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The Challenge of the Seventies to Lawyers and Law Firms*

DANIEL WALKER**

I would like to talk tonight about those of you who are interested in the law and are studying to be lawyers, but some part of this will go beyond those who are interested in becoming lawyers, and it will be directed at all of the young people present. You're part of what I like to call the "concerned generation."

I find increasingly, not only among my own sons and daughters but also among college and law school students who I talk to across the nation, that they are very concerned about some of the contradictions that exist in our society

I would like to take a few of these contradictions from current events to make my point.

America has placed a man on the moon, but we have not been able to solve the discriminatory housing noose that is slowly strangling every one of the major cities in the United States—and that is not an overstatement.

Did you know that the federal government spent during 1968 more money on subsidies for farmers in just a few South-eastern states in the United States than it did on the entire, the entire national poverty program?

There is a county down in Texas, called Lynn County, where almost one in every four of the residents is classified as what the government calls "hard core poor." These persons, and there are over 2,000 of them in that county, are denied all access to any of the federal food aid programs because the county officials refuse to permit it. But at the same time, last year, the cotton and sorghum farmers in Lynn County, Texas, received \$8,903,000 in federal subsidies for not planting their lands.

The House Banking Committee tried to force Secretary of the Treasury Kennedy to sell his bank holdings, but it was later disclosed that twelve members of that same committee have financial interests in banks and saving and loan institutions.

Did you read the results of a study of a team of economic planners—that South Vietnam could be put back on its feet economically, over a ten year period for exactly what it costs to wage that war for one month.

The cost overrun on the Navy's Mark 48 Torpedo development program is greater than the entire fiscal 1970 fed-throughout the United States plus water pollution.

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For what it will cost the taxpayers of this nation to deploy the first anti-balistic missile, we could build a half a million housing units in America.

And finally, it will cost more to refurbish our fifteenth aircraft carrier than the government will spend in its entirety on cancer research in 1970.

eral spending for all of secondary and elementary education I cite these examples not for any other point except to say that these are the kinds of things that young people are concerned about—the things they call contradictions in our society

I find from my own work in this area that there is a common thread that runs through the attitudes of many of the young persons, black and white, who are disillusioned about America. This is not all young people, but it comprises a significant group. They believe that our society and our system is not meeting the needs of today, that the system operates to protect the "haves" and to oppress the "have nots." They believe, unfortunately, that reforms come about only when the system is confronted with dramatic violation of the law and, in some instances, even by outright violence.

I want to say loud and clear to this audience that this thesis—that violence is needed to achieve reform—is an argument that I think must be repudiated. All of us have thought about the fact that throughout history there have been instances where reforms have been precipitated by violent rebellion against existing law. But I suggest that it is equally true that this kind of reaction has perhaps more frequently caused a reaction that has led not to reform, but to a more repressive system. And if you ask for a "for instance," I cite the Weimer Republic and the Third Reich.

A lot of young people ask me "When is a refusal to accept the existing framework of law justified?" All of us can think of instances when it is, ranging from the birth of Christianity to the American Revolution. But I would hope that particularly the law students present would agree that when the existing legal system does provide alternative and non-violent avenues for achieving reform, then even though these avenues may be difficult to pursue, there can be no support for the argument that the end justifies the means. And in a very real sense, that is what law school is all about.

If it is proper to violate the law in order to bring about university reform which a student may believe in, then I suggest to you that it is proper for the Ku Klux Klan to violate the law in resisting a reform that they do not believe in. Neither of these approaches can be tolerated. Violators of the law must be punished, no matter how noble their intentions. Dr. Martin Luther King would not have

disagreed. He was a true civil libertarian—he reserved the right to violate what he believed to be a patently unjust law. But he was willing to take the consequences of arrest and punishment in order to test that law. The same cannot be said for many who are exercising the right of dissent as they see it today.

However, unlike many people who talk about this issue that I am speaking with you about this evening, I do not think that it is enough to say that we should have respect for law and our institutions. I think you have to go further. I think you have to recognize that there are some very real faults in our society and that we have to take action to cure those faults.

Each one of you who is now in school is going to have a chance in the very near future to join in that action. You can make your own choice, obviously, but I suggest to you that there are only three alternatives.

When you finish school you can take a job, raise a family, continue to read in the newspapers about the problems that confront the world, grouse about them, occasionally vote and otherwise let the world go on about you. That is what many Americans and, indeed, what many lawyers are doing today. But I submit that this is an increasingly dangerous path to follow in America today. I hope that each one of you will refuse to join the ranks of the “do-nothing backyard barbequers,” “weekend golfers” and “weekday office and home routiners” who choose not to get involved in what is going on in America today.

There is a second alternative, at the other extreme, and that is to join the revolution. The persons who have opted for this alternative argue that the whole system is rotten and must be destroyed. They are present, as I am sure you know, and have followings on many of our university campuses. I think there is something wrong, basically wrong, with both their premise and their conclusion. Their premise, and you can find it in their writings, is that man is basically decent but that corrupt institutions have transformed this very noble savage into a civilized monster. Their conclusion—destroy the corrupt institutions and Man’s native goodness will flower.

I do not think there is anything in history that would confirm either the premise or the conclusion. There has to be a government and men are going to have to run it. And while I must confess that I am not entirely happy with all of our government officials, I would not foresee any improvement if, for example, Jerry Rubin were in charge of international affairs or Abbie Hoffman were running domestic affairs.

There is a third alternative, and that is meaningful participation

within the system. I think that this is the route that lawyers must take. I think that lawyers have to be leaders, not followers, in meeting the challenges of today. Lawyers, above all, have to prove that the law is not a tool to preserve the status quo and to protect selfish interests, which so frequently it has been in this nation. Lawyers have to show that the best way, the very surest way to redress the wrongs in our system is to use the law to keep the nation up to date with the changing times.

I do not believe that lawyers, and particularly law firms, have led the way in this regard in the past as much as they could.

I would like tonight, since some of you will end up working for them, to talk just a little about this institution called the "law firm." You must know that until the latter part of the Nineteenth Century, business, as well as most individuals, obtained their legal services largely from individual practitioners. Law partnerships usually consisted of a two man operation—an office lawyer and a court lawyer. But that is not the way it is now. There has been a real proliferation of these major law firms and today, as you know, there are hundreds of them throughout the nation with more than fifty attorneys. Some have over a hundred lawyers.

The reasons for this development in the American legal system, I am sure I do not have to dwell upon. Proliferation of the laws, tendency toward specialization, large corporations making increasing demands on legal talent—all of these have contributed to the growth of the law firm and have produced what we call the "legal factory."

The legal factory, the large law firm, spends most of its time and most of its talent representing business interests. What is the reason for this? Most often it is the business corporation that can afford the fees that these firms charge, which sometimes range up to one hundred dollars per hour. And it naturally follows that when there are corporate clients able to pay these kinds of fees, the spending of time by the lawyers in the firm on clients who cannot afford this rate is discouraged.

Let me point out, too, because those of you who will be going to law firms will be associates, that the division of legal functions within a law firm between the partners and the associates also operates to limit the clientele of the law firm. It is the partners, properly, who decide what the associates are going to work on. Quite naturally, they frown on the associates working on matters that are going to be billed at less than the rate the major corporate clients can pay. Any student of the economics of a law firm will tell you that it is the associates who create much of the profit for the firm. Why

is this? Because the young associate will be expected to produce anywhere up to forty billable hours per week and will be paid at a rate of about five to ten dollars an hour for his services. Contrast this with the hourly rate charged to the client for his services—\$20 up to \$40 per hour—and you can see the profit.

Since progress within a law firm depends upon hard work, and I do mean hard work, for well-paying clients, the young associate has been historically and effectively prohibited from spending time on organizations or services which serve either the underprivileged or the poor. Indeed, until very recent years, these kinds of activities were frowned upon by most, not all, but most, major law firms in the United States.

Where does this lead me? It leads me to this for the reasons I have given you, the services of our nation's law firms, the larger firms, which have the biggest assemblage of legal talent that you can find in America, were in prior years very rarely involved in the problems of the underprivileged and the indigent. Their community service activities were largely devoted to services such as charity boards, hospital boards, fund drives for worthy causes and other similar activities. But anything that smacked of controversy was avoided. Of course there were exceptions to this but they were rare.

It is true that individual attorneys have traditionally participated in community service programs, particularly—to give one note-worthy example—the legal aid programs sponsored by the bar associations. But these programs, and I speak specifically of the legal aid programs, were, until recently, hardly ever innovative or effective in meeting the needs of the indigent persons in our large cities. Frequently, the important members of the law firms and the officials of the local bar associations, who happen often to be partners of the large law firms, acted as a moderating influence on some of the innovative programs and projects that were designed to aid the underprivileged. The fear was often expressed, at least in private, that some of these programs might adversely affect the interests of the clients of the firm. They might result in controversy and the firm getting its name in the newspaper in a context that the corporate clients would not like.

Until recently, a lawyer in a large firm who wanted to engage in community services was usually forced to take a leave of absence from his firm. But these were granted infrequently, the pressure of business made it difficult to get them. Further, some would have doubts as to their future with the firm if they took a leave of absence to engage in these types of projects.

In sum, until the late 1960's, most law firms of America were not

leaders in community service. They tended to be insular, preoccupied with serving their well-paying corporate clients.

I am glad to be able to say that the times are changing. Let me give you one reason. Harvard Law School reports that the percentage of its graduates entering private law practice has declined from 54% in 1964 to 41% in 1968, the University of Virginia, from 63% to 54%. Yale, which always had a high percent of graduates going into public service, declined from 41% in 1968 to 31% in 1969. The University of Michigan Law School reported that 26 of its 1969 graduates are entering Wall Street firms, as compared with an average of 75 in preceding years. The fact of the matter is, in part because of the very factors that I have talked about, many law school graduates are "turning off" the major law firms. They are looking for an avenue of public service that the law firms have not provided.

There are about 2,000 lawyers throughout the nation in various programs, both federal and private, giving full time to providing legal services for the poor. Their clientele consists of about 34,000,000 Americans who have incomes below the poverty level. This comes out to about one lawyer for each 15,000 clients. These people are doing a yeoman job, but much more needs to be done.

Let me mention a few of the things the forward-looking law firms are experimenting with in an effort to become more responsive to the problems of today. A major firm in Baltimore, Maryland has opened a branch office in the ghetto and staffs it with its own lawyers, both partners and associates, to provide legal services to the ghetto community.

There is a private lawyers' group which has been established in several cities called the "legal assistance group." It is made up of volunteers from a number of the large law firms plus law school students. They establish legal aid offices in the inner city.

Other law firms are taking a different approach. They are taking on major cases that are testing new frontiers involving the poor and disadvantaged. In Chicago, you may have heard of the "contract league buyers" case which involves a group of black people who purchased their homes under contract, paying exorbitant interest rates. A major law firm in Chicago is handling the case. They are staffing this case with top trial lawyers with all of the depth that they give to a major case for a well-paying client.

There are other law firms that are experimenting with different kinds of approaches and I hope that we see much more of this.

I think that the lawyer who spends his entire professional life turning out legal work for fees does a major disservice to his profession. Lawyers have an obligation to give of their talents to gov-

ernment and community service. The nation's law firms are starting to recognize this. They should not condone the attitude that is still present in a number of law firms that young lawyers should only grudgingly be allowed to participate in the kinds of programs that I have described.

The nation's lawyers have a very direct responsibility for this system that some young people, black and white, are protesting against. And the nation's lawyers cannot absolve their responsibilities by saying "let the government take care of it."

I envy each one of you who is heading towards a legal career. You are doing this at a time in our nation when there is a greater opportunity than there has ever been before to bring about some long-needed reforms in our institutions.

I would like to urge each of you to be a participator and not an onlooker. I would like to urge you not to be afraid of controversy or the unpopular cause.

It was not until the decade of the 1960's that America finally faced up to the really true dimensions of the problems such as poverty and racial discrimination that exist in this nation. The balance of this century can, should and must be devoted to finding solutions to these problems. Whether it will or not is going to depend to a very great degree upon the nation's lawyers and, therefore, on you.

I would like to suggest, in closing, two slogans for your guidance. The first has no source "Behold the turtle, he makes progress only when he sticks his neck out." The second is the VISTA slogan "If you're not a part of the solution, you are a part of the problem."