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## The Private Lawyer and Public Responsibility—The Profession's Armageddon

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# THE PRIVATE LAWYER AND PUBLIC RESPONSIBILITY —THE PROFESSION'S ARMAGEDDON

Marna S. Tucker\*

The profession must . . . purge itself of the inbred precepts of another day, rethink its code of practice and reshape its internal mechanisms for meeting its public responsibilities. Else the dangerous cleavage between a public sector of the bar devoted to the developing issues of society and a private sector—the practicing bar—which ignores them will only widen.<sup>1</sup>

This was the message of Mr. Justice William J. Brennan at the Harvard Law School Convocation on the occasion of its 150th Anniversary. And this is the conclusion of a growing number of attorneys and law students who live in the stark reality of a society whose social organization and economic development have become so complex as to make it easier to lose touch with human values than to deal with them. The lawyer has always had significant responsibility as an architect of social progress; the way he has chosen to define and execute this public responsibility has been a subject of continuing change. But the changes have not kept pace with the demands of the public. The rumble of discontent is growing both inside and outside of the profession.

## HISTORICAL DEVELOPMENT OF PUBLIC SERVICE WORK

The history of the private lawyer's role in public service work began in the 1870's, when the view of the profession's responsibility to the public interest was limited to insuring that legal representation was of high quality.<sup>2</sup> At that time in history little thought

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<sup>1</sup> Brennan, *The Responsibilities of the Legal Profession*, in *THE PATH OF THE LAW FROM 1967* 92 (A. Sutherland ed. 1968).

<sup>2</sup> For a history of the professional rebirth of the Association of the Bar of the City of New York see F. R. Marks, *The Lawyer, The Public, and Professional Responsibility* 9 (unpublished draft, publication set for Spring, 1972).

was given to the consequences of inequality of access to legal representation. With the turn of the century, a few lawyers focused on the problems of providing legal services to people who could not pay for an attorney. Up to World War I, private lawyers had provided some free legal assistance to people who could not pay for them,<sup>3</sup> but the collective focus on increasing the delivery of free legal services was inaugurated with the publishing of Reginald Heber Smith's *Justice and the Poor*<sup>4</sup> in 1919. The concept of organized legal aid spread rapidly so that by 1922 the American Bar Association had recommended that every state and local bar association appoint a standing committee on legal aid work.<sup>5</sup> This concept logically progressed into the mass governmental funding of legal services programs across the nation which presently provide over 2,000 lawyers in over 270 operating programs to represent people who cannot afford legal assistance.<sup>6</sup>

The 1930's saw the New Deal government likened to the saviour of the common man, and many lawyers joined its ranks as federal attorneys with the thought that their role in the new regulatory agencies would be to protect the public interest. But somewhere along the line, under the guise of protecting private interests from the excesses of government, the very industries to be regulated become the controlling powers, and the public interest which had spawned the regulatory agencies became the whipping boy of its own progeny. These same agencies are being attacked today by the lawyers of the 70's under the banner of the public interest.

In the 1950's and early 60's lawyers interested in public service work looked to the civil rights movement for their sustenance. Organizations like the NAACP Legal Defense Fund, Inc. and the Lawyers Committee for Civil Rights Under Law, founded during the Kennedy Administration, took a leading role in designing a national strategy for civil rights litigation, utilizing the skills of lawyers across the country to bring cases attacking racial discrimination in voting, education, housing, and employment. For a brief time lawyers seeking to work for the public interest returned to the ranks of the federal government—to the Civil Rights Division of the Department of Justice or the United States Commission on

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<sup>3</sup> Most of this work was done on an individual basis by private lawyers. However, some organized legal aid was available in New York as early as 1876. See E. BROWNELL, *LEGAL AID IN THE UNITED STATES* (Supp. 1961).

<sup>4</sup> R. SMITH, *JUSTICE AND THE POOR* (1919).

<sup>5</sup> 47 A. B. A. REP. 5, 402 (1922).

<sup>6</sup> Statistics from officials of the Office of Economic Opportunity, Office of Legal Services, Washington, D.C., December 1971.

Civil Rights, which under the Kennedy Administration worked alongside flocks of private lawyers and law students in implementing Fourteenth Amendment rights and equal justice for all.

The legitimate heir of the civil rights movement was the poverty program. While the successes of the civil rights movement set the country on the track to assuring equal rights to the blacks of the South, the cities began to crumble under the weight of large, poor, black, and minority populations. Existing legal aid societies were not geared to meet the demands for lawyers by vast numbers of poor people seeking basic rights.<sup>7</sup>

The OEO Legal Services Program created under the Economic Opportunity Act<sup>8</sup> offered the poor the promise of accessibility to lawyers and whatever changes in society that lawyers' magic might bring. It also offered a new avenue for lawyers to perform a public service and paved that avenue with adequate salaries and a goodly number of job opportunities.

The legacy of the poverty program was still another new movement for lawyers of the 70's interested in public service work. Even with the mass expenditure of government funds in the OEO Legal Services Program, many interests and individuals still continued to go unrepresented by lawyers. Environmental groups, consumer groups and health groups all started demanding attorneys. The new "public interest" lawyers answered the call.

Although imbued with the same public spirit that characterized the public service lawyers before them, these lawyers were different. What was once an evolution of the legal profession's involvement in representing the traditionally unrepresented has become

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<sup>7</sup> Considering one case being equivalent to one person being served, there were 27,000 persons served in 1900 and 426,000 served in 1965 prior to the establishment of OEO legal services. The need for legal services has been estimated by various experts to range from 7.5 persons per 1,000 population to 25 persons per 1,000. Fisher and Woods estimate the need at 7.5 persons per 1,000 population on the basis of a case load study of legal aid provided between 1936 and 1947 in 43 cities. L. FISHER & R. WOODS, *A STANDARD OF MEASUREMENT FOR LEGAL SERVICES IN URBAN AREAS* (1948). Reginald Heber Smith placed the number at 13.3 persons per 1,000 population. R. SMITH, *JUSTICE AND THE POOR* (1919). Earl L. Koos indicated the need at 17.5 to 25 persons per 1,000 population. E. KOOS, *FAMILY AND THE LAW* (1929). In *BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA, REPORT OF THE COMMISSION OF LEGAL AID* (1958), the need was indicated to be 17.6 to 25 persons per 1,000, with the lower figure concurred in by Lee Silverstein. L. SILVERSTEIN, *AVAILABILITY OF LEGAL SERVICES FOR THE POOR: A PRELIMINARY REPORT ON CASE STUDIES OF SAMPLE COUNTIES* (1966).

<sup>8</sup> 42 U.S.C. §§ 2701-981 (1964).

a revolution in professional responsibility, manifesting itself in the form of a whole new breed of lawyer. The law graduate of the late 60's and 70's is a different animal than the graduate of ten years ago. Nurtured by courses in poverty law and clinical education programs that were the direct result of pressures from the OEO legal service movement, and identified with antiwar, environmental and women's rights activities, these lawyers seek to practice law to change the social and economic order, not merely live off it.<sup>9</sup>

The few surveys conducted of law students suggest that incoming classes are greatly interested in public service work.<sup>10</sup> "Although the evidence is highly fragmentary, the career objectives of entering students seems to have shifted markedly to reflect the concern of the present student generation for social reform."<sup>11</sup> In 1969 law students started pressuring private law firms in job interviews to undertake more public interest work, and effected national collective bargaining techniques very successfully.<sup>12</sup> Law firms report that during recruiting, law students constantly question them about their pro bono policies, although the students have ceased making the existence of such a policy a condition of employment.<sup>13</sup> Several

<sup>9</sup> See Garrett & Pennington, *Will They Enter Private Practice?*, 57 A.B.A.J. 663 (1971).

<sup>10</sup> A 1970 poll of first-year students at Harvard revealed the following preferences when they were asked to name "the field of interest in which you wish to work after graduation."

Field of Interest	%
Business Corporation	2
Corporate Law Firm	8
Corporate Law Firm (if time allowed for pro bono work)	10
General Practice Law Office	12
Criminal Law	3
Government	11
Teaching	3
Civil Rights, Civil Liberties, Poverty Law	21
Non-Legal	6
Other (Specify)	5
Don't Know	21

Bok, *New Lawyers in Old Firms*, N.Y. Times, Feb. 3, 1971, at 37, cols 3-6 [hereinafter cited as Bok]; see also Berman & Cahn, *Bargaining for Justice: The Law Student's Challenge to the Law Firms*, 5 HARV. CIV. RIGHTS—CIV. LIB. L. REV. 16 (1970) [hereinafter cited as Berman—Cahn]. Garrett & Pennington, *supra* note 9, at 666.

<sup>11</sup> Bok, *supra* note 10.

<sup>12</sup> See Berman & Cahn, *supra* note 10.

<sup>13</sup> American Bar Association Pro Bono Project, Questionnaire to Private Law Firms with Pro Bono programs, Aug. 1971 (unpublished results in ABA office, Washington, D.C.) [hereinafter cited as ABA Pro Bono Questionnaire].

firms have reported that young associates have left the firm in the past year to spend full time in public service work. One particular firm stated that six attorneys either left the firm or took an extended leave of absence to do *pro bono* work.<sup>14</sup>

Although the motivation of the law students is clearly in the direction of social reform, and their interest is being made known to law firms, the percentage of those who actually enter public service work is small.<sup>15</sup> The public service job market cannot meet the demand,<sup>16</sup> forcing law graduates to turn to private firms or create their own alternatives for employment.<sup>17</sup> The diminishing demands for *pro bono* commitments from private firms may be a result of the tight job market, but that analysis falls short of what has really happened to the legal profession. The recent law graduate not only has received a different emphasis on his legal education than the lawyers of previous decades, he has developed a different value system and life style. Though the majority of law students may enter a practice where the "higher calling" of social reform is not emphasized,<sup>18</sup> they enter the practice complete with the value system of their peers, a powerful force with which to contend. These are the same graduates who spurned the luxuries of their families for less materialistic goals. The luxuries offered by a grand law practice may suffer the same fate.

Both as a response to the demands of the new law graduates and young lawyers in law firms, and to the challenge issued by Mr. Justice Brennan at the Harvard Law School Sesquicentennial

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<sup>14</sup> *Id.*

<sup>15</sup> "When the actual postgraduate plans of the class of 1970 of Columbia Law School are analyzed, 75% of the total class and 80% of the Law Review staff plan to enter private practice, expressions of conscience and professed public service career objectives to the contrary notwithstanding." Garrett & Pennington, *supra* note 9, at 666.

<sup>16</sup> According to OEO officials, in 1971 there were 1,500 applicants for 200 positions in the Reginald Heber Smith Fellowship Program of the OEO Legal Services Program. The Public Interest Research Group, an affiliate of the Ralph Nader Center for the Study of Responsive Law, reports that it had 700 applicants for 9 attorney positions. The Minnesota Public Interest Research Group received 300 applications for one attorney position. Interview with Don Ross, Director, Public Interest Research Group, in Washington, D.C., Sept. 1971.

<sup>17</sup> For a discussion of the new law communes and collectives, see Washington Post, Feb. 8, 1970, at A-3, cols 1-3.

<sup>18</sup> If job opportunities were in adequate supply in the public service fields, the majority might indeed shift.

Celebration in 1967,<sup>19</sup> law firms started undertaking a variety of programs whereby the firm made a collective commitment toward correcting many of the evils of society that are oppressive to the poor, to minorities and to many segments of the general public. These programs were quite different from the earlier participation of the private bar in public service work which had been of a non-organized nature and looked more like a charitable dispensation of services than a professional responsibility.

The initial private bar activity in formalizing pro bono programs started in the larger east coast cities—Washington, D.C., Baltimore, New York, Philadelphia, and Boston.

The American Bar Association Section of Individual Rights and Responsibilities viewed this development with keen interest and took the opportunity to engage the organized bar in the dialogue of the private law firm's role in public service. With a Ford Foundation grant the Project to Assist Interested Law Firms in *Pro Bono Publico* Programs was undertaken on February 1, 1971 with the mandate to:

[C]ollect, compile, and exchange information concerning existing *pro bono* and public service efforts by the private bar and to consult with private members of the bar throughout the country who want to establish individualized programs that can effectively utilize their special skills and expertise as private attorneys to benefit those groups of persons who have been traditionally under-represented.

Although the mandate was couched in general terms, it was clear that the Section very specifically wanted to provide encouragement and support to the scattered individual efforts across the country.

The first survey conducted by the Project in February, 1971 revealed that approximately ten to twenty law firms or bar associations had formalized *pro bono* programs and that these were confined primarily to large coastal cities. Within seven months the Project had assisted approximately ninety law firms and organizations who were actually operating or were in the active process of developing a specific formalized program. Over 500 law firms and forty bar associations have expressed interest in some aspect of *pro bono* work, and it is anticipated that a significant number of these will choose to develop a formalized program.

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<sup>19</sup> "What we primarily need . . . are more and better ways to combine within a legal career consecutive periods of full-time private and public service, although I would not abandon the search for imaginative new ways by which the lawyer can serve the public interest while continuing in private practice in a more substantial and concentrated fashion than has traditionally been true of spare time activities." Brennan, *supra* note 1, at 97.

Perhaps the most significant fact about the *pro bono* movement is not the number of law firms or organizations getting involved but their geographic diversity. The inquiries have come from an evenly-blanketed 38 states, including large cities and small towns alike. Without any substantial source of financial assistance to encourage participation in these efforts, the *pro bono* movement has reached the heartland of the country.

### NEW RESPONSES BY THE PRIVATE BAR

Private bar participation in the *pro bono* movement has taken on a myriad of styles but can be categorized into participation by law firms, bar associations, legal organizations, and law schools. An analysis of the developments in each of these categories may help to ascertain what the real contribution of the private bar will be to the public interest.

#### LAW FIRM PARTICIPATION

The private law firm activities are varied but have distinctive characteristics. They range from the traditional non-formalized approach where a law firm allows an individual member to engage in activities the attorney chooses, consistent with his workload, to a more formalized approach where the firm *qua* firm creates what can be called a *pro bono program*.<sup>20</sup> Larger, more affluent firms have undertaken such programs as a Public Interest Department or Section which is designed as a permanent part of the law firm, such as tax or litigation, usually headed by a partner who does only public service work in a manner similar to other department heads.<sup>21</sup>

Other law firm programs include the operation of a branch office in a ghetto or barrio, directed by a partner or experienced associate with other associates permanently assigned or rotated

<sup>20</sup> Ashman & Woodard, *Private Law Firms Serve the Poor*, 56 A.B.A.J. 565 (1970); Note, *Structuring the Public Service Efforts of Private Law Firms*, 84 HARV. L. REV. 410 (1970); Note, *The New Public Interest Lawyers*, 79 YALE L.J. 1069, 1106-09 (1970).

<sup>21</sup> M. TUCKER, *THE PRIVATE LAW FIRM AND PRO BONO PUBLICO PROGRAMS: A RESPONSIVE MERGER* 14-15 (1971). The permanence and regularized status of this type of program minimizes the pressure created by a conflict of time between *pro bono* and paying cases. It is clear that the firm has committed itself to the principle that *pro bono* work should be firm work done on firm time and with the back-up support and resources that the firm provides to its other departments. This program is particularly suited to long-range planning and can develop on-going communications with community groups and public interest referral agencies.



through it.<sup>22</sup> Some firms may loan attorneys for an extended period of time to a government-funded legal services program, or several firms can privately participate in running or staffing a neighborhood office.<sup>23</sup>

But, besides the private firm programs, there is a more unique development within the private bar whose existence can take credit for the national focus on the *pro bono* phenomenon. The Public Interest Law Firm (PILF) is a private law firm devoted primarily to clients or interests with a public policy need. Economic gain is a secondary purpose. Frequently their operations are limited to one or more aspects of public concern such as environment, consumer or health cases. The majority of these firms are small, self-supporting firms which receive no foundation or government funding except as fees from clients who may be recipients of such funding.<sup>24</sup>

These firms are not radically different from other small private firms; their differentiating characteristics being in their specialty rather than in their structure. They specialize in representing the interests that the practicing bar has, for the most part, ignored, but their style of practice makes it highly likely that, if they survive economically, they will be readily accepted into the mainstream of private practice and eventually become indistinguishable from other small firms.

Probably the most elaborate of the PILFs are the foundation-funded law firms which are usually funded to perform in a specific area of the law or to demonstrate a particular need or hypothesis.<sup>25</sup>

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<sup>22</sup> *Id.* at 15-16. The efforts are primarily directed toward the problems of the local poor and community development representation. This is the most "visible" law firm program, but its style and location can make it a competitor with local legal services offices and minority practitioners.

<sup>23</sup> *Id.* at 17; see also J. ROSENTHAL, R. KAGAN & C. QUATRONE, VOLUNTEER ATTORNEYS AND LEGAL SERVICES FOR THE POOR: NEW YORK'S C.L.O. PROGRAM (1971).

<sup>24</sup> Berlin, Roisman & Kessler, *Public Interest Law*, 38 GEO. WASH. L. REV. 675 (1970).

<sup>25</sup> *Id.* at 684; see also Note, *The New Public Interest Lawyers*, 79 YALE L.J. 1069, 1111-14 (1970). The Center for Law and Social Policy in Washington, D.C., a typical example, receives funding from several foundations and concentrates on environmental, consumer and health problems. Public Advocates, Inc., a non-profit law firm in San Francisco, receives foundation funds to maintain comprehensive litigation and other legal activities in areas of pre-eminent concern to the poor, and to determine whether the structure of present-day legal practice can be altered so that a law firm devoted solely to the concerns of the poverty community can become self-supporting and wholly independent.

The foundation-funded PILF's suffer from the uncertainty of economic insecurity, and it is this dependence on foundation largesse that creates unique problems of accountability. They must be accountable to their lifeline, the foundation boards of directors, as well as the non-paying clients they choose to represent.

Of equal concern are the moral implications of a group of independent lawyers free to choose their own version of the public interest . . . whether public interest law will develop new methods of ensuring democratic control of the nation's resources and programs or whether it will be a further entrenchment of the most elitist tendencies in the law remains to be seen.<sup>26</sup>

Foundation funding, in its essence, is both short-term and experimental. One contribution of these law firms to the public interest will be to serve as the cutting edge for the rest of the profession; their mission being to pierce so deeply that legal institutions and present notions of professional responsibility will be permanently altered by the healing process.

The most frequent question asked about the private firm involvement is "Is this a temporary phenomenon?" Although any answer would be speculative, it can be said that, whether or not the formalized programs are temporary, the effects of such programs within the private bar have resulted in permanent changes within law firms that should redound to the benefit of the general public. "If firms and individuals would examine the implications of their professional roles and set limits on advocacy for private interests . . . the consequences are bound to be healthy."<sup>27</sup>

Several factors must be considered in evaluating the possible duration of such a movement. First, *pro bono* work is at most a secondary purpose of a law firm's activities. Law firms are private rather than public institutions. The practice of law is a business, and hopefully, a profitmaking business, although it is distinguishable from a business and denominated a profession because of its established ethical standards and dedication to "a spirit of public service."<sup>28</sup> Therefore, some outside limits to the private bar's involvement in *pro bono* work are established at the outset.

Similar to earlier public service developments within law firms, it is a movement from the bottom up where the younger lawyers and law students have organized to pressure firms to undertake a

<sup>26</sup> Cahn & Cahn, *Power to the People or the Profession?—The Public Interest in Public Interest Law*, 79 YALE L.J. 1005, 1008 (1970).

<sup>27</sup> Dorsen, *The Role of the Lawyer in America's Ghetto Society*, 49 TEX. L. REV. 50, 59 (1970).

<sup>28</sup> R. POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES* (1953).

greater commitment to *pro bono* work.<sup>29</sup> The younger lawyers most likely will become the senior partners of the firms, and if the present generational values prevail; indeed, law firms may well adopt a different emphasis for their representation of private interests. However, historically the responsibility for implementing the "missionary" desires of young law associates has been passed down to the young rather than up to the senior partners. Although there is a professional *duty* to provide representation in indigent criminal cases, this duty, in large part, has fallen on the young associates. Rarely are the greying temples of the senior partners found in the local criminal courts. Therefore, there is no clear precedent to indicate that as younger lawyers climb the law firm ladders to success they will continue to embrace the public good as a major responsibility of the profession.

In the private firms that have formalized *pro bono* programs, senior partners have yet to evidence the interest and activity in the type of public interest work that the younger associates have.<sup>30</sup> Yet, the input of senior partners is crucial to the success of *pro bono* activities. A five-minute phone call from a senior partner may have the same impact as two weeks of brief-writing from a young associate. Who is putting in hours is more important than the number of hours being spent. Many firm partners remain detached and largely uninformed about their firms *pro bono* programs. Senior partners put in a similar number of hours in public service work, but the work is a type that is a function of their prestige and is markedly different from the *pro bono* work of younger associates. Senior partners sit on local civic boards of directors and participate as leaders in bar association activities; young associates undertake cases and provide representation to needy groups.

"The main reason for non-involvement of partners . . . [in *pro bono* work] relates to their personal attitudes about poverty law rather than the structural impediments they derive from the position of partnership per se."<sup>31</sup> But the prevailing opinion of large firms with formalized programs is that, since the inception of their *pro bono* program, more partners and associates are engaging in a

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<sup>29</sup> See notes 10-14 *supra* and accompanying text.

<sup>30</sup> See J. ROSENTHAL, R. KAGAN & C. QUATRONE, *supra* note 23, at 163-67. In a study conducted by the Russell Sage Foundation of the operations of the Community Law Offices in New York,  $\frac{2}{3}$  of the volunteers who participated in the CLO program reported that "they rarely or never received help from partners in doing their CLO work." Only 8% say they usually or always do. *Id.* at 163.

<sup>31</sup> *Id.* at 167.

wider range of *pro bono* practice.<sup>32</sup> One firm reports that "pro bono lawyering has tripled over the previous period since [the *pro bono* program] began operations."<sup>33</sup> The undertaking of a *pro bono* commitment by the firm operates in favor of greater participation because attorneys feel freer to spend firm time on non-paying cases. Firm programs also make it easier for attorneys to find cases that are of interest to them and that utilize their particular area of expertise to greater advantage.

Another factor that could affect the permanence of *pro bono* activity within the private firm is the process of re-evaluation of the lawyer's role in the public sphere that has taken place as a result of discussions within the inner sanctum of the partnership meetings.

The new lawyers . . . want . . . the lawyer to take more seriously his obligation to the public interest in the course of his private practice. As stated by John Esposito, an associate of Ralph Nader, the lawyer 'has a duty to balance the private interest of his client against the public interest of society,' and if the two interests do not coincide, he should then urge his client to take a broader view of his best interest.<sup>34</sup>

In matters of public health and safety, a lawyer's role becomes more critical. If he sees a conflict between his client's interest (as the client views it) and the public's, he has a responsibility to broaden his client's perspective. The real long-term interests of the client and the public often coincide.<sup>35</sup>

Still another factor which could perpetuate *pro bono* activity in substance, if not in form, is the change in the manner of how decisions on *pro bono* work are made within a law firm. Historically, *pro bono* work was treated like a charitable matter, leaving the decision to participate to an individual's own discretion. It was strictly a matter of autonomy, and the firms believed that any collective decision about this type of work would be outside the sphere of firm regulation, except so far as to declare it a matter of individual choice.<sup>36</sup> As private firms began developing formalized programs this attitude changed or had to be reconciled. The real

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<sup>32</sup> ABA *Pro Bono* Questionnaire, *supra* note 13. One firm reports that prior to the adoption of its *pro bono* program, 2.5% of total firm work time in 1969 was devoted to *pro bono* work. After the inception of the program, the *pro bono* time in 1970 rose to 4%.

<sup>33</sup> *Id.*

<sup>34</sup> Riley, *The Challenge of the New Lawyers: Public Interest and Private Clients*, 38 GEO. WASH. L. REV. 547, 549 (1970) [hereinafter cited as Riley].

<sup>35</sup> *Id.* at 566.

<sup>36</sup> See J. ROSENTHAL, R. KAGAN & C. QUATRONE, *supra* note 23, at 147.

significance of the change of procedure was the elevation in status of *pro bono* work. By being of enough importance to warrant collective consideration *pro bono* work can be said to have become institutionalized in the firm. One example is a change in firm policy where, as a result of their *pro bono* program, a firm "voted to give *pro bono* work equal status with fee-paying work for purposes of assessing associate's performance and advancement,"<sup>37</sup> thereby making explicit a policy, the absence of which had acted to discourage participation by young associates in *pro bono* work.

It is the side effects of these firm discussions that may have the most significant impact on social progress. By being forced to examine some of its own policies, policies that its own lawyers may be attacking in other arenas as contrary to the public interest, a firm may direct its attention to the minority hiring practices of the establishments where the firm banks or purchases furniture and supplies; it may scrutinize its own discriminatory employment practices in the hiring and promotion of women and minority groups.

The firm's *pro bono* activities have helped make the partners more aware of the importance of encouraging minority recruitment and the recruitment of women. These have also encouraged the establishment of a program of sabbatical leaves for periods up to a year for individual lawyers. We do now have a program for hiring minority students for summer work. This program may have had its genesis in our community legal services program.<sup>38</sup>

Clearly, the most important factor bearing on the permanence of *pro bono* activity is its economic effect on the law firm. Larger firms which have undertaken formal programs such as public interest departments may expend anywhere from \$44,000 to \$150,000 in operating costs.<sup>39</sup>

These figures should be viewed alongside the value of time contributed on an ad hoc basis by individual lawyers in similar firms without formal programs. Actual figures are not available for individual time, but estimating conservatively that each attorney provides six hours of *pro bono* work a month, at an average cost to the firm of \$30 an hour, and multiplying this figure by approximately fifteen practicing attorneys over a twelve-month period, one

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<sup>37</sup> ABA *Pro Bono* Questionnaire, *supra* note 13.

<sup>38</sup> *Id.*

<sup>39</sup> Of the larger firms (over 50 attorneys) answering the ABA *Pro Bono* Questionnaire, the average amount of firm time devoted to *pro bono* work was 2.5% of total firm billable hours. Smaller firms showed considerably less.

can see a firm contribution of \$32,400.<sup>40</sup> Recognizing the high cost of *pro bono* work with relatively low measurable impact, firms have started calculating their non-formalized contributions and are now developing programs to make these contributions more efficient and, hopefully, more effective.

But the benevolence of the law firm is directly dependent on the economic prosperity of the firm, no matter how well integrated the *pro bono* program may be into the regular operation of the firm.

When the economic picture becomes bleak, the *pro bono* work becomes more dispensable to members of the firm reading the balance sheets. The insecurity that comes from such fair-weather dependence is a fate that *pro bono* programs share with their brothers, the government-funded OEO legal service programs, whose fate is dependent on congressional whim.

The need for sustained economic viability presents the challenge to develop methods to help *pro bono* and public interest work pay its own way, if not contribute to the profits of a firm. Nothing will do more toward providing adequate and available representation for unrepresented groups than to make such representation fee-generating.

After all is said and done, the ultimate contribution of the private bar to the *pro bono* movement may be the pressure that is generated to develop new ways of financing legal representation. The most frequent request for assistance from attorneys to the ABA *Pro Bono* Project has been for funding these programs. The pressure is coming from an unusual alliance that may signal the permanent survival of the movement.

The large private firms, perhaps because of their inherently cautious nature, have helped give *pro bono* work the stature that public interest lawyers had recognized all along. Their desire to lessen their economic burden, yet increase their activism, may make the heretofore lonely mission of public interest lawyers to make public interest work economically feasible somewhat easier.

Smaller private firms and individual practitioners, the vast majority of the practicing bar in the United States, have not been at the vanguard of creative *pro bono* programs, although their participation in volunteer programs, run by bar associations or legal services programs, has been commendable. The small firm

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<sup>40</sup> The six-hour figure is ascertained by assuming a sixty-hour work week and utilizing the 2.5% figure of note 40.

and private practitioner is struggling for his own economic survival and views his problem as one of increasing the demand for paying legal business. The public needs lawyers, but the public demand has not been meshed with the supply of small firm lawyers. Making legal services available to moderate-income persons at a reasonable fee might facilitate the bringing of many public interest cases, presently too costly for our present professional patterns to handle.<sup>41</sup>

The existence of a coalition of public interest lawyers, large firms, small firms, and bar associations offers real hope that a solution will be found for financing *pro bono* work.

Assuming that *pro bono* work in private firms will continue in some form, the most difficult problem with which the private bar jousts is that of conflicts of interest. It is a serious problem that places additional limits on the extent of *pro bono* involvement. Large law firms, in particular, may well be on the other side of many public interest questions. But it is not a simple question of representing parties or interests on each side of an issue. Rather it is a complicated issue that involves how broadly one defines the interest one represents and what is the scope of a lawyer's responsibility to a client.

Conflicts of interest as they apply to *pro bono* work can be categorized broadly as *true* conflicts and *spurious* conflicts. True conflicts are those where a lawyer declines representation, either to prevent the divulgence of confidential information or because he is already representing a party or issue on one side of an interest so that the independent exercise of his professional judgment would be hampered.<sup>42</sup>

Conflict of interest with pending paying cases is often a problem. Probably none of the leading firms could take some broad innovative suits such as the one pending against potentially all the District of Columbia banks for violating the usury laws. Any Washington firm with a District of Columbia bank, or perhaps any bank, as client could not take such a case because of a conflict of interest.<sup>43</sup>

This type of conflict is visible, understandable and a difficult and recurring problem for a closely knit private bar in a business community.

The conflicts issue, in this instance, becomes one of a denial of access to the legal processes because, even defining the conflict narrowly, most law firms with formidable expertise in the area

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<sup>41</sup> See B. CHRISTENSEN, *LAWYERS FOR PEOPLE OF MODERATE MEANS* (1970).

<sup>42</sup> ABA CODE OF PROFESSIONAL RESPONSIBILITY Canons 4, 5 (1969).

<sup>43</sup> Riley, *supra* note 34, at 580.

have a legitimate conflict, and it is almost impossible for a client challenging the interests to obtain a lawyer. It is in this area that the need for a separate public interest law firm, free of the financial dependence on clients, becomes most apparent. The choice for a public interest client really has been non-existent, and many worthy claims have gone untested judicially.<sup>44</sup> With the advent of the public interest law firm as an available alternative means of providing representation, the private firms are beginning to recognize that they can no longer tolerate non-representation and still espouse the viability of the legal process and the adversary system. Therefore, they are turning to assisting in the formation and financial support of public interest law firms.

The other major category of conflicts of interest—the *spurious* conflicts—are so called because they are conflicts based on grounds other than the lawyer's ability to represent the best interests of his clients. Spurious conflicts are the most prevalent and most difficult to resolve because they are so difficult to define.

One example of the way a law firm defined and resolved some *pro bono* conflicts illustrates that its primary concern may not have been its unhampered ability to represent its client's best interests: "We have had several conflicts of a *general philosophic nature* which in most cases we resolved in favor of the lawyer taking on the *pro bono* case on an individual basis without the signing of the firm name."<sup>45</sup> A "general philosophic" conflict sounds more like a description of cases that may *offend* clients rather than cases in conflict with their interests. Therefore, the decision on how or whether to handle these cases is usually a question of good business rather than professional responsibility.

Another firm's description of a procedure to deal with conflicts of interest indicates the broad definition the firm uses for a conflict in a public service case:

If in the course of an individual lawyer's public service legal activities it appears that such individual's position may be *inconsistent with an existing firm relationship* to a client, it is the obligation of the lawyer promptly to discuss and clear the situation with the coordinator of public service activities.<sup>46</sup>

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<sup>44</sup> "For the net effect of an overharsh rule of disqualification must be to hinder adequate protection of clients' interests in view of the difficulty in discovering technically trained attorneys in specialized areas who were not disqualified, due to their peripheral or temporarily remote connections with attorneys for the other side." 64 YALE L.J. 917, 928 (1955).

<sup>45</sup> ABA *Pro Bono* Questionnaire (emphasis added).

<sup>46</sup> *Id.* (emphasis added).



It is doubtful that such a broad standard is used in the determination of whether or not to represent a new paying client.

Exclusionary zoning cases present an example of a spurious conflict where it is nearly impossible for someone who wishes to challenge the zoning of a particular area of town to find an attorney who does not represent someone who lives or works in the area. Again, the problem is not a conflict in the ethical sense as much as it is a fear of losing business by offending clients, thereby denying access to the legal system to legitimate interests. In some instances, this fear has been extended to question the propriety of lawyers contributing money to public interest law firms who are willing to represent the disfavored interest. At a meeting in a medium-sized city where representatives of the fifteen largest law firms were gathered to discuss launching a public interest law firm, the points in contention were who would sit on the Board of Directors and how the firm would be financed. There was no disagreement that a public interest firm should be formed; the jockeying was in the area of who would be identified with it. When one of the large firm representatives doubted that his firm could make financial contributions without alienating its clientele, another of the most senior firm representatives interjected with "What kind of prostitutes are we?" The tone of the meeting was elevated as each lawyer in that room clung to his professional independence. It became very clear that rules were not going to be of much help and that each lawyer would have to make each decision for himself. Lawyers draw the line in spurious conflict cases at different places, and where they choose to draw the line determines where the "business" of law separates from the "profession" of the law.

The limited knowledge of whether a private firm's involvement in public interest issues of a controversial nature will alienate the firm's clientele so as to interfere with the level of business indicates that the fear is stronger than the reality. In the questionnaire administered to private law firms by the ABA *Pro Bono* Project the question was asked: "Has the operation of the program had any effect on your regular clientele?" Although, in fact, controversial cases may never have reached the stage where they could have the effect of alienating clients because the firm may have decided against taking them on the basis of a "conflict" at the outset, the general view can be summarized by this reaction of a large Los Angeles firm: "There has been some favorable comment, but no noticeable effect."<sup>47</sup>

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<sup>47</sup> *Id.*

Lawyers have always lived with the possibility of guilt by association with their clients and with the possibility of alienating clients, but they have accepted that as inherent in the nature of the adversary process. The greater risk is the loss of professional independence by an attorney who, in fear of losing business, allows himself to be dictated to by his clients.

#### BAR ASSOCIATION PARTICIPATION

Another category of private bar involvement in *pro bono* work is participation by bar associations. Essentially, organized bar associations have two functions: to protect the interests of the profession and to protect the interests of the public. The attempt to balance these interests has presented a continuing struggle to the bar.

It is precisely because bar associations purport to be more than private institutions with private purposes that the organized bar would be expected to play a greater role in public interest work than the private law firm. Traditionally, bar associations have helped finance or operate legal aid societies.<sup>48</sup> Many of these activities were expanded when the OEO Legal Services Program was established in 1965. Some of the earlier legal aid societies had been created with charitable notions in mind—that legal services were a type of charity for clients and the hiring of retired or unsuccessful lawyers was a type of charity to the profession. The mission of the OEO Legal Services Program was to disabuse the profession of these charitable notions and to make quality and aggressive legal services to the poor available as a matter of right. Therefore, many of the newly-expanded bar association programs found themselves with new Boards of Directors running the beefed-up legal services programs, and although bar associations were represented on these boards, they rarely found themselves in control.

The support of the American Bar Association was a key factor in the establishment of the OEO Legal Services Program, but many local bar associations were skeptical about the new heavily-financed government programs, and OEO was skeptical about the local bar associations.

In six years most bar associations have formed alliances with the legal service programs, but it has been a rocky marriage. However, with the advent of the *pro bono* movement an upsurge in the amount and style of bar association concern has occurred, and much

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<sup>48</sup> *Supra* note 7.

of the new activity has focused on developing strong alliances with legal services programs by providing affirmative assistance in the form of manpower or money.<sup>49</sup>

Public demands for increased services at reasonable fees are sensitizing bar associations. One reaction has been to attempt to improve the image of the private bar by informing the public of the bar's record in public service activities. This has been implemented through surveys of private bar pro bono involvement and a series of public relations campaigns.<sup>50</sup>

Some bar associations have sponsored "public interest law firms" with full-time staff, supported financially by the bar association and by participating law firms, and supplied with volunteer manpower of private law firms.<sup>51</sup> The involvement of bar associations in the actual practice of public interest law has been attended by some acclaim because of the uniqueness of a usually cautious body forging into a relatively unknown future, although funding and operating a public interest law firm is not so different in structure from the traditional involvement in funding and operating a legal aid society. It is probably because of this similarity that the private bar has been much less skeptical toward public interest activities than it was toward the legal services movement. On the contrary, the bar has been supportive in its approach and has either laid to rest its earlier notions of charitable dispensation of legal services and the implicit acceptance of less than aggressive representation, or has shifted its strategy on how to deal with new legal movements. The shift in attitudes can also be explained because some of the reluctance to the legal services programs stemmed from a fear of vast amounts of federal dollars being poured into legal entities that were not under the control of bar associations. Pro bono activities and public interest law firms have relatively little outside money supporting them, and although the future of these programs may be in doubt, the present is very much in control, and bar associations can participate in their development with traditional

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<sup>49</sup> OEO intends to emphasize the role of the private lawyer in legal services programs by assisting the ABA *Pro Bono* Project in developing and implementing methods on how the private bar can be most effective. See also Boasberg, *The Private Bar and OEO's Legal Services Program*, 2 URBAN LAWYER 248 (1970).

<sup>50</sup> The State Bar of Texas and the Maricopa County Bar Association (Arizona) conducted extensive surveys of the private lawyer's involvement in community service work which are on file at the ABA Pro Bono Project.

<sup>51</sup> See Levy, *Lawyer and the Soul*, 5 J. OF THE BEV. HILLS BAR ASS'N 41 (1971) for a description of the Beverly Hills Bar Association efforts.

tools such as the development of guidelines and the interpretation of the canons of ethics.

Presently, two bar associations are actively considering developing guidelines for the operation of public interest law firms. The Bar Association of the District of Columbia issued an opinion in the matter of the Stern Community Law Firm<sup>52</sup> which allowed the

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<sup>52</sup> Before the District of Columbia Bar Association, Jan. 26, 1971. The Stern Foundation gave money to a church to enable it to retain a public interest law firm. The church would tell the law firm what problems to attack, and handling these problems was the firm's only activity. The firm called itself "The Stern Community Law Firm."

The firm consisted of three members of the bar and three other attorneys not yet members of the bar. The name "Stern," as identified with the Foundation, was not that of a practicing attorney.

The church instructed the firm to litigate to reform the local adoption laws. Pursuant thereto, the firm advertised for clients with adoption problems in the *D. C. Gazette*, the *Afro-American*, the *New Republic*, and over several other radio stations. The firm believed that it could not obtain a desirable array of fact situations without advertising. The firm did not limit its search to indigent clients; it intended to accept any clients who presented a desirable factual situation, regardless of ability to pay. However, it accepted no fees.

Once a client was "signed up," the ordinary attorney-client relationship attached. The firm stated that the wishes of the client would govern, even if these later came into conflict with the desires of the church.

The Ethics Committee approved the concept of the Stern Community Law Firm. The Committee was not disturbed by the conflict of interest aspect because it was assured that once the adoptive parents were signed up, the law firm would serve their interests exclusively. The Committee was not disturbed by the stirring up of litigation aspect, on the assumption that the law firm's good judgment would limit the suits brought to those with a reasonable basis. The Committee approved the advertising aspect provided individual attorney names were not mentioned.

The advertisements made declarations that certain D.C. adoption practices were contrary to law. The Committee found that these declarations should be modified to show that they were the law firm's opinion, and not necessarily a correct statement of what a court would hold the law to be.

The Committee was concerned about what would be a proper name under which to practice and advertise and, by a divided vote, approved the use of the "Stern Community Law Firm."

The Committee's report was presented to the D.C. Bar Association Board of Directors. The Board approved the Committee's position on the ads, except for the question of what would be a proper name under which to advertise. The Board found that the word "Law" should be deleted from the name of the group sponsoring the advertisement. The Board noted that this was an interim position, subject to re-examination, and requested the Ethics Committee to prepare recommended guidelines for PILFs.

firm to advertise for clients in an adoption case. The opinion was interim in nature until such time as the Bar Association could adopt guidelines for public interest law firms. The subcommittee presently working on the guidelines has taken a flexible and expansive approach to existing canons of ethics and to procedures that will assist the organized bar in being responsive to the new-style public interest law firms. The task has not been perceived as one of "regulation" of these firms or of controlling their activities. The subcommittee has thus far restricted its jurisdiction to non-profit public interest law firms which are usually foundation-funded law firms and organizations practicing law without charge to clients.

The Oregon State Bar in March, 1971 passed a resolution "to inquire further into . . . so-called *pro bono* attorneys and law firms . . . to submit to the Board of Governors for approval, rules or guidelines concerning the operations of such attorneys or law firms in a manner not violative of the Code of Professional Responsibility . . . ."

The Oregon State Bar emphasis is different from the D.C. Bar Association. First, the Oregon Bar is attempting to regulate self-supporting public interest firms that charge some fees but do the majority of work *pro bono*, whereas the D.C. Bar has limited its scope to firms that do not charge fees. The Oregon Bar guidelines would have more of a regulatory effect because of the difference in emphasis. For example, if the charging of fees places a public interest law firm in competition with other firms for some of the same clients, the quid pro quo for the special privilege to advertise may have to be submission by the *pro bono* firm to some type of certification. The Oregon State Bar's Committee on Future of the Legal Profession has asked the *pro bono* firms in Oregon to submit position papers as a basis for guidelines.<sup>53</sup>

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<sup>53</sup> Excerpts from the position paper of one *pro bono* firm indicate a way *pro bono* firms can be regulated:

"C. CERTIFICATION

No attorney or firm may publicly hold itself out to be a PILF, nor solicit as allowed under A, above, or advertise as allowed under B(1) above, unless it holds a certification from the Oregon State Bar Association that it is a public interest law firm.

1. The minimum requirements for a PILF are:

- a. At least 50% of the attorney time of the firm shall be devoted to matters in the public interest.
  - i. such time may either be compensated, noncompensated, or both.

Through their position of leadership in the private bar, bar associations can offer unique contributions to the *pro bono* movement, some of which are already evident.

The majority of lawyers in the country are sole practitioners or members of small firms who do not have the time or resources to meet *pro bono* needs individually. For these lawyers bar associations can provide a vehicle for effective public interest participation, such as the public interest law firm,<sup>54</sup> obviating financial difficulties as well as conflicts of interest problems. It would not be a difficult matter for bar associations to utilize part of their dues to support *pro bono* work, such as for fellowships to individual lawyers or law students to promote ongoing work in the public interest area.

As important as the establishment of a vehicle for participation is the encouragement to participate that is explicit with the imprimatur of the bar association. Beyond encouragement, bar associations have the ability to implement and enforce standards for participation in *pro bono* work for the private lawyer just as they can implement and enforce other standards of professional conduct.

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ii. service as a public official or as a member of a private organization shall not be countable.

b. The firm shall commit itself to a low income (net) level commensurate with the ideal of serving the public interest rather than the economic interest of the members. Said level shall be set by the firm and disclosed to the Oregon State Bar Association.

c. Except as stated in paragraph "d" which follows, all sums received by the firm which are in excess of the established annual income ceilings of the lawyers shall be placed in trust under terms which preclude the attorneys from taking such moneys as income if doing so would cause the annual income ceiling to be exceeded.

d. The provisions of "c" above shall not preclude the distribution of firm income to the members thereof, over and above the annual income ceiling, to such an extent as is necessary to pay any income taxes incurred by the receipt of the firm of net income in excess of the sum of the member's annual income ceilings.

The essence of the trust fund and annual income ceilings is to, in effect, place "salary" ceilings on the individual attorney's income so that his distributed income is equivalent to the gross income of a salaried employee at the ceiling level.

2. To obtain certification, a PILF must agree to the following:

a. Maintain accurate time sheets and allow the Oregon State Bar to inspect same;

b. Undergo an annual audit and submit the audit report to the Oregon State Bar.

3. The Board of Bar Governors shall be the certifying body."

<sup>54</sup> See authorities note 20 *supra*.

Until such times as a professional *duty* to provide *civil* representation to persons who cannot afford an attorney is established, similar to the judicially-enforceable duty to provide *criminal* representation, bar associations have the primary responsibility for defining the professional commitment in the area of public service.

#### BROKER ORGANIZATION PARTICIPATION

Another category of private bar participation in the *pro bono* movement can be better described by its function than its structure. Organizations like the Lawyers Committee for Civil Rights Under Law, the NAACP Legal Defense Fund, Inc. and the American Civil Liberties Union have performed a "broker function"<sup>55</sup> of locating and "packaging" cases and finding lawyers to handle them. These organizations are usually national in scope, focusing on broad areas of responsibility and need such as civil rights and civil liberties with minimal coordination and supportive staffs.

New *pro bono* lawyers' organizations, following the successful example of their civil rights predecessors, have undertaken coordinating and supportive roles at the local level in areas of public interest need. A series of groups generated locally have organized across the country.

The Council of New York Law Associates, with a membership of over 1,500 New York lawyers, mostly associates in private firms, circulates a newsletter to its membership which lists the names of organizations with a public service function who are in need of free legal assistance. The requests for lawyers range anywhere from assisting a theatrical arts group to acting as attorneys general at the polls on election day. The survival of the Council of New York Law Associates as a viable organization of lawyers can be attributed thus far to the fact that a clearinghouse function serves a real need and is apolitical so as to appeal to a broad base within the bar.

But the most important service the Council could perform would be as conscience to the legal profession, moving bar associations, private law firms and governmental agencies toward responsible institutional changes. By wielding a large membership that represents a valid cross-section of the New York legal establishment, the Council can be a vital political force toward markedly influencing the standard practices of the legal community. The Council can demand released time policies in law firms for public interest work; the Council can demand law firm assessments for financial support

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<sup>55</sup> F. R. Marks, *supra* note 2, at 141.

of separate public interest firms. Whereas a few young associates in one private firm or a few insurgents within a local bar association may stand relatively powerless in their quest for institutional change, the collective effort of the Council can set the tone for the future of the legal profession in the city. The New York Council has yet to flex its political muscle, having spent its infancy developing its membership and exploring the immediate needs of the public. The New York City legal community is vast, diverse and fertile ground for the success of the Council.

The Los Angeles County Bar Association Barristers adopted the New York Council's clearinghouse function and created a Legal Response Center circulating a regular newsletter. This function is particularly crucial in large cities where the private bar has little opportunity to exchange information because of professional diversity and lack of social intercourse.

The Washington Council of Lawyers, while performing a clearinghouse function, provides additional services to the public and to the bar. Because its genesis was a response to different needs of the legal community, the Washington group is more overtly activist in nature than the New York Council at this juncture. The Washington bar has a liberal bent, partially because of the transience of its members and the lack of a need to maintain the "status quo" in a city where the most powerful residents come and go with the election returns. A substantial segment of the Washington legal community is composed of government attorneys and of lawyers in large private firms. Very few of these large firms have a "local practice" but, instead, represent national private interests in their dealings with the government. There is also a well-defined and easily ascertainable "public interest bar." What was needed in Washington was the ability of a group of organized lawyers to act quickly in specific crises that were peculiar or convenient to the Washington scene but were national in impact—such as the Supreme Court nominations of Haynesworth and Carswell—or the possible impairment of the independence of the attorney-client relationship under proposed changes in the Economic Opportunity Act Legal Services Program. The Washington Council is geared to act quickly on issues where the bar has a vital concern and responsibility.

The Chicago Council of Lawyers resembles a bar association more than any of the other Councils, so much as to be in the process of seeking affiliation with the American Bar Association. The Council's extensive public interest work includes drafting and formally submitting to the Illinois Supreme Court proposed rules



for the appointment of Associate Judges under the new constitution and the election of Chief Judge for each Judicial Circuit; gathering information on the manner in which bail is set in criminal cases in Cook County; and developing a package of consumer protection legislation.

Councils of Lawyers can contribute to the *pro bono* movement most appropriately by providing a vehicle for participating in *pro bono* work, thereby maximizing minimal resources, and by serving as a conscience, and sometimes as a competitor, to the organized bar for institutional reform in the profession.

Whatever may be the genesis or function of the local organization of lawyers, their potential development as well as the initiation of new groups across the country offers great promise toward the redefinition of the lawyer's responsibility to the public interest. A national network of lawyer's organizations with *pro bono* propensities is a powerful force with which to contend.

#### LAW SCHOOL PARTICIPATION

Another category of *pro bono* private bar activities is legal education. Having generated much of the impetus toward the *pro bono* movement, law schools have assumed a significant part of the responsibility for the practical development of the use of law as an instrument for social and economic change. The rapid rise of clinical programs or law school-related programs has changed the faces of many law schools, although it remains to be seen whether these courses will become fully-integrated into the long-term curricula.

Several schools offer programs where students actually handle cases under faculty supervision or are assigned to work, for credit, with public interest law firms. One law school seminar has students working with a large private law firm in the development and filing of public interest law suits. Other public interest programs are affiliated with the law schools but go beyond course status. For example, the Ford Foundation-funded Institute for Public Interest Representation at Georgetown Law Center in Washington, D.C. engages in legal scholarship and advocacy before federal regulatory and administrative agencies. The Institute conducts research, develops teaching materials for law schools and participates directly in agency and judicial proceedings.

The most creative and encompassing program in legal education, addressing itself to relevant scholarship in the public interest field, will be the Antioch School of Law, scheduled to open in September,

1972. The plans for the school include the use of a teaching law firm as the central educational vehicle for training law students, the first attempt by a law school to train para-professionals, and a heavy enrollment from a minority and poverty background.

As the debate continues about the proper function of legal education the reshaping of the curriculum continues to respond to meet the needs of a changing society.

### JUDGMENT DAY APPROACHES

The private bar, as it is presently constituted, represents private interests far more adequately than it represents public interests. In its attempts to rectify the imbalance the pro bono movement has highlighted it more clearly. Whether the new activities or their results are significant enough to alter the gestalt of the bar so as to reverse the reality is in question.

The vast and sophisticated needs of the public cannot be met through a dependence on sheer voluntarism and moral responsibility which is the state of professional response at this time. If the legal process is to provide an adequate forum for legitimate claims, the profession must redefine its entire system for delivery of legal assistance. Such legal planning would necessarily have to include an appraisal of the legal system itself, with an examination of who has access to the system, the means for implementing access, and provisions for remuneration for those who assist in providing access. Unless such a comprehensive approach is taken, the bar will continue in its present posture of chipping away at this glacier-like problem with ice pick solutions.