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Counselors-Not-at-Law †

By MELVIN D. HILDRETH*

With revealing frankness, a counselor on public relations details in a popular magazine the secrets of his craft. He is a "counselor," there is no doubt of that. He has clients, charges fees, prepares briefs, makes appearances, and generally guides his client through the Washington administrative labyrinth. Like the Doctor of Naturopathy, who holds himself above the humble "M.D.," so does the public relations counselor hold himself above the lowly LL.B. Not for this distinguished gentleman is the bother of law school and cumbersome examinations. Not for him is the admission to the bar where he must rub shoulders with those beneath his caste. He requires no diploma, no certificate, no routine of admission. Possessed of a barbed wire secretary, imposing suite of offices, an engraved letterhead, excellent connections, and a better address, he becomes a "counselor," but not at-law.

A recent survey of a downtown Washington office building revealed that several law firms, in the building for a number of years, has not increased their space by as much as a square foot during the period of the emergency. However, a public relations counsel, starting with a few rooms, had so expanded that he now occupies an entire floor. So elaborate were his requirements that even the doors leading into the hallway had to be replaced with doors of a special design more in keeping with his importance and dignity.

Recently the retiring president of the New Jersey State Bar Association, David M. Kausner, called on the association members to protect their profession, "challenge false and misleading statements regarding the bar," and emphasized that "the public has always held the bench and bar responsible for the proper administration of justice." The unauthorized practice of law, the retiring president stated, presented a problem of great concern to the lawyer. He added, "The public should be protected from deception and exploitation by untrained and unsupervised laymen who inexpertly attempt to practice law—the bar should be protected from such illicit competition."

The Association of the Bar of the City of New York is urging that lawyers be appointed as secretaries to justices stated, "There are ethical standards that circumscribe the conduct of a lawyer and disciplinary sanctions to enforce them, which do not apply to a layman."

Recently a public relations counselor, in a large display advertisement in Washington papers, announced that an ex-congressman, and former executive of the War Production Board, would join his group as a general partner for the purpose of representing clients before administrative agencies.

The Interstate Commerce Commission Practitioners' Journal has called

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*Of the District of Columbia Bar.

attention to the use of "attorney" or "counsel" by non-lawyer practitioners. Rule 71 (b) of Standards of Conduct as issued by the Commission provides:

"Titles—No member of the Association nor admitted to the bar shall use the title 'Attorney' or 'Counsel,' but should use the title 'Traffic Manager,' 'Practitioner before the Interstate Commerce Commission,' 'Registered Practitioner,' or other appropriate title or designation."

"All persons appearing must conform to the standards of conduct required by the Code of Ethics of the Association of Interstate Commerce Commission Practitioners. Failure to conform to those standards will be ground for declining to permit appearance in any proceeding before the Commission."

In spite of this rule, however, there is considerable agitation on the part of a number protesting against the restriction of the use of the word "counselor" to members of the bar.

In a statement before the commission, one of the speakers is quoted as follows:

"It has been well known throughout the country that many people have held themselves out as counsel, not necessarily counsel before the Commission, but as counsel, and have been guilty of fraud, and that the bar is moving in various states for laws to penalize them by criminal penalties. It depends on the law of the state in which you make that representation as to just what the punishment may be. In any event, in connection with law practice (and this is law practice), if you hold yourself out as counsel it carries the implication (the very desire to use that term carries the implication), that you want to convey the notion to the client that you are counsel, and that you are versed in the law which is involved."

The Chicago Bar Association Committee on Unauthorized Practice has maintained that "any appearance before an administrative tribunal was the practice of law."

There are those who desire to escape responsibility which is placed upon the practice of lawyers. They very cleverly support their position by alleging that lawyers are fighting for a "closed shop" and attempt to prohibit representation before administrative tribunals by others than themselves.

In Washington, as in many cities of the United States, a poor, ignorant person, running afoul of the law, is entitled to be defended by competent counsel admitted to practice. The list of lawyers from which such selections are made, are busy men and of the highest standing. They consider it to be part of their function to enter into court and defend, without compensation, some poor, ignorant scoundrel who is entitled at least to have some point in his favor emphasized before court and jury. In this work, the public relations counsel and various other types of counsel, is not to be found. They have no time to give away, they are much too busy and too important to be concerned with the lowly and ignorant individual on trial for some earthy crime. There is a peculiar society, a caste system based on avenues of publicity,

properly denied the lawyer, permitting them to function on a foundation of prestige built by lawyers which they enjoy as a parasitical class. As has been stated in the Journal of the American Judicature Society, "The lawyers of a state are more than a group of people making a living by the same occupation. They are an essential part of the government. They are officers of the courts, engaged in performing a public service as vital to the people of a commonwealth as police, public health, or any other governmental service."

Even today some administrative agencies advise the citizen that no lawyer is necessary, and that representation by lawyers is not looked upon with favor. Perhaps those who seek to impose an arbitrary view upon a helpless citizen do not want to have standing at his side one versed in rights and duties as well as obligations.

Counselors on public relations, economic counselors, traffic counselors, trade counselors, customs counsel, house counsel, and all variations of the phrase, lead but to one door—the implication that the "counselor," so-called, is especially skilled in a special field, a field which properly belongs to the responsible lawyer.

While 40,000 lawyers are in uniform (one-fourth of the bench and bar), the "counsel" marches in to capitalize on an emergency condition. Here today and gone tomorrow, his interest is in the moment—making hay while the sun shines. He is a counselor, but not at-law.

Perhaps no one has more appropriately set forth the importance of the lawyer to the community than Alexis de Tocqueville, who more than 100 years ago in his book *Democracy in America* stated:

"The profession of the law is the only aristocratic element that can be amalgamated without violence with the natural elements of democracy and be advantageously and permanently combined with them. I am not ignorant of the defects inherent in the character of this body of men; but without this admixture of lawyer-like sobriety with the democratic principle, I question whether democratic institutions could long be maintained; and I cannot believe that a republic could hope to exist at the present time in the influence of lawyers in public business did not increase in proportion to the power of the people."

Now to us, as lawyers, comes the task of contributing to the lasting solution of the problems faced by a disorganized post-war world, and with pride of accomplishment, with understanding of our responsibility, we approach these problems as counselors-at-law.

Our Returning Lawyer-Veterans

MARCUS O. SHIVERS, JR., major, air corps, served from May 1942 to Jan. 1946 in the C. B. I. theater and the U. S. He has returned to practice as a partner in the firm of Simon and Lee, 3485 South Broadway, Armitage Bldg., Englewood.