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## The Minority Lawyer: Link to the Ghetto

by Leroy D. Clark

The black sole practitioner, struggling in the ghetto to make a living and resist the influences of deprofessionalization, is a link by which the major bar associations and white law firms may provide a worthwhile service to both indigent clients and the profession. A program under which the ghetto lawyer might establish a relationship with the white firm would help both and would make a more lasting contribution to the public than the efforts of idealistic white lawyers on white chargers.

**R**ESponsible persons and organizations are greatly alarmed at the signs of disintegration and disorganization evident in our society. The assassination of Martin Luther King, Jr., and the hardening of the hostilities and fear which resulted from the riots after his death are examples that underscore the need for creative and prompt responses to the signs of social dislocation. The national riot commission's report aside, there are now two separate societies, black and white. The reason that society takes note of this now is that blacks are exhibiting more overt behavior (riots, etc.) to express their profound sense of alienation.

The law, despite the fact that it usually has functioned as a preserver of the *status quo* and a protector of vested interests, has a capacity to function for distribution of equity and for the reformation of conditions which have caused our present impasse. Before the law can ever achieve its true reformation potential, however, the organized Bar itself must begin to clean its own house. One cannot change other institutions until one's own is changed.

This article directs itself to the establishment of new relationships between major bar associations and the minority lawyer now practicing in the ghetto. It is important to focus on this relationship because that minority practitioner is the major agent and representative of the organized Bar vis-à-vis poor people. His relationship (or lack of relationship) with the poor probably contributes to the disorganization and feeling of impotence prevalent in the ghetto. It is through him that the people in the ghetto learn what a lawyer is.

One need not repeat the ways in which the organized Bar has failed the ghetto poor in their need for legal serv-

ices. Underfinanced legal aid societies and local bar committees ready to take cases without charge, but which no one in the ghetto knows about, are all too prevalent. It is hoped that the recent new federal programs to provide legal services will be a partial, constructive move. But the ghetto community is failed also because the Bar in the past has discriminated against, ignored or had a step-child relationship with the black practitioner in disadvantaged communities.

Law schools have also played their part in this dereliction—only 1 per cent of the lawyers in the country are black.<sup>1</sup> Southern schools have excluded black applicants, although after the job segregated schooling has done, many black students probably could have been turned down on the merits. Northern schools have either discriminated against or not actively recruited black students. This, fortunately, is undergoing change. The result has been that entire black communities, even with paying clients, have had no black lawyer to serve them, and they do not trust the white lawyers, who come from the matrix of prejudice and discrimination, to give full and adequate service. Huntsville, Alabama, has a number of black professionals but no black lawyer. In the entire State of Mississippi, there are only eight black lawyers. Should not the Association of American Law Schools or the American Bar Association have concerned itself years ago with this pattern of exclusion?

When Southern black lawyers survive the sieve of discrimination and begin practicing, they are excluded from major professional activities and opportunities. They are not invited to membership in the major bar associa-

1. Carl, *The Shortage of Negro Lawyers*, 20 J. LEGAL ED. 21 (1967).

tion of their town or city. In all the South, none are teaching in any law schools, none hold the position of United States attorney for any area, and none are on the federal bench.

This situation, however bleak, is even more complicated and professionally disappointing for the Northern black lawyer. The black community does not have business at the level of the white community, so he is excluded from adequate fees and retainers which his white counterpart enjoys. Many black middle-class citizens who can afford a fee see the law largely as a function of "contacts", which they do not believe the black lawyer has. He, in turn, is subjected to the intense competition of an urban environment, and the clients he can expect on the basis of proximity and race avoid his services. So this Northern lawyer is often marginal in income, and he has been the only one providing practically free services for ghetto residents. The quality of this service may be compromised sharply because a lawyer with limited income can stretch himself only so far for persons who can pay no or only nominal fees.<sup>2</sup>

Under these circumstances the ghetto lawyer may develop a concept of ethics different from that of the lawyer in the firm with sizable retainers. This redefinition of ethics may be open to legitimate criticism, particularly when clients are the victims, but it may also mean that there ought to be a dialogue between the minority and the organized bars toward the revision of the Canons of Professional Ethics to reflect the realities of functioning as a single practitioner in an urban setting. The effect of the ghetto setting is that the minority lawyer struggling to maintain an adequate income often slips into questionable professional practices and may gain a reputation in the community for being a sharp dealer or, worse, a shyster. One quality which pervades ghetto life is that residents do battle with one another. Here another battle is set up between an attorney and his clients, with the result that talents and energies which could be directed towards resolution of community problems become misdirected and misused

in the struggle for professional survival.

### **What Kind of Response Is Required Now?**

What should be the responsibility of the organized Bar? Clearly, some response is demanded, for we now see in the ghetto increasing expressions that the law is not only irrelevant to the resolution of problems confronting the residents but is, in fact, hostile to that resolution. The American Bar Association has gone on record in support of the new federal legal services programs. These programs, with a few exceptions, have entailed the establishment of full-time attorneys in a single program. Usually the program is simply the old legal aid society with improved salaries and a few new staff members. If it is a new program, the staff is composed of young, idealistic white lawyers with little or no experience.

The black lawyer who has toiled for years in the ghetto is not on the staff for a number of reasons. In many instances he has already done his stint with the legal aid society, this being one of the few positions that was open to him when he left law school. This was only seen as "experience getting". He conceived of his move into private practice as a move "upward" professionally, and now he would be loath to return to legal aid work. Also, the salaries paid the ordinary staffer by the legal aid societies, even with the new federal programs, will not attract lawyers with four or more years of experience, and the opportunities for advancement are limited.

The young white lawyers who enter the legal service programs are excited by the prospect of performing a worthwhile public service. They know, however, that their options will not be limited to legal aid, and so they have no hesitancy about committing two or three years of their professional life to this kind of work. The black lawyer, on the other hand, is required by the nature of his private practice to perform "public service" (free service), so the legal aid society is not offering him anything he does not get in the

normal course of his private practice. The result is that the opportunity for the black lawyer to become known as a community leader is eclipsed by the young white lawyer who is involved in community issues, with the plus that he is rendering services without charge. The black lawyer who becomes involved in community issues, which are always time consuming, does so at a great financial sacrifice.

One need not be a "black racist" to see that a succession of young white knights on their legal chargers, over the long run, can have a negative effect. Disrupted self-image is as much a part of the ghetto syndrome as poverty. The black professional performing adequately and competently can provide role models that go a long way toward restoring the confidence that is a precondition for a people seeking nondestructive means of coping with their problems. He also can be the most potent recruiter of students for law schools. By example he can encourage young blacks to see the law as a profession relevant to the needs of their people. Irrational forces are intensifying in the ghetto; the lawyer is an excellent agent for rationalizing those forces and directing them into constructive channels. It is likely that only blacks dealing in good faith with other blacks can accomplish this.

There is also an issue larger than the particular role of the black lawyer in his community. It can be safely said, after the experience of recent years with legal services programs, that they are not capable of reaching and serving all the indigents who need legal assistance.

### **Legal Services Programs Have Been Disappointments**

The legal services programs began, perhaps naively, with the premise that their doors would be open to all indigents with legal problems. No standards were set, other than income, for

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2. The full effects of this erosion of professional talent are documented well in CARLIN, *LAWYERS' ETHICS—A SURVEY OF THE NEW YORK CITY BAR* (1966) and CARLIN, *LAWYERS ON THEIR OWN—A STUDY OF INDIVIDUAL PRACTITIONERS IN CHICAGO* (1962). See also Note, 51 VA. L. REV. 521, 535-537 (1965).

refusing cases. Practically all of the legal services programs are now experiencing caseload problems. Despite high hopes, many programs find that they are functioning like the very legal aid societies they roundly criticized a few years ago. Despite the fact that the legal services program of the Office of Economic Opportunity has encouraged law reform in programs funded by OEO, to date there are probably only seven or eight programs that have sustained efforts in this direction. One of the best, California Rural Legal Assistance Corporation, has considered cutting back its service in marital actions in order to concentrate on test cases.

It was hypothesized at the outset that lawyers who deal with the problems of indigents would be best equipped to engage in law reform activities. However, most legal services programs provide only ordinary, garden-variety legal assistance, like that which single practitioners perform every day. For instance, simple marital actions make up 30 to 40 per cent of the caseload in some programs. This may have happened because the majority of federally funded programs were pre-existing legal aid societies, which continued business as usual, only with an expanded staff. Indeed, given the rapidly increasing demand for services, it is difficult to know how they could have changed substantially the manner in which they operated. In any event, there is a need to expand the pool of legal resources available to indigents.

We should reverse the trend of excluding the local private practitioner from serving indigents; there is a dire shortage of legal personnel. The federal programs resisted judicare at the outset because it was thought that many communities would avoid full-time staffs and establish only a judicare program. There should be no fear of this in communities in which a legal services program already is established. Another concern was that judicare would be too expensive. This may be true, but if we are to extend a real opportunity for indigents to use lawyers, we must pay for it.

When one enjoys a monopoly, as legal services programs now do with

indigents, there may be a tendency for the staff to perform in a routine, unimaginative way since the client has no alternative. If the organized Bar supported a mixture of judicare and legal services programs, a healthy competition might begin. Indigents would be given the same range of choice now enjoyed by persons who can afford to pay a fee. Indigents should have an opportunity to reject the service of lawyers who are not performing in accordance with the client's expectations. After the right to counsel at state expense was established in criminal cases, some defendants claimed a right to counsel of their choice.<sup>3</sup> Some day, if the right to counsel is established in the civil area,<sup>4</sup> the same challenge may be made concerning the indigent's right of choice.

There are serious problems in bringing black single practitioners into a program providing top quality legal service to indigents. Many have an inadequate education and may have adopted poor habits under the deprofessionalizing pressures of ghetto practice. Law schools could help diminish this problem by reversing their practice of extending fellowships only to persons who graduate *cum laude* and by offering some to single practitioners with three or four years' experience. Since these practitioners may have families to support and simply could not return to school on a full-time basis, the fellowships ought to be geared to the level of their present earnings.

Variations of this postgraduate education could be tried on something less than a full-time basis. For example, a practitioner could be paid to take particular courses. The level of payment could vary with the grade received, and this grade could be tied to evidence that the lawyer has used the course profitably in his practice. This is one means to refine the quality of the private practice of criminal law, which has in many instances been relegated to the single practitioner.

The organized Bar itself should establish greater contact with the single practitioner. Every major bar association in an urban area should have a



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special committee specifically relating to his problems. Through this involvement lies the greatest hope for the single practitioner to become a functioning member of the Bar.

#### Relationship of Large Firms to the Ghetto Lawyer

Bar associations also should be active in encouraging large firms to set up working relationships with single practitioners. A firm might offer to set up a "house counsel" relationship with various poverty groups, using the ghetto-based lawyer as its prime representative. They could work with him to assist groups, for example, to become incorporated, or deal with various tax problems of nonprofit organizations, or provide back-up legal resources for litigation. Young lawyers recently taken into the firm could be placed under the single practitioner for stated periods, to get a sense of the quality of that kind of practice. To avoid any indication of low status, this service should

3. *Illinois v. Gray*, 33 Ill. 2d 349 (1965), appeal dismissed, 384 U. S. 718 (1966).

4. See Note, *The Indigent's Right to Counsel in Civil Cases*, 76 YALE L. J. 545 (1967).

be a plus in consideration for partnership.

The ghetto lawyer would benefit from the financial base placed under his practice and from the opportunity to deal with legal tasks of a larger scope than he would ordinarily meet in his regular practice. He also would benefit from the association with lawyers who have been engaged in a higher level of practice for many years. The larger firm might encourage and assist single practitioners to combine into firms. In New York City, one of the largest centers of black lawyers, with approximately 205 in 1960, there is no firm of black lawyers with six or more members. Although the rugged, independent, sole practitioner has been idealized for years, we know that in an urban setting, with the myriad of legal problems that a lawyer can be asked to handle, firm practice is the most efficient way to provide services and maximize income.

From these relationships, a firm with an interest in "integrating" would have a working relationship upon which to base an offer. If the firm felt that it could not financially undertake the establishment of this relationship, it might approach the Office of Economic Opportunity to finance such an experiment or seek foundation support. One might ask why law firms, which like other economic units are interested primarily in a profit, should undertake such ventures. The answer is that they would benefit because everyone benefits from the competent performance of a public service. A characteristic American response is that it is "really

not my problem", but from such programs one might find that the distance between "uptown" and "downtown", both for lawyers and the community, might be lessened.

Another means by which the organized Bar might support expanding legal resources for indigent communities would be to go on record as favoring programs in which law students in their third year are permitted some form of actual practice. The Harvard Law School program, "Community Legal Assistance Office", has had a signal success. A number of purposes could thus be served. "Third-year boredom" would be counteracted, and black students would be encouraged to complete their legal education, for many of them now find the curriculum remote from their concerns. Students also could be assigned to ghetto-based lawyers in a *judicare* program, to assist with the caseload problem that inevitably develops.

#### **Moral Support Is Important**

The organized Bar still has a responsibility for dealing with lingering racial and ethnic discrimination. Southern bar associations still exclude or have not extended an invitation to black lawyers. An active effort to end the all-white composition of Southern bar associations ought to be undertaken. Firms still have racially or ethnically discriminatory hiring policies.<sup>5</sup> A provision should be added to the Canons of Professional Ethics that such racial and ethnic discrimination is unprofessional conduct. One might

think that such a provision is superfluous since discrimination now is outlawed under federal law and many state statutes. Antidiscrimination statutes, however, have not been effective at the professional level, where there are so many variables that play a part in hiring, promotion, etc. In any event, racial discrimination must be fought at various levels.

One of the things we know as lawyers is that rules and principles, even without full enforcement, can have, because of their symbolic nature, some coercive effects. A statement by a President of the United States that racial discrimination is a "moral" wrong sets an ethical tone that eventually, albeit haltingly, works itself into the action of the nation. A profession, particularly one committed to the rational resolution of problems, ought to be willing to go on record that those matters which are irrelevant to merit ought to be ruled out in decisions of hiring and promotion within the profession.

It need not be dwelt on, but the minority bar itself ought to initiate some of these suggestions and ought to be more tightly organized, so that the proposals do not become a kind of professional welfare program. There are many things this minority Bar ought to do on its own without any assistance from the Bar as a whole. The day of waiting supinely for someone else to resolve one's own problems is over.

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5. See Note, *The Jewish Law Student and New York Jobs—Discriminatory Effects in Law Firm Hiring Practices*, 73 *YALE L. J.* 625 (1964).