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# Book Reviews: The Lawyer, the Public, and Professional Responsibility

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THE LAWYER, THE PUBLIC, AND PROFESSIONAL RESPONSIBILITY. By: F. Raymond Marks with Kirk Leswing and Barbara A. Fortinsky. Chicago: American Bar Foundation. 1972. Pp. xii, 305, Appendix and Index. \$7.95. paper \$2.95. F. Raymond Marks is a Senior Research Attorney for the American Bar Foundation and Professional Lecturer at the University of Chicago Graduate School of Business. Kirk Leswing and Barbara A. Fortinsky were Research Associates at the American Bar Foundation. He was attending Antioch College and she was a candidate for the Ph.D. degree in psychology at the University of Chicago at the time of this study.

The late Justice Brandeis once observed:

Instead of holding a position of independence between the wealthy and the people, prepared to curb the excesses of either, able lawyers have, to a large extent, allowed themselves to become adjuncts of great corporations and have neglected their obligations to use their powers for the protection of the people. We hear much of the "corporation lawyer," and far too little of the "peoples' lawyer." The great opportunity of the American bar, is and will be to stand again as it did in the past, ready to protect also the interests of the people. . . .<sup>1</sup>

The concept of lawyers as leaders in the *pro bono publico* effort was not original with Justice Brandeis. At an early date, the call for the organization of the Association of the Bar of the City of New York spoke of:

. . . organized action and influence of the Legal Profession, properly exerted. . . [which would] enable it, in many ways, to promote the interests of the public.<sup>2</sup>

More than a century has passed since that call was issued, and some sixty-seven years have elapsed since Justice Brandeis articulated his concept of the proper role of the American Bar. Yet, a substantial portion of the American public would question—and perhaps with good cause—whether the legal profession as a whole, is prepared to give more than lip service to these noble sentiments.

What can be done to mobilize the resources of the legal profession for the overall good of the community? According to the authors of *The Lawyer, The Public, and Professional Responsibility*, a socially-conscious public is a vehicle which can propel the legal profession forward. This public awareness, as the authors point out, is growing. The acquiescent majorities of the 1950's are becoming the militant

1. F. MARKS with K. LESWING and B. FORTINSKY, *THE LAWYER, THE PUBLIC AND PROFESSIONAL RESPONSIBILITY* 28-29 (1972).

2. *Id.* at 12.

empathetics of the 1970's. Issues of poverty, social injustice, the environment, etc., are no longer relegated to the back pages of daily newspapers. They are, and undoubtedly will continue to be, matters of prime concern to ever-increasing segments of the public.

There is little doubt that the legal profession has talked about its public responsibilities and to some extent has taken steps to reach an accommodation with the *pro bono publico* concepts. But, are these efforts a truly agonizing reappraisal or are they merely token gestures designed to quiet the militant empathetics and the discomfiting tensions within the legal establishment? Only time will tell. However, enough water has passed under the bridge to warrant a backward glance at what has transpired and a forward glimpse at where the legal profession may be heading in its efforts to meet its public responsibilities. This is what *The Lawyer, The Public, and Professional Responsibility* has attempted to do.

Without any vested interest in defending what was, and without any parochial attachment to what is, the authors review the historical antecedents of the *pro bono publico* role of the legal profession and trace its development to the present efforts of the organized bar, the individual lawyer, the private law firm and the non-legal organizations which act as brokers between the legal community and the public.

The authors demonstrate that the legal profession is responding to its public responsibilities to a greater degree than is generally recognized and have created new organizational styles to deal with the changing public concepts of social responsibility. Each new emerging style is examined, starting with the simple and neutral responses of the public interest partner or committee, continuing with the branch office or released time approach and then with those who "broker" legal services.

The authors point out that the public interest partner or committee approach has developed along three lines, (1) indirectly sanctioning outside activity by their lawyers (the auditors); (2) encouraging taking public interest matters as work of the firm (the integrators); and (3) handling a single public interest matter (the program approach). Some firms have progressed to the establishment of a public interest department or section, which is managed and staffed either on a rotating basis or for a single matter in the same manner as assignments are made to other departments. At least one firm brought in a permanent partner who was charged at the outset with the establishment of policy guidelines for the department's operation. This firm also has assigned a senior associate on a full time basis to the *pro bono* activity, although junior associates are assigned on a temporary basis in keeping with the firm's policy of rotating new associates to all departments.

Whereas the public interest department tends to organize along law reform lines, the branch office and released time approaches tend to the more traditional concepts of legal servicing. As may be expected, this

approach has encountered problems of distrust and alienation on the part of the ghetto inhabitant, who is, of course, the potential client. In addition, some attorneys already practicing in the ghetto have displayed varying degrees of hostility to the branch office concept.

Delivery of legal services requires clients who are sufficiently cognizant of their need for legal services. As long as the potential client is alienated or hostile, the gap between the desire to serve and the delivery of legal services remains wide. This is where "legal brokers" such as the Community Law Offices (CLO) and the American Civil Liberties Union (ACLU) perform a needed and useful function. However, there are differences between their operations and those of the traditional legal aid organization. These are explored in some detail by the authors.

Can the legal profession fulfill its *pro bono publico* responsibility? Can the public marshal its socially conscious awareness in a manner which will galvanize the entire legal profession into accepting its *pro bono publico* responsibility? *The Lawyer, The Public and Professional Responsibility* does not supply the answers. . . Indeed the authors make no pretense at this, particularly since much of their data was obtained in selective interviews with those engaged in the public interest effort. Despite their limited efforts the authors have succeeded in viewing and presenting the emerging situation critically and with due recognition of the possibility that more radical changes in the definition of the lawyer's role and responsibility may be necessary.

TWO MILLION UNNECESSARY ARRESTS. By: Raymond T. Nimmer. Chicago: American Bar Foundation. 1971. p. vii, 202, \$5.00, paper \$3.50. Mr. Nimmer is Project Director of the American Bar Foundation's Study of Public Intoxication and Criminal Law.

In recent years, public drunkenness arrests have amounted to approximately one and a half million annually.<sup>1</sup> Enforcement of statutes pertaining to public intoxication, vagrancy, and related victimless crimes has resulted in little more than a "revolving door" process—arrest, temporary incarceration, and then rearrest. Sheer volume propels the criminal justice system into a mass production operation. Due process standards are abused and the individual receives minimal, if any, treatment. In *Two Million Unnecessary Arrests*, the author explores the treatment and criminal-arrests systems, examines the consequences to the individuals engulfed in the systems, draws realistic conclusions, and makes practical recommendations.

The subculture of the *skid-row derelict*, whose members comprise most of the drunkenness and related arrests, is the focal point for the study. Portrayed as a complex entity, it is composed of a heterogeneous

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1. R. NIMMER: TWO MILLION UNNECESSARY ARRESTS, 1 & 155 (1971). See FBI UNIFORM CRIME REPORTS, Table 23, (1968-1971).