as the lawyer's substitute in a client interview, to draw up a simple will, or to investigate a particular matter. Curtailing these legal activities would sharply diminish a secretary's usefulness. No objection should be raised against these practices because the lawyer usually has trained his secretary laboriously, and she operates under his closest supervision.

We may speak with less assurance in considering the lawyer's investigator. Since the same opportunity for close supervision does not exist, we may feel instinctively that his activities should be narrowed rather than given free rein. Yet once a lawyer is satisfied that his investigator is honest and ethical, he probably will let him run his own show. Most lawyers would not seriously contend that interviewing witnesses, reviewing testimony, and collecting documents for trial are not fundamental aspects of the practice of law, but if an investigator could not handle these portions of an investigation, his usefulness would be significantly diminished.

---

26. ABA COMMITTEE ON PROFESSIONAL ETHICS, OPINION 316 (1967, Supp. 1968) (emphasis added).

The paralegal who is employed to back up the probate court practitioner is clearly engaged in the practice of law. In addition to preparing accounts, he may, in fact, do everything necessary for an audit except the final review and presentation of the papers. As long as the legal assistant does not make the formal presentation to the court, however, no one is likely to be shocked by this practice. When there is no contest over a legal issue, one would find it difficult to explain what harm would result from an appearance in court as well. The assistant could answer the court's questions about the account and distribution papers as readily as the lawyer whose principal contacts with the estate have been some early directions to the assistant and a last minute review of the documents.

Every lawyer with extensive court practice experiences periods of wasted time while he waits in court before presenting a hand-up or answering a list. These tasks could be handled by an experienced office boy, who would be equally able to convey the necessary information. It is true that an older lawyer can send his youngest associate as a substitute; but in a day when the latter may be earning 15,000 dollars a year and carrying an hourly billing rate of 35 or 40 dollars, why should the substitute not be a paralegal with, perhaps, a fifteen dollars per hour rate?[27] While some will say without hesitation that the dignity of the court would suffer from the appearance of a layman at bar, this objection is not persuasive. The judge's prestige ought not to rest on such an illusory basis. Sophisticated clients neither insist upon nor expect their lawyer to appear in court on their behalf or perform any other given task for them. They entrust their affairs to the lawyer and leave the choice of workmen to him because they have confidence in his selection. It is difficult to perceive why a judge should have less confidence than the client in a lawyer's judgment as to which representative he chooses to send to court. Furthermore, a legal assistant should quickly learn to defer to the dignity of a court.[28]

If the foregoing analysis can be accepted, the problem posed by the paralegal's practice of law surely tends to disappear. His capabilities, the extent of his activities, and the degree to which he remains subject to supervision, of course, present difficulties. The employing lawyer's responsibility to the court and client for the assistant's work product is

27. It may, of course, be replied that the solution to the problem of wasted time in attendance at court lists would be the elimination of the calling of such lists when they can be answered by telephone or mail. If and when such a solution becomes a reality, one potentially useful activity of a legal assistant will disappear.

28. If anything goes amiss, the court can impose discipline on the assistant and his employer as well. *See* note 21 *supra*.

likewise a continuing and extremely important consideration, but similar worries underlie the relationship between a partner and a young associate who is still too inexperienced to take on the full and unsupervised representation of a client. In time the paralegal could become more expert in his area of specialization than anyone in the office. At that point he should be able to recognize legal problems when they arise and call for a lawyer's help automatically. Under these conditions the danger of mistakes and injury to the client would be no greater than in the case of any lawyer specialist working in the same office.

III. THE WELFARE OF THE PROFESSION

Those who question the wisdom of bringing paraprofessionals into the law office may be persuaded that this presents no serious ethical problems and that the interest of the client may be well served by a reduction in the cost of office operation. They may nonetheless still doubt whether the innovation is in the best interests of the profession. Some lawyers disapprove of admittedly ethical practices, such as contingent and shared fees,[29] because they believe them to be highly injurious to the profession. Therefore, one must ask whether the employment of legal assistants is likely to harm the high standards and good name of the bar. This inquiry is especially important in light of some disquieting developments in the legal profession within recent years that may be the source of much of the discomfort felt by critics of the paralegal trend.

The last quarter century has witnessed a vast expansion of specialization in the legal profession and the growth of large law offices, which tend to gather in the cream of the clientele. Although these offices encounter serious problems if they expand too rapidly, it is probably a safe generalization to say that the successful ones try to increase their staff of attorneys by at least ten percent each year. They become highly skilled in almost every aspect of legal practice and have specialists with whom neither general practitioners nor the intermediate sized firm can ordinarily compete. This has left smaller practitioners with the crumbs and has placed them in the humiliating position of appearing to vie with legal aid and the poverty program for the small rewards that can be gained from representing the indigent.[30] This split within the ranks of the profession, particularly in the metropolitan areas, presents the unedifying spec-

29. ABA CODE OF PROFESSIONAL RESPONSIBILITY EC 2-20; DR 2-107.

30. The ABA General Practice Section filed a report prior to the 1971 Annual Meeting of the Association advocating ABA control of all governmentally supported legal services for the poor and their transformation into judicare programs--programs in which legal advice would be supplied by private practitioners rather than full-time legal aid attorneys.

tacle of one group growing ever more prosperous and powerful, while the other is struggling merely to make a living. The two groups often differ on important aspects of professional life—for example, standards of ethics and the enforcement of professional discipline. They are on opposing sides in personal injury litigation, which is almost the sole forum in which their paths cross. Moreover, they have less and less intercourse within the organized bar, the smaller practitioners being vocal in the local associations while the more successful firms tend to dominate the state associations and certain elitist organizations from which the small practitioner is almost wholly excluded.[31] In a democratic society, this cleavage within the legal profession is not a healthy one.

The small practitioner's ability to maintain a semblance of competitive power has been attributable to his lower cost of operation. He may serve his clients at an hourly rate of 25 dollars or less, while the large office's higher overhead may compel it to charge as much as 40 dollars an hour for the time of an associate who is just out of law school. Since nearly all the top-ranking law graduates gravitate toward the large firms or public service, many intermediate firms have managed to keep their overhead materially below that of their larger competitors by hiring associates whose poorer marks in law school prevent them from commanding high starting salaries. While they may be excluded from representing major industry and high finance, many small offices maintain a good practice. As a group, however, they are probably losing ground to their larger competitors from year to year.[32]

Introduction of the paralegal will help the large firm to overcome the weakness that has made it vulnerable to competition from smaller offices—its high cost of operation. Although the employment of paralegals, even on a broad scale, will not reduce costs and fees sensationally, it will assure clients of the large offices that charges are closer to those of the more modest legal establishments. Since specialization and high quality of legal talent have already enabled the large offices to give excellent service, a reduction in their costs of operation resulting from the use of paralegals should place them in an almost impregnable position.[33]

The smaller practitioner may have cause to view the paralegal trend with some alarm, but the benefits from employment of paralegals are by no means confined to large law offices. Since many legal tasks de-

31. The ranks of such organizations as the American College of Trial Lawyers include few who have not enjoyed great professional success.

32. For an analysis of the various factors that give the large office an advantage over this group see B. CHRISTENSEN, *supra* note 17, at 31.

33. For an excellent discussion of the importance of the cost factor in the employment of paralegals see Sproul, *supra* note 18, at 11.

mand fixed fees, it may be advantageous to the lawyer to have some portion of this work performed by persons whose time commands a lower hourly rate than his own. Furthermore, delegation of routine or other relatively uncomplicated work to paralegals should enable the small firm to expand the scope of its practice.

There is one final argument that may be advanced by the smaller practitioner who views the paralegal as a serious economic threat. The legal assistant will do legal work and, therefore, will displace law school graduates who would otherwise be hired by a law firm to perform the same tasks. According to *Martindale-Hubbell*, lawyers in private practice divide equally between sole practitioners and those in multi-lawyer offices.[34] If the employment of associates by the latter group were curtailed because of the hiring of paralegals, more sole practitioners would emerge, thereby increasing the competitive struggle for pickings that are already too thin.

Why then, when many attorneys are starving for lack of clients, should the large offices, with more clients than they can handle, hire laymen to perform work that "belongs" to lawyers? The fact that paralegals may be paid salaries below the starting rate for law graduates entering the large offices—around 15,000 dollars—is not accepted as an answer because many struggling lawyers, young and old, would gladly accept large office employment for an assured compensation of 10,000 dollars a year. A number of reasons are advanced for not hiring these attorneys, but perhaps the chief one is an unwillingness to compromise on a widely held determination to maintain the high caliber of an office by taking on only those graduates who have had the highest grades.

Although it is clear that no agreement among all types of practitioners concerning the economic aspect of employing legal assistants is likely, one cannot avoid deep concern about any major development in the profession that threatens a further dislocation in the relationship between the large successful firms and their small struggling counterparts. On the other hand, the cost problem demands a solution, and it would not be very constructive to knock down the first promising proposal that has been advanced. Aside from totalitarian methods, there appears to be no easy method of equalizing the work to eliminate the disparity in the economic rewards that are earned by the different segments of the bar. More selectivity in law school admissions and better

34. Letter from Martindale-Hubbell, Inc. to Theodore Voorhees dated Sept. 20, 1971, on file with the *Vanderbilt Law Review*. The 1971 *Martindale National Summary* shows that there are 118,963 solo practitioners in the United States compared to 117,122 lawyers who practice in law firms—92,442 as partners and 24,680 as associates.

educational methods might result in the small practitioners doing a better job, but continuing inequity in the acquiring of clientele and in compensation seems almost inevitable. Progress could be made if sole practitioners would recognize the advantages of joining together with others to form specialized law firms.[35] Here again, the profession has a difficult job to perform in educating a large segment of its ranks about where their true interests lie.

The training of paralegals must inevitably suggest new methods of educating lawyers.[36] Attorneys who find themselves in competition with paralegals will wonder why three years are necessary to prepare for admission to practice when paralegals may develop their usefulness in six months. Why, again, they may ask, if paralegals can limit their training to a single specialized area, should lawyers be obliged to study legal subjects with which they will never have any encounter in a lifetime of practice? The whole field of specialization is in an unsatisfactory stage of development;[37] and despite intensive promotion and considerable progress, continuing legal education has a great distance to go.[38] Study, innovation, and experimentation are needed in the whole educational field, and the paralegal example could provide the necessary encouragement for future progress.

IV. CONCLUSION

The legal profession may be imaginative, but with regard to its own affairs it is not innovative. Except for a few new ideas in court administration and rules of procedure, one would be hard pressed to remember any major changes since the days of Langdell. The employment of paraprofessionals revolutionized the medical profession, and while it has perhaps less promise for lawyers, the idea is not one deserving to be strangled at its inception by lawyers. Instead, it at least should be given a fair trial and its immediate effects carefully studied. Any major relaxation of, or departure from, the rules or traditions of one area of our practice might encourage reexamination of other branches of an institu-

35. *See, e.g.*, Fuchs, *Lawyers and Law Firms Look Ahead—1971 to 2000*, 57 A.B.A.J. 971, 974 (1971).

36. A broad based study of legal education and continuing legal education has been planned for more than 2 years by the ABA, the Association of American Law Schools, and the ALI-ABA Joint Committee on Continuing Legal Education. The launching of the study has been delayed by lack of funds, but it is believed that it will be under way within the next 6 months.

37. REPORT OF THE SPECIAL COMMITTEE ON SPECIALIZATION, 94 A.B.A. REP. 843 (1969).

38. *See* Darrell, *The Role of the Universities in Continuing Professional Education*, 32 OHIO S.L.J. 312 (1971).

tion that needs revitalization from top to bottom. New approaches to legal education, continuing legal education, group legal services, certified specialists, prepaid legal insurance, and paralegals offer possibilities that should be beneficial to lawyers and the public alike. In the end they should give the profession strength, a broader vision, and a new era of usefulness.