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Criminal Law—Unlicensed Practice of Law

Richard Brocklebank

he was "ready" when called for trial, that he had not been denied the right or opportunity to produce witnesses, that the right of appeal was open to him, and that the withdrawal of his guilty plea had not been used against him.

Although the Court avoids making the point, it is submitted that a factor in reaching such a decision might well be the inference from circumstances that the reason for the defendant's withdrawal of his plea of guilty was that he had learned in the meantime that his license was to be revoked. If the inference is supported by a record which shows a diligent conduct of the defense at trial, then it could fairly be concluded that the statutory warning was in this case unnecessary to achieve the objective obviously intended by the legislature in prescribing it, *i.e.,* to put the defendant on notice of the consequences that might follow his conviction so that he might not enter a hasty or ill-considered plea of guilty or be too casual in his defense at trial after a plea of not guilty.

Judge Van Voorhis dissented, arguing that, since the majority opinion endorsed the rule that the requirement of section 335-a is not waived by the entry of a plea of not guilty, and since the Court had in a previous case[28] ruled that the warning must be read regardless of whether the defendant is represented by counsel, the mere combination of these two factors cannot convert the character of the failure to read the warning from prejudicial to non-prejudicial error.

It is submitted: (1) that the dissent lends support to the idea that the majority gave more weight than is expressed in its opinion to the circumstance that the record failed to show any reason for the defendant's withdrawal of his plea of guilty, and (2) that Judge Van Voorhis is unwilling to mitigate the effect of the failure to obey a "simple and imperative legislative enactment"[29] on the basis of such inference.

Unlicensed Practice Of Law

In *In re Roel*[30], the accused was charged with violation of section 270 of the Penal Law which provides that the practice of law without a license is illegal.[31] The defendant, a member of the Mexican Bar but not a member of

28. People v. Duell, 1 N.Y.2d 132, 151 N.Y.S.2d 15 (1956).
29. Astman v. Kelly, *supra* note 26 at 575, 161 N.Y.S.2d at 866.
30. 3 N.Y.2d 224, 165 N.Y.S.2d 31 (1957).
31. N.Y. PENAL LAW §270:
> It shall be unlawful for any natural person to practice or appear as an attorney at law . . . or to hold himself out to the public as being entitled to practice law aforesaid, or in any other manner . . . without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state . . . .

the New York Bar, maintained an office in the city of New York where, for a fee, he advised New York residents on Mexican law and provided active assistance in the initiation of actions and proceedings in Mexico. The Court of Appeals held that such conduct constituted the unauthorized practice of law within the meaning of statutory provisions.

Other decisions have pointed to such a result. In *Matter of New York County Association,*[32] the court said that one admitted to practice law in Mexican Courts, but not admitted to practice law in New York is not authorized to give legal advice or render legal services to lay persons in this state. In *In re Becu,*[33] an accountant giving Federal tax advice was found to be practicing law illegally. In *In re Cool,*[34] a labor relations institute was wrongfully practicing law by giving Labor Law advice. In *In re Pace,*[35] New York attorneys assisting a Delaware Corporation who was offering either to incorporate companies under the laws of Delaware or to furnish all the necessary forms were found guilty of aiding the corporation in its illegal practice of law; the court said, further, that practicing law includes special proceedings, conveyancing, the preparation of legal instruments of all kinds and the giving of all legal advice to clients.

In dealing with the question of what constitutes the unlawful practice of law, the Court has taken cognizance of legislative intent and public policy. The purpose of the statute in requiring the licensing of practitioners of law is to protect the lay public when they seek legal advice.[36] The public is as liable to injury when an unlicensed person gives advice to an individual as to his legal rights under foreign law as it is with respect to his rights under domestic law, for example, a Mexican lawyer arranging divorce proceedings for a New York resident in a Mexican court and the divorce obtained might be invalid in New York State.[37] To allow a Mexican lawyer to give legal advice without requiring him to be licensed is to provide inadequate protection for the lay public.

Advice given to the public by one holding himself out to be a "consultant in the law of his specialty," although not duly admitted to the bar of this state, constitutes the unlawful practice of law.[38] Therefore, whether a person gives advice as to New York law, Federal law, the law of a sister State, or the law of a foreign country, he is giving legal advice and must comply with statutory provisions governing such practice.

32. 207 Misc. 698, 139 N.Y.S.2d 714 (Sup. Ct. 1955).
33. 273 App. Div. 524, 78 N.Y.S.2d 209 (1st Dep't 1948), *aff'd,* 299 N.Y. 728, 87 N.E.2d 451 (1949).
34. 294 N.Y. 853, 62 N.E.2d 398 (1945).
35. 170 App. Div. 818, 156 N.Y. Supp. 641 (1st Dep't 1915).
36. People v. Alfani, 227 N.Y. 334, 125 N.E. 671 (1919); In re Standard Tax and Management Corporation, 181 Misc. 632, 43 N.Y.S.2d 479 (Sup. Ct. 1943).
37. Querze v. Querze, 290 N.Y. 13, 47 N.E.2d 423 (1943).
38. Matter of New York County Association, 207 Misc. 698, 139 N.Y.S2d 714 (Sup. Ct. 1955).