

AUTOMOBILE CLUB ACTIVITIES: THE PROBLEM FROM THE STANDPOINT OF THE BAR

CHARLES LEVITON*

Inherent in any penetrating inquiry concerning a legal problem we find of necessity a road which travels from the concrete to the abstract and from the particular to the general. It is the usual method of testing results obtained in the sciences. While it is a commonplace that law cannot be named a science and while it is more appropriately termed an art, it may be stated that the process of human reason has as important a role in the solution of legal problems as in biology, chemistry or any other field of human thought and endeavor. Since very few questions giving rise to legal discussion are simple, in a search for the correct answer it becomes necessary to test general laws which may agree, overlap or conflict, and, as in the sciences, the application of a tentative solution should be tested with actuality, both in its immediate and its ultimate bearing. In such a discussion it is of the essence to strip the issue to its fundamentals and to discard the outer garments of apparent expediency, no matter how attractive they may appear.

The State of Illinois was the first jurisdiction wherein a court of last resort held that the activities of a motor club supplying legal services to its members was contrary to public policy. This decision, *People ex rel. The Chicago Bar Association, Relator, v. Motorists' Association of Illinois*,¹ was rendered on December 22, 1933. It was followed by similar decisions in other jurisdictions and by two other cases in Illinois, *People ex rel. The Chicago Bar Association v. Automobile Club of Illinois*,² decided at the October term, 1934, an unreported decision, and *People ex rel. The Chicago Bar Association v. Chicago Motor Club*.³

CONDITIONS LEADING UP TO THESE DECISIONS

The background of the decisions both in Illinois and elsewhere does not show a history of precipitate, unconsidered, or selfish action on the part of the lawyers who instituted the proceedings. On the contrary, for many years the scope of the activities of the motor clubs had been growing and expanding in services, as well as in membership. The Chicago Motor Club had boasted of a membership of 60,000, the Motorists' Association of Illinois, 50,000 and the Automobile Club of Illinois some 10,000. All over the country automobile clubs and associations had been for many

* Ph.B., 1909, J.D., 1911, University of Chicago. Member of the Illinois Bar. General Counsel of the Chicago Bar Association.

¹ 354 Ill. 595, 188 N. E. 827.

² Sup. Ct. Ill., Docket No. 21962.

³ 362 Ill. 50, 199 N. E. 1 (1935).

years increasing their activities, intensively soliciting membership and advertising heavily, as an inducement to the public, that legal services, in addition to all of their other facilities, would be rendered without further cost except the cost of membership. When the complaints against the motor clubs were presented to the courts, the essential question for decision was one of public policy, and in arriving at a decision, the courts were called upon to find whether or not it was in the public interest that automobile clubs practice law.

To assist the courts in arriving at a conclusion, there was presented to them, in detail, the history of the organization and activities of the clubs and of the services they rendered their members. The Chicago Motor Club was a pioneer in its field. There were at least three other motor clubs in the State of Illinois which patterned themselves more or less after the Chicago Motor Club. For an understanding of the situation, a brief statement will be given as to a typical automobile club picture and in this survey there can be taken for laboratory examination the operations of the Chicago Motor Club now on record in the courts of Illinois.

This organization is selected because of its prestige, its success and its comparatively high standards, as well as because of the ability with which its counsel presented its contentions. These were so persuasive that two of the seven judges dissented from the majority opinion, departing from the unanimity theretofore obtaining in the preceding cases.

The Chicago Motor Club was a "not for profit" corporation organized in 1914 under the laws of the State of Illinois. However, in the opinion of the writer, the fact that the club was incorporated is as irrelevant as its ostensible designation "not for profit." This discussion will cover automobile clubs or associations whether they are in corporate form or not. It is not believed that the dress is of the essence. If their law business tend on the whole to the well-being of the public, they should be encouraged. If they do not, they should be suppressed.

THE LEGAL ACTIVITIES OF AUTOMOBILE CLUBS

The Chicago Motor Club gave a varied service. It gave mechanical first aid and towing service and issued a bail bond guaranteeing appearance of any member arrested for a motor vehicle violation except for driving while intoxicated, or a felony, established touring and road signs, and was active in accident prevention work. It issued a monthly publication called "Motor News," and claimed that as members of the club, club members who placed their automobile insurance with the Inter Insurance Exchange of the Chicago Motor Club would have savings of 20%, and that the insurance policy so issued was a very advantageous one in many respects. It also represented the motorists in combating legislation detrimental to the car owner. It described its legal services as follows:

Members are always free to consult the legal department in any of their troubles concerning the use or ownership of their automobiles. In Cook County the attorneys employed by the club devote their entire time to serving members. In the territory outside of Cook

County reliable firms of attorneys are retained to represent members. Should you be arrested for any alleged violation of the motor vehicle law, you may call the Legal Department and one of our attorneys will conduct your defense in court. The handling of property damage cases is another service rendered by the legal department.

Its membership fee in Cook County, including the emblem, totaled \$16.00. In its publication, the "Motorists' Service," an entire page of the magazine was devoted to a large photograph of one of its counsel standing and addressing other attorneys seated at a table, behind which were shown many book cases containing law books. Above this photograph was the following recitation, under the heading in large capitals:

A LEGAL STAFF AT YOUR SERVICE

In Cook County the attorneys employed by the club devote their entire time to serving members. In the territory of the club outside of Cook County firms of attorneys are retained to represent members.

Should you be arrested anywhere in the territory of the club for alleged violation of a city ordinance or of the motor vehicle law, call the club if you are in Cook County; if you are in any other part of the territory, call the firm of attorneys that represents members in that particular county. You will find a list of these attorneys published in every issue of *Motor News*, the monthly magazine of the club. In addition to the actual handling of cases in court, involving violations of the motor vehicle act, the legal department spends much time in giving advice to members.

The handling of property damage cases is another service that is rendered by the legal department. If your car is damaged or if someone sues you for property damage, call on the legal department. Attorneys for the club will try to make an adjustment for you, and if necessary will handle your case in court.

Speed trap operators, fake motoring organizations, swindling concerns selling to the motorists and crooked officials, all find the legal department an able and determined foe. Ready at all times to co-operate with honest officials, the legal department, nevertheless, refuses to condone corruption on the part of any arresting agency.

The relations of the legal department with a majority of the magistrates have been extremely friendly and the honest officials are just as anxious as the legal department that the spotlight be thrown on the activities of grafters who prey upon motorists under the cloak of law and authority. This friendly co-operation has made for better motoring conditions for the entire driving public.

Another one of these large magazine pages contained another large photograph exhibiting various stenographers at their desks, together with other personnel of the law office of the club and the general counsel. Underneath the photograph was the following recitation in very large black type:

81 ATTORNEYS AT YOUR SERVICE

to Represent You in Automobile Damage of Traffic
Violation Cases

If your car is damaged or someone sues you, call the legal department. If necessary, Club attorneys will handle the case in court. Should you be arrested for alleged violation of vehicle laws or city ordinances, call a Club attorney.

The Club had submitted a statement to the Chicago Bar Association setting forth the extent and complexity of its legal activities. The detailed statement supplied by the Club sets forth the following:

The services of the legal department of the Chicago Motor Club may be outlined as follows:

- A. Advice and Information as to:
 1. Local and foreign laws and regulations.
 - a. Speed regulations.
 - b. Licensing laws.
 - c. Touring permits.
 - d. Provisions regarding sale, transfer and registry of motor vehicles.
 - e. Compulsory insurance laws, financial responsibility and drivers' license laws of other states.
 - f. Provisions regarding size, weight and equipment.
 - g. Income tax deductions on automobile expenditures.
 - h. Customs regulations.
 2. Rules of the road.
 3. Liabilities and rights arising out of automobile accidents.
- B. Legislation.
 1. Drafting of proposed bills.
 2. Analysis and criticism of pending bills.
 3. Legislative surveys, research and compilations.
- C. Investigations and Prosecutions.
 1. Misfeasances and oppression by police and other officials.
 - a. Speed traps.
 - b. Unjustifiable arrests.
 - c. Assaults, batteries and false imprisonment of motorists.
 2. Racketeering organizations and confidence games.
 - a. Illegitimate insurance schemes.
 - b. Dishonest finance companies.
 - c. Fly-by-night auto radio companies.
 - d. Fake "motor clubs."
 - e. Fake "police benefit associations."
 3. Dishonest practices.
 - a. Selling adulterated gasoline.
 - b. Selling short measure gasoline.
 - c. Fake service coupon rackets.
- D. Education.
 1. Information regarding new legislative requirements or regulations.
 2. Interpretation of motor vehicle laws.
 3. Safety campaigns.
 4. Public addresses and publicity relating to traffic regulations.
- E. Claims.

(Property damage claims only, both plaintiff and defense.)
- F. Representation in Court.
 1. Civil cases.

(Property damage claims only, both plaintiff and defense.)

2. Traffic arrest cases.

(Traffic and motor vehicle offenses only, excluding driving while drunk or any other offense involving moral turpitude.)

a. Defense on plea of not guilty.

b. Pleas of guilty and payment of fine without member's appearance in court.

From the statement submitted by the Club it further appears that on February 18, 1922, the legal department of the respondent was handling 1053 claims. The number of claims had increased until in 1931 there were 8640 claims handled with a total collection of \$107,075.43. In 1929 it handled 2299 arrest cases, the fines totaling \$8,888.00. In 1931 in the City of Chicago 1235 arrest cases were handled with total fines imposed of \$3,032.35. In 1930 in what the Club designated "country towns" it handled 2260 cases, wherein the total number of fines imposed was \$16,958.00, and in 1931, 2027 cases were handled wherein the total amount of fines imposed was \$13,194.95.

The answer of the respondent in the *Motor Club* case set forth that in 1931 there was a total of 3262 arrests of which 758 or 23.33 + % of the members were discharged; that the fines against the remaining 76.77 — % averaged \$6.50 for charges heard outside of Chicago and \$2.45 for city cases.

The facts above detailed in this case history speak for themselves. Not only was the Club engaged in the institution of property damage suits and the defense thereof, but it was also engaged in a blanket undertaking to defend certain types of criminal cases involving traffic violations, in prosecution of unjustifiable arrests, and of misfeasances and oppression by police and other officials, as well as the prosecution of illegitimate insurance schemes, dishonest finance companies, the selling of adulterated gasoline and other doings of malefactors. In addition, it not only gave legal advice as to local and foreign laws and regulations, but it also gave advice as to income tax deductions on automobile expenditures, customs regulations and liabilities and rights arising out of automobile accidents.

Thus we can see that the Motor Club in its legal operations covered many fields of law; the law of contracts, the law of torts, the law of personal property; the giving of advice in personal injury cases and criminal law and the actual conduct of cases in court. It gave advice on federal income tax and customs regulations, personal property problems covering the proper methods of sale and transfer of automobiles and a host of other fields. Its lawyers were competent and its services in legitimate fields were efficient.

Undoubtedly there exist laymen to whom the prospect of securing such service for such apparent fees would seem most alluring and salutary. To one schooled in the traditions of the profession it is difficult to contemplate the scene without shock; 60,000 clients had been secured by broadcast solicitation, and in the circular distributed by the Club there was widely distributed extremely aggressive advertising of the Club's legal staff. Moreover, the Club gave a remarkable undertaking,

to-wit, it undertook to defend its members wholesale for an indefinite number of misdemeanors which might be committed by the members in the future.

Individual attorneys may well be disbarred for undertaking the defense of a crime in advance. The evils of this plan and the plain results of the undertaking are amply shown by the record furnished voluntarily by the Motor Club. In spite of its prestige and authority, of its competent representation, of its annual income of not less than \$900,000.00, of its prosecution of those magistrates who had been engaged in terrorizing of motorists for profit, 76.77% of its members in the year 1931 out of all its members arrested were found guilty. When we consider that in a criminal case, a mere preponderance of evidence is not sufficient to convict, but that the defendant must be found guilty beyond a reasonable doubt, that many cases are dismissed, nolléd or abandoned for one reason or another, without regard to the merits of the case, the statistics offered by the Motor Club are astonishing. Can it be to the public interest to commercialize the defense of members of an automobile club with the result that the vast majority of the members are found guilty in cases where they have been arrested? Is it to the public interest that legal representation should be procured for such a cause and in this method?

THE REAL PUBLIC INTEREST

Statistics showing the increasing annual slaughter by automobiles taking place in Chicago, as well as elsewhere, do not seem to indicate that the prime necessity of motorists is to secure defense against future unjust accusations. Except in a few isolated instances in small communities, it is a matter of common knowledge and known to every automobile driver, that the instances where he has been wrongfully arrested for violation of automobile speed laws and regulations are extremely rare. Let his conscience advise him as to the number of infractions that he has committed and for which he has escaped the penalty.

What is actually needed is not greater tenderness to the violators of the law, but more caution on the highways, more penalties and a stricter application of the law. That this is evident appears from statistics published from time to time and from various essays on the subject, of which an article published in the June, 1935 issue of *Harper's* is typical. This issue contains a discussion entitled "Why Automobile Accidents?" by William Junkin Cox,⁴ a distinguished traffic engineer.

The author shows that in 1926 commercial vehicles involved in fatal accidents numbered 795 and in 1934 they numbered 759, a 5% decrease, whereas in 1926 private passenger cars involved in fatal accidents numbered 1291 and in 1934 they numbered 2233. The number of private passenger cars involved rose two and one third times as fast as registrations rose, while the number of commercial cars decreased.

⁴Mr. Cox was formerly traffic engineer of the National Bureau of Casualty and Surety Underwriters, New York, member of consulting staff of the First National Conference on Street and Highway Safety, member of the Statistics Committee of the National Safety Council, member of Mayor's Traffic Commission of New Haven, and of the New Haven Safety Council, and a director of the Eno Foundation for Highway Traffic Regulation.

Commercial-car operation became safer as passenger-car operation became more dangerous.

From additional statistics given in the article, it is indicated that commercial drivers showed an actual decrease in fatal accidents, coupled with some increase in registrations and a large increase in speeds. With smaller increases in both speeds and registrations, private passenger cars during the period from 1926 to 1932 showed five times as great an increase in fatal accidents.

The conclusion of the author is that the commercial driver knows that if he has an accident, no matter how indifferent the public authorities may be, his employer may feel differently, since although insurance be carried, the rate will depend to some extent upon the accident record. Strange as it may seem, the fear of losing his employment operates upon the truck driver so as to make him drive much more safely than the driver of the private car. The inevitable conclusion drawn by the author is that where there has been a direct incentive not to have accidents—a direct penalty attached to culpable accidents—accidents have decreased; that a large proportion of accidents can be eliminated by providing certainty of punishment for the violations which caused them.

Thus it can be seen that direct public interest aside from all other considerations on this particular issue demands not that defendants in traffic violations be defended automatically at a cheap price by a regiment of skilled attorneys supplied by a powerful and widespread organization, but rather that the penal laws be enforced promptly and consistently. Under these circumstances, how can it be said that the motor clubs have contributed to the public welfare?

We have gone somewhat into detail in this matter. The perspective is an object lesson covering the entire question growing out of practice of law by laymen and by lay agencies. The direct commercialization of legal services must of necessity, as we have seen, not only lower the standards of the legal profession, but in the long run, since the objective is business and not justice, result in detriment to the community. Lawyers are governed by codes of ethics, standards and traditions which have been painfully accumulated for many centuries. When they violate these standards they are subject to discipline. From such discipline laymen are immune. The least that can happen to a lawyer who attempts to commercialize his profession is the general contempt and disapprobation of his profession and of the public acquainted with his activities. For many the relationship between a lawyer and his client has always been deemed sacred in the real sense of the word. To state that the wholesale business of handling litigation, and the intensive commercial advertising of lawyers, can serve a useful purpose, is to state an absurdity.

"NOT FOR PROFIT"

As for the "not for profit" designation of the corporation, that description need not be taken very seriously. It was undoubtedly for the profit of its members or they would not pay its dues and initiation costs. It was undoubtedly for the profit

of the attorneys, who through its advertising were enabled to secure employment. It was undoubtedly for the benefit of those who controlled the allied insurance services. Those who are managing motor clubs in general conceivably gain profit through their employment, through their connected insurance features, through their tire sales and through the charges they make for their towing and similar services.

The lawyers of the Chicago Motor Club were also lawyers for the Inter Insurance Exchange and the Chicago Motor Club included as part of its services this insurance department. They were both housed under the same room, and the club offered an opportunity, for additional premiums, to secure the services of its insurance department. It gave such coverage as fire, theft, public liability, property damage and collision and windstorm.

The entire situation has been clarified by a statement in the brief filed in the Supreme Court of Illinois by the Chicago Motor Club, where, in an effort to distinguish the Chicago Motor Club from the Motorists' Association, it is said: "This organization is of comparative recent origin and does not have the record of public service and performance to which the Chicago Motor Club can point. In an effort to compete with the Chicago Motor Club it became necessary for its promoters to represent to the general public that they were offering more in the way of services and consequently its advertising went to much greater lengths." It is further stated in the brief: "We seriously question whether the Motorists' Association, now defunct, could have met the test of rendering service in the interest of the public welfare. The promoters and sponsors of practically all of the motoring organizations which have sought to duplicate the services rendered by the Chicago Motor Club have been those who thought they saw an opportunity for private gain and profit." Like the Chicago Motor Club, all the other clubs operated under "not for profit" charters.

Strange to say, in the City of Chicago, there were published two articles publicizing an opposite viewpoint. They were both by the same author, Mr. Henry Weihofen, an instructor at the University of Colorado School of Law. The first article appeared in the December, 1934, issue of *The University of Chicago Law Review*, and was entitled "Practice of Law By Non-pecuniary Corporations: A Social Utility."⁵ The learned author contended that the inhibition against corporations practicing law should apply only to business corporations and not to corporations organized not for profit. In this connection it may be said that a true corporation not for profit may be a social club, a charitable society, or some other institution wherein the economic motive is absent. It is plain that the designation of the Motor Club as a non-profit corporation is a misnomer.

The article was published while the Chicago Motor Club case was pending before a Commissioner appointed by the Supreme Court. We shall pass over the author's discussions concerning the statutory and constitutional rights of the Motor

⁵ (1934) 2 U. OF CHI. L. REV. 119.

Club therein urged by him. It may be stated that these constitutional rights and issues, as well as any question of the restriction of the power of the courts over unauthorized practice, have been before the Supreme Court of Illinois several times. Furthermore, the Supreme Court of the United States has refused to hear similar contentions not only when they arose in Illinois, but where *certiorari* was sought from decisions of courts of last resort of other states wherein there was defined the practice of law and the unauthorized practice thereof was punished or enjoined. We will not cite authorities as to either one of these points—it suffices to say that the courts have acted so many times that the matter is no longer a debatable question. Whatever force there may be in the statutory and constitutional propositions advanced by the learned author, the courts at any rate have decided otherwise.

We are relegated then to the discussion set forth by the author under the heading of "The Consideration of Public Policy." The writer took an active part in the presentation of the Chicago Motor Club case. It is unfortunate that Mr. Weihofen made no effort to consult with the relator, The Chicago Bar Association, concerning the matters and things then pending before the Supreme Court of Illinois, and apparently ignored The Chicago Bar Association's contentions, good or bad. Some such investigation might have avoided some misapprehensions on the part of the author. For example, it is declared that it was stipulated that the services which the lawyers for the Club performed were unremunerative to lawyers in private practice, although the stipulation contained no such recital. The recital contained therein was that the Motor Club *claimed* that the services were unremunerative, etc., and *per contra* it appears from the record that the Club had no difficulty in securing plenty of lawyers outside of Chicago who were employed by the Club at a fee of \$15.00 a case.

Is it to the public interest that the Motor Club should attend at inquests, a service which can look forward only to the defense of criminal or civil liability? Is it to the public interest that petty claims arising from collisions usually covered by insurance should be automatically resisted; that violators of the traffic laws who ordinarily would not employ an attorney to defend them should automatically secure a defense? Is such stirring up of litigation a public service? It is urged in the article that there should be a socialization of legal services as in medicine and that the people are entitled to cheap legal service. It is safe to say that the vast majority of the legal profession is under-paid, and not over-paid. The number of lawyers now reported to be accepting relief as indigents from the federal government in New York City alone is almost unbelievable.

An attempt is made by Mr. Weihofen to state that since the motor club's practice of law has been declared illegal, legal aid societies are, therefore, also violating the law. He states that no distinction exists, but the distinction is very clear. As we have seen, the Chicago Motor Club itself has admitted that the other "non-profit" motor clubs were organized for purposes of profit. The services of legal

aid societies are of an entirely different nature. They are rendered only to the indigent. The services of the Motor Club, on the other hand, were rendered not to the indigent, but to those who were so little impoverished as to be well able to own and operate automobiles for their private purposes, and to pay the city and state licensing fees and the dues and charges of the club to which they belonged. Why wholesale legal services to such people is in the public interest still remains to be seen. The stirring up of petty litigation where property damage is involved that would ordinarily be dismissed, disregarded or compromised, the wholesale presentation of defenses in cases where 76% of the defendants have been found guilty is surely not in the public interest.

In his later article published in the February, 1936 issue of *The University of Chicago Law Review*, Mr. Weihofen has attacked the decision after its rendition under the caption "Practice of Law by Motor Clubs—Useful but Forbidden."⁶ One of the chief points of attack is not that the practice by motor clubs has been condoned or approved of in any court of this country, but that it is being indulged in in Great Britain. The remarkable statement is made: "A practice to which objections are considered inconceivable in England cannot be so clearly bad as the Illinois Supreme Court implied." Many thoughtful people have the most intense admiration for the juridical institutions of Great Britain, but to condone a practice because it is current in Great Britain, although nowhere approved by any court there or here, is quite far fetched. Incidentally, in this article, as in his prior discussion, Mr. Weihofen also complains of the inhibition of the activities of tax associations. These activities which also have been lauded as in the public interest by the author were condemned in *People v. Association of Real Estate Taxpayers*.⁷ This "not for profit" concern, whose activities were ended by the Supreme Court of Illinois, precipitated one of the worst fiscal muddles which has ever occurred in the County of Cook. Its members numbering many, many thousands were advised to withhold the entire tax levied against their real estate and not even to pay a minimum, because of an alleged technicality in the spreading of the assessment. Was this in the public interest?

Even in the brief of the Chicago Motor Club in an attempt to distinguish the case, it was stated: "It was extremely doubtful whether the Association of Real Estate Taxpayers was rendering any public service or was acting in the interest of the public welfare because its activities tended to cause the withholding of tax payments, thereby crippling the various branches of local government." Mr. Weihofen states in his introduction that: "The Anthropologists have shown that ethical and moral values vary from time to time and from place to place. There is nothing so heinous but that it has been considered proper and even obligatory for moral standing in some ethnic group. . . . It seems that the code of ethics for the legal profession is no exception to the rule." He thereupon points the moral by indicat-

⁶ (1936) 3 U. OF CHI. L. REV. 296.

⁷ 354 Ill. 102, 187 N. E. 823 (1933).

ing that what is considered ethical in Great Britain is most monstrously deemed unethical by the Supreme Court of Illinois.

A search of our decisions fails to disclose that the bench or the bar has approved at any time of the wholesale advertising of lawyers, the broadcasting of replicas of their photographs, the engagement in advance of retainer for defense against actions brought for violation of the penal code, or that there has ever been approval either by the bench or bar of the divesting of lawyers of their independence and their subjection to lay authority and lay direction. When lawyers are socialized it will be an evil day for the body politic. That legal aid should be rendered to the indigent has nowhere been denied, but to propose that the profession should be subjected to lay authority or should be commercialized or subjected to the social authority of the state bodes ill. It may not be inappropriate to ask those who advocate such action to cast their eyes over the European dictatorships and see what has happened to the profession.