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## LAW FIRMS MUST GIVE A DAMN

DANIEL WALKER\*

**T**HERE IS abroad today in America, among a disturbingly large segment of the population, a disenchantment with government and disrespect for law. It is particularly evident among the disadvantaged—the minority groups in particular—and it is reflected by the actions and attitudes of many members of the younger generation. All of these persons are justifiably concerned about racial discrimination, poverty, inadequate education and the other ills which beset particularly our large cities.

I believe this disenchantment with the system to be a development we cannot afford. When the poor and the alienated feel that the institutions of government are not legitimate and do not relate to their needs, then the entire nation has a severe problem on its hands.

Government alone cannot do the job. Private resources must be mobilized. We have heard repeatedly of the different ways in which different segments of the private sector can become involved. But my thesis here deals with the lawyers.

I believe that law firms have a unique opportunity for participation. To be sure the efforts of everyone are needed. But even more important are the abilities and experience of those with a high degree of expertise in problem-solving—a particular characteristic of the legal community.

I would like to start with a few words about the history of the law firm.

The legal needs of industry, trade and finance were served predominantly by single practitioners until the latter part of the nineteenth century. Law partnerships were seldom more than two-man operations, consisting of an “office lawyer” and a “court lawyer.” Since that time, there has been a proliferation of sizeable law partnerships in our major metropolitan areas. Today, there are hundreds of law firms with more than 50 attorneys. Some have over 100 lawyers.

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The reasons for this are obvious—the spectacular growth of our economy, the proliferation and complexity of laws and regulations, the tendency toward specialization; all are major factors. The large corporations have continual demands and the business community made increasing use of the corporation as a legal entity for commercial activities. In his book *The Lawyers*, Martin Mayer said: “Only God can make a tree; only lawyers can make a corporation.” The legal issues facing corporations became too complex to be handled by the legal “generalist.” They required the help of a number of legal specialists—securities law experts, antitrust experts, tax experts, and other attorneys who specialized in narrow areas of the law. It was found that the most efficient service could be given if these specialists were located in the same law firm.

These developments have given rise to what some call the legal “factory,” which spends most of its time and talent representing business interests—in part, at least, because it is business corporations which can pay the high fees—\$50 to \$100 per hour—which the lawyers in these firms demand. And, when there are corporate clients who will pay this figure, the spending of time on clients who cannot afford to meet this rate is greatly discouraged.

Even the division of legal functions in law firms between partners and associates operates to limit the clients. The partners decide what the associates will work on and naturally they frown on associates working for less than the going corporate rate. It is the associates, after all, who make the profit for the firm. A young associate is expected to produce from 40-50 billable hours a week—and he will be paid at the rate of about \$5-10 per hour. The firm will charge from \$20-40 per hour for his services—the mark-up on his time is obvious.

Since progress within a law firm is dependent on hard work for well-paying clients, young associates are effectively prevented from devoting substantial time to organizations or causes which serve the underprivileged and the poor. Indeed, until very recent years, such activities were openly frowned upon by the senior partners.

For all these reasons and others, our nation’s law firms have rarely been involved in the problems of the indigent and the underprivileged. Their community service activities were largely devoted to service on

charity boards and fund drives for "accepted" charitable causes. Of course, there were exceptions to this, but the exceptions were rare.

Some organizations serving community needs were represented on a reduced-fee or no-cost basis, but frequently as a favor to an officer, director or other important employee of a corporate client who might have an interest in a charity as a board member or a major contributor.

It is true that individual attorneys have traditionally participated in particular activities designed to aid the indigent, such as programs for the benefit of the poor established by local bar associations. But these programs have never been given the support which they deserve.

As a result of all this, attorneys have usually resorted to a leave of absence in order to participate in any meaningful way in solving the problems of the disadvantaged segments of the community, either through governmental service or otherwise. But leaves of absence are granted infrequently. The pressure of business in many firms does not permit the services of even one attorney to be lost for any extended period of time. And a lawyer must have concern about how his future in the firm will be affected should he take a leave of absence.

The law firms of America until the 1960's were not leaders in community service activities aimed at the disadvantaged. They tended to be insular, preoccupied with serving their well-paying corporate clients. The outside activities of the members of the firm tended to be more related to activities which enhanced professional prestige or client getting. Again, there were exceptions, but this was the general rule.

The times have changed. But before turning to the currently changing nature of law firm attitudes toward community service, I would like to briefly look at the crises in our American cities with which they must deal.

The central city areas remain the repositories of the disadvantaged members of our urban communities. The Southern Black, the Appalachian White and the Spanish-speaking peoples dominate our inner cities.

Poverty and social disorganization are the realities of life for these ghetto residents. They lack the occupational and educational skills in demand by our increasingly technological society. Patterns of life

derived in other times and other places are inadequate to cope with the complexities of modern slum life.

The legitimate channels for the redress of the grievances of private citizens have been largely ineffective for the underprivileged and their particular complaints. The courts, which are the traditional forums for the correction of private wrongs, are too frequently like the Waldorf Astoria—theoretically available to the rich and the poor.

But the courts serve their needs badly. The right to equal justice and protection under the laws promised to all our citizens is frequently not available to the poor and the disadvantaged. Unfortunately our system of laws too frequently works best for the wealthy.

Government has a responsibility for redressing the just grievances of its citizens, but it has been a poor manager of the affairs of the disadvantaged.

It has proved inept at innovation and problem solving. The slogans of yesteryear are served up as the programs of today. Unsuccessful programs are revised only to be bungled again. Too frequently, the best we get from our bureaucratic institutions is competent mediocrity—all too often we get less than that.

Often there are no existing programs to deal with certain needs of the poor. And many agencies are so understaffed that they are unable to administer existing programs. Some programs are simply ludicrous. It has been demonstrated that some job-training programs were preparing ghetto youths for jobs being automated out of existence, or in some cases for jobs which did not even exist.

Too many programs are ill-conceived, and seem to add to the problems they seek to eradicate.

Our ghettos have responded to these failures with frustration and confusion. We have seen lawlessness and disorder increase in our oppressed urban communities. Incidents of violent crime originating from the poor are increasing at alarming rates. Mob violence has become an increasingly familiar pattern of life. So-called commodity riots have given way to open guerilla warfare, complete with shootouts in some of our major cities.

These are the acts of those who feel they have no stake in the system, who feel that the institutions which control their very lives are illegitimate. They argue persuasively that they have little or no voice in these institutions. Disaffection of this kind poses a threat to the continued orderly existence of our country.

Private institutions and private resources are needed to assure that today's poor can obtain their goal of equal justice. The history of the inner-city forms the basis for this belief.

Impoverished immigrants, the Germans, the Irish, the Poles, the Italians, the Jews and many other groups, lived in the inner-city at an earlier time in much the same conditions still found there today. They did not enter the mainstream of society solely by reason of government—there were few government agencies and programs involved with social problems at that time. Forces in the private sector were much more important.

The urban political machines arose to contribute to the political and economic interests of a number of these earlier immigrants. The advent of the settlement house and private charities greatly affected the future of others. The acceptance of the labor union as a legitimate organization for the representation of workers played an all-important role in the progress of many immigrants. The demands of industry for unskilled labor also played a part in improving the condition of these immigrants.

Unfortunately, none of these forces have much relevance for today's inner-city resident.

Many private citizens have been spurred to action by the recognition of these facts. New proposals have been put forth by talented persons for dealing with the problems of the poor. Ambitious litigation has been proposed to attack the basic ills of the underprivileged. Non-governmental organizations have been established with imaginative new approaches to the old problems. Novel approaches are at least now forthcoming and the law firms of America are beginning to participate in this effort.

In great part, this has been precipitated by the attitudes of the young lawyers. Many law school graduates are forsaking the financial

attractions of the corporate law firm to become more directly involved in the social problems of our cities. Law school administrators, law firm recruiters, and even the national media have commented on this trend. Harvard Law School reports that the percentage of its graduates entering private law practice declined from 54% in 1964 to 41% in 1968; the University of Virginia Law School reports a decline from 63% in 1968 to 54% in 1969; and Yale Law School reports a reduction from 41% in 1968 to 31% in 1969. The University of Michigan Law School reports that 26 of its 1969 graduates are entering Wall Street law firms as compared with an average of 75 in preceding years.

The Legal Services Program of the Office of Economic Opportunity has employed large numbers of attorneys interested in public service careers. Over 1,800 staff attorneys work under the program. They are assisted by 700 VISTA volunteers with legal training and 250 Reginald Heber Smith Fellows, law school graduates with one-year fellowships. In the year 1968 almost 800,000 cases were handled at the trial and appellate levels with notable success in many.

Their efforts and those of other organizations have made the goal of equal justice under law somewhat closer to reality for the poor. But what of the corporate practitioner in the business law firm? His talents are perhaps more valuable than the man just graduating from law school. He has had the benefit of experience in the practice of law.

A number of alternatives for public service are becoming available to them and their law firms.

A law firm may establish an inner-city law office, either by itself or in conjunction with the Neighborhood Legal Services Program (NLSP). One Baltimore firm has done this on its own.

At least one private lawyers group, the Legal Assistance Group, has established a number of offices in Chicago. The program participants are volunteers from a number of large law firms of the city and from the student body of Northwestern University School of Law.

The procedure for establishing the office is a simple one. A storefront office located in a poverty area must first be leased. It is furnished with the office materials and equipment necessary to the practice of law.

The expense for the lease, materials and equipment is borne by the law firm or the group of lawyers establishing the office. Volunteers who serve without fee are then found to staff the office.

The attorneys in such a neighborhood legal office essentially supplement the efforts of NLSP attorneys. They deal in the day-to-day problems afflicting the inner-city resident, domestic relations matters, installment buying problems, landlord and tenant difficulties and similar issues.

The contribution made by this approach is to provide fully staffed neighborhood offices at no cost to the poor or to government. The need for additional neighborhood offices to handle these recurrent problems is indeed a crucial one. But there are other ways to contribute.

One approach would be to institute formal "released time" programs in the large law firms. Interested attorneys would be permitted to spend a designated portion of their working hours on noncompensable social welfare representation of their choice. It would be within the discretion of the law firm as to how many of its men would participate at any one time.

Such a program is a substitute for the leave of absence. It would permit an attorney to provide his services without the disadvantages of taking a leave of absence. An attorney would not be compelled to sever his association or partnership with a law firm in order to participate in public service work. He would continue to receive remuneration from the firm for his services, including the "released time," on the same basis as before.

The attorney would also be permitted discretion in the selection of the matters in which he would become involved. He could undertake matters in which he had a personal interest. Projects would ideally be referred from non-firm organizations which would require the particular talents of the corporate practitioner. They could be varied. Thus, for example, an individual could accept test case litigation, consumer group representation, legislative and administrative lobbying, and similar material from any number of groups active in the public service field.

The virtue of this procedure is to provide good quality legal ser-



vices at no cost. The poor would be able to tap sources of expertise which they otherwise would not be able to receive.

Another approach, now being utilized by some law firms, provides for the law firm accepting full responsibility for all aspects of one or more social welfare legal projects. An example is cases brought to test the validity of particular law or regulations. Law firms in Chicago and Washington, along with other cities, have decided to follow this route.

The last—and perhaps the most unusual approach—would be to develop and conduct a community service or public interest practice as a speciality of the law firm on an equal standing with securities, antitrust or tax specialties.

Public interest representation could be provided on a nonchargeable or discounted fee basis by a separate department, staffed in the manner of the firm's other departments. The expertise and experience of these practitioners could be mobilized in the most dramatic manner by this approach to provide a service to the underprivileged on a par and equal to the service received by the important corporate clients. The activities of the firm in solving social welfare problems could be coordinated to make the most effective use of its resources.

Other meaningful approaches for the solution of these problems also exist. If we are to resolve the issues tearing our society asunder, we must explore all of them. And the nation's bar associations could do much more to provide leadership in this area than they are now doing.

If there is one lesson to be learned from the events in recent years, it must be that we cannot proceed in disregard of the demands of our time. Our ultimate security and success can be guaranteed only if we accommodate and embrace the "other America," those who are discriminated against and those who are poor.

The nation's law firms have much to offer in this regard, and it is time that they heeded the VISTA slogan: "If you are not a part of the solution, you are a part of the problem."

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