

Journal of the Institute for the Study of Legal Ethics

Volume 2

Article 2

1-1-1999

Corporate Law Firms and Corporate Ethics

Ralph Nader

Follow this and additional works at: <https://scholarlycommons.law.hofstra.edu/jisle>



Part of the [Legal Ethics and Professional Responsibility Commons](#)

Recommended Citation

Nader, Ralph (1999) "Corporate Law Firms and Corporate Ethics," *Journal of the Institute for the Study of Legal Ethics*: Vol. 2, Article 2.

Available at: <https://scholarlycommons.law.hofstra.edu/jisle/vol2/iss1/2>

This Article is brought to you for free and open access by Scholarship @ Hofstra Law. It has been accepted for inclusion in Journal of the Institute for the Study of Legal Ethics by an authorized editor of Scholarship @ Hofstra Law. For more information, please contact lawscholarlycommons@hofstra.edu.

CORPORATE LAW FIRMS AND CORPORATE ETHICS

*Ralph Nader**

My topic this afternoon at this Conference on Legal Ethics: Access to Justice deals with corporate law firms and corporate ethics. This is an area that is as vast as it is unexplored. Most of the discussions regarding legal ethics, whether they are in grievance committee or at conferences, deal with issues that somehow don't apply to corporate law firm operations. They deal with criminal law, with the behavior of criminal defense lawyers. On occasion they deal with prosecutorial behavior. They deal with issues of individual client billing, fraud, solicitation issues, advertising issues by lawyers, escrow accounts or the extent to which lawyers can talk in court and out of court before they are judicially reprimanded.

It is quite apparent that the body of legal ethics has not moved fully to challenge the more systematic behavior of corporate law firms on behalf of corporate clients that are not individual human beings but which are artificial legal entities. As a result, a lot of the misbehavior by corporate lawyers doesn't quite fit under the existing interpretation of the canons or rules of professional conduct. If it did fit, it doesn't have the engines to extend it into the corporate law firm arena, as it would to an individual lawyer representing a client whether in a divorce case, a landlord tenant case, or in a contract or conveyance case or, obviously, in a criminal defense case.

As we began our study of corporate law firms back in the 1970s when Mark Green put out his book *THE OTHER GOVERNMENT*, law firms were so off limits that they almost generated bursts of humor and satire. I remember at law school we were taught to challenge everything, including Learned Hand's opinions. But the one thing we never were encouraged to challenge was the behavior of corporate law firms which were recruiting on campus regularly for the newly-minted graduate. When Mark Green began his study of Covington and Burling and Wilmer, Cutler and Pickering in the early 1970s with me in Washington, D.C., Mr. Cutler demanded that Mark Green get an opinion from the

* Ralph Nader is one of America's most effective social critics, the Consumer Crusader, and Public Defender.

American Bar Association that it was not a violation of the canons of ethics for giving Mr. Green an interview.

In one case when Mr. Green was interviewing one of the partners at Covington and Burling, the partner was asked, "What law school did you go to?" just in terms of preliminary inquiry. He told Mr. Green that he couldn't tell him that. Mr. Green asked him, "Why not?" He said, "because there is a canon against self-touting that prescribes me from this." It turned out that he was a graduate of Yale Law School so I couldn't figure out what the problem was. But those were the pre-Steve Brill days. Those were the pre-*American Lawyer* days when legal journalism was off limits. Now, of course, there has been a revolution in inquiring into corporate law firms, partner escapes, rating partners, fees and generating revenues. This fills the *Legal Times* and the *National Law Reporter*, and of course, the *American Lawyer*.

There really is an undeveloped framework of legal ethics draping itself over these giant institutions. We are talking about the 100 corporate law firms which are about to gross twenty billion dollars in fees next year. We are talking about law firms that have reached the level of 1,000 lawyers, Baker & McKenzie, for example, Skadden Arps, and many of them are in the 200, 400, 600, 800-lawyer population. There are responsibilities that accrue to the firm, to individual lawyers, to individual boutique practices within the firms, that mix in a matrix of a gradual loss of professional independence from the large corporate clients who have learned how to pit one big law firm against another. They have learned how to induce a rainmaker complex in these corporate law firms where the three or four rainmakers become almost tyrannical powers within the corporate law firms who in turn make sure that there are profit centers throughout the law firm, which is rather contradictory to certain professional statutes and standards. Other lawyers in the law firms either leave or they just succumb to the rainmaker's pace and highly commercial priorities in terms of the behavior of the firm. The rainmakers sanction other lawyers in the firm. The rainmaker can say to the other attorneys that we may lose our corporate clients. They may go across the street to another large firm, and that would be pretty catastrophic. Of course, the other sanction is the large bonuses and the withholding of bonuses and the pushing out of lawyers as they reach their late fifties or sixties because they are not "sufficiently productive," and so forth.

It is important to know that we have to have some sort of framework to grapple with so much of the unknown. There is so much rich material for legal ethics in the vast area of the role of corporations in American life. These corporate law firms are exquisite brokers of corpo-

rate power. Historically, they have represented intellectually achievements of great impressiveness, however dubious that may be in some people's judgement. These corporate law firms are the architects of the corporate institution as it developed starting in the early 19th century in the textile industry in Massachusetts, all the way through the turbulent post-Civil War period to the growth of the holding company structure. Then we move into the 20th century with a whole series of elaborate mechanisms that extended the privileges and immunities of corporations far beyond those available for individual human beings.

The structures also connected with the national subsidy state like the immunities from accidents under the tort system for worker's compensation. The whole elaboration of bankruptcy law is extremely adroit. You have to be amazed and impressed by the intellectual fire power that these law firms bring. Their ability to turn their corporate clients into private legislatures by an elaborate set of contracts of adhesion, which are now signed by millions of people everyday—auto insurance, HMO contracts, employment contracts, bank deposit cards, auto dealer and credit contracts, etc. All of these are relentlessly detailed, relentlessly one-sided contracts, relentlessly focused on people giving up their rights to go to court, for example, and have a trial by jury when they sign an agreement that has in the fine print a binding arbitration clause.

The corporate law firm assault on the tort system is not quite so adroit, yet rather crude. Representing the tobacco company and other corporations, it is hard not to be crude. It is not simply a defense against plaintiff filings under product liability or medical malpractice. It is not simply destruction and delay by lawyers who get paid by the hour and do not have a particular interest in expeditious proceedings. It's not only the ability to engage plaintiff lawyers in inclusive class action settlements that are very bad for the plaintiff lawyers' clients but are very good for the plaintiff lawyers' fees, which are tendered not out of the settlement but as a side negotiation by the defense counsel. It is beyond that. It is a systematic attack legislated at the state and federal levels on the tort law in the direction of restricting the rights of plaintiffs rather than expanding the rights of plaintiffs, further making it advantageous for their corporate clients to proceed with more and more limited liability privileges and immunities.

In fact, if there is one theme in the work of corporate lawyers that is most historically significant, in my judgment, it is the relentless expansion of limited liability and the privileges and immunities that accrue to corporations that status and go beyond that. We have reached a point in our country where we do have almost a double standard between the

laws that apply to corporations and the laws that apply to real individuals. Corporations have the ability to create their holding companies, to engage in transfer pricing across national jurisdictions, to avail themselves of corporate law firms' drafted general agreements on tariffs and trade or the forthcoming multilateral agreement on investment systems of international governance that are highly biased against democratic processes of member nations and the rights of workers, consumers, the environment, and other less organized constituents. We look at it in that grandeur, shall we say using the word "grandeur" to attach to the gravity of the work of corporate law firms, as well as the international scope of how it affects the deployment of technology.

Now, for example, the architecture of genetic engineering and artificial computer intelligence is being developed by corporate law firms. How does it affect people? It really behooves those who work in the vineyards of legal ethics to raise some pressing questions. What I would like to do is go through the framework that I approach this with, and then give a few case studies which we documented in our book *NO CONTEST*. I found that the corporate law firm is a profession. No matter how crass a corporate law firm may be, there is a certain standard that it cannot dismiss. That standard is more than a professional code of conduct or what we used to call the canons of ethics. It's a standard that is embraced by (a) the legal monopoly of the profession to represent people in court, and (b) the concept of the officer of the court.

In more colloquial terms, every attorney I have ever spoken to recognizes that there is a dual role. Attorneys are expected to zealously represent their clients and to advance the system of justice, defend the administration of justice, improve it, etc. So there are two roles, and the tension between these two roles can be very intensive if they are allowed to tense. But if they're not allowed to tense, as is often the case, the role of the attorney becomes dominant. The large part of the career of the average member of the bar is that of an attorney representing clients, rather than as a lawyer defending justice. When we went through our research, we found very interesting changes in senior lawyers in corporate law firms. They are tending towards aliteracy these days. They are making much more money than their predecessor prominent corporate lawyers, and they are reading less, reflecting less, and regretting less publicly. Although privately we found them to be regretful after retirement, feeling that they missed out on some striving of justice that their prominent role might have encouraged them to engage in.

We went back and saw how people like Henry Stimson, Randolph Paul, and others looked at their role. I just want to read you a few

excerpts. Of course, we all remember Justice Brandeis, when he was a corporate lawyer, and also a people's lawyer. He warned about corporate lawyers being too indentured to business clients. He was very cautious as to what that would do to the independence of the profession. But it was Charles Horskey, a senior partner in Covington Burling, who made a telling point. Here are his words: "We have an obligation to do more than tell clients how they can lawfully do what they want to do. I do not refer only to the clients who want to urge positions so outrageous that no lawyer could advocate them and still maintain his self-respect. We should go beyond that. The public position of the bar suffers improperly when it becomes apparent that there are Washington lawyers who are quite willing to ignore entirely the large issues of the country and the basic standards of decency in the process of stringing together sets of legal loop holes to achieve some inordinant advantage. Because this is an area which canons of ethics and grievance committees cannot operate, it's the more reason why more lawyers should be alert to the implicit as well as the explicit responsibilities which distinguish law as a profession and not merely a highly technical trade."

It's quite interesting that Charles Horskey's colleagues on the whole did not take these words quite seriously. When Mark Green was doing his research, he found that one day an associate went to a senior partner in that same firm of Covington Burling and said that their client, the Electronic Industry Association, was dividing up markets in a manner that violated federal criminal antitrust laws. He asked the senior partner what he should do, and the senior partner told him to burn the documents. Now, Henry Stimson wrote in his book, "I felt that if the time should ever come when this tradition (public service) faded out and the members of the Bar had become merely the servants of business, the future of our liberties would be gloomy and deep indeed."

Now switch to the ABA model rules of professional conduct. In a paragraph that is almost never considered by attorneys today, there is the celebrated elaboration of the two central privileges of our profession — the monopoly privilege and the officer of the court: "A lawyer is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice. As a public citizen, a lawyer should seek improvement of the law . . . the administration of justice. . . . A lawyer should be mindful of deficiencies in the administration of justice." What does this mean in the daily life of corporate law firms? Not very much. We now come to Sol Linowitz and his recent book in which he said attorneys "can command corporations and

governments to testify and produce documents and defend their actions. They are truly invested with unique public citizen responsibilities.”

Now reflect on this. If you were a corporate lawyer and believed you had this dual role, you wanted to advocate for your client zealously and you wanted to also be mindful of your lawyer’s responsibilities for systems of justice, what would you do? Would you take the following cases? Would you have represented the coal companies in the 1930s and created the notorious broad form deeds by which the coal company obtained (from the impoverished and desperate Appalachian rural people for fifty cents an acre) the right to all coal, oil, gas, metal, and minerals and the right to divert and pollute water and receive immunity from all liability? What is your role as an attorney? What is your role as a lawyer? Imagine! Signed on the dotted line, “Immunity from all liabilities.” What would you have done if you were an attorney for banks, hospital chains, and employers who developed a compulsory arbitration clause in the fine print of the agreement that millions of consumers sign where basically the legal remedies are taken away from unsuspecting consumers? What would you have done as a lawyer? What would you have done as an attorney? We should all remember that the most prominent lawyer in the 1920s, Elihu Root, was often quoted as saying to his clients: “It may be the legal thing to do, but it’s the rotten thing to do. Don’t do it.” If you were an attorney for a corporate client on a tax matter, would you lobby to damage the equity of the tax laws for all corporations? In other words, would you give all corporations an inequitable provision in order to represent your corporation in a particular case before Congress?

I came across this in a very intense way in 1966, lobbying for the motor vehicle safety laws. We were making great progress in Congress when the issue arose as to whether these laws should have a criminal penalty as a sanction against willful and knowing violation of government safety standards by anybody in the automotive industry. Lloyd Cutler was representing the Automobile Manufacturers of America, which then was composed of GM, Ford, Chrysler, and American Motors.

He wanted to make sure that they would never be prosecuted criminally for willful and knowing violation of government safety standards. Now let’s assume as an attorney there he thought he had four blessed corporations which would never violate these standards. He got through Congress an exclusion from criminal penalties from 1966 to the present for every automotive supplier, foreign and domestic, every automotive manufacturer, foreign and domestic, and everybody in the automotive industry for whom he could never vouch and never be around to

excoriate. As an attorney, he did his job. What did he do as a lawyer? Then, of course, there are the attorneys for the speculative savings and loans, which has produced a lot of ethical issues because the federal banking agencies went after some of the law firms which I will allude to in just a moment. There was again that tension between lawyer and attorney. Then there is the attorney/lawyer contrast in the firms that specialize in opposing union organization by workers at the workplace of their corporate clients. Their techniques raise very serious questions of total dismissal of any role of officer of the court and what that entails.

Back about nine years ago, Professor Eugene Gaetke wrote an article in the *KENTUCKY LAW JOURNAL*. It was a simple inquiry. The inquiry was, "Does the phrase 'Officer of the Court' have any practical meaning affecting the behavior of attorneys?" He concluded that the answer was it had no real meaning. First of all, it had no mandatory *pro bono* obligation. It didn't develop the kind of sanctions that the courts have the authority to invoke. He concluded in this way: "Lawyers like to refer to themselves as officers of the court. Careful analysis of the role of the lawyer within the adversarial legal system reveals the characterization to be vacuous and unduly self-laudatory. It confuses lawyers and misleads the public. The profession, therefore, should either stop using the officer of the court characterization or give meaning to it."

Let's briefly discuss some of the real life cases. In Seattle, Washington, a two-year-old girl with asthma was prescribed a drug by her pediatrician. The drug was produced by Fisons, a British drug company, and apparently when she took the drug, she was severely damaging her life. The drug had an ingredient in it that immediately triggered the effect of an overdose for an infant who had asthma. The pediatrician was sued by the parents and so was the drug company. The drug company retained the firm of Boggle and Gates, and the battle was on around 1986. A while later, an envelope arrived at the plaintiff lawyer's office with a letter that the drug company sent to a few influential doctors, but not all the doctors, warning them about this precise side effect. This letter was sent well before the child's injury occurred. Later it was learned that before the injury, the same employee of the drug company who signed the letter sent to only a few influential doctors produced an internal memorandum for his company in which he noted "a dramatic increase in reports of serious toxicity to theophylline" in a 1985 medical journal. He then said that this whole product was a mistake. This, however, was not produced under discovery. Disclosure of these materials settled the case for \$6.5 million. There were no punitive damages in Washington State so they couldn't go for punitive damages. Then the

pediatrician sued the drug company because the pediatrician was being sued by the parents. The pediatrician sued the drug company, settled with them, and then the insurance company of the pediatrician filed suit against Boggle and Gates as well as Fisons based on discovery abuse and sought sanctions.

The defense by Boggle and Gates basically was, "Everybody does it. All law firms do this. That's zealous representation. And in defending themselves they brought affidavits from some prominent lawyers, heads of the Bar Associations in past years, and Geoffrey Hazard. Geoffrey Hazard, then a Yale Law School professor said, "An award of sanctions is reserved for clear abuses of the discovery process, where reasonable minds can not differ on the issue. In responding to the discovery requests, the rules do not require the responding party to be generous or volunteer information that may be helpful to the other side." Fortunately, the Supreme Court in the State of Washington vigorously disagreed with Mr. Hazard and sent the case back to the trial court to determine sanctions. Before that occurred, the case was settled with the insurance company. The insurance company fulfilled its objectives; it publicized the misbehavior, with a lot of *mea culpa*, and they decided to settle for \$300,000 or so, covering their own attorney fees.

Now this illustrates to me an obtuseness that is extremely worrisome. These are really smoking gun documents that were known to the law firm for the drug companies. They did not produce them on discovery, and discovery requests were quite broad. The law firm tried to say, "Well they didn't ask for the exact, specific thing." The Supreme Court of Washington vigorously dismissed the kind of defense that was entered by the law firm. Now at least that had a happy ending in terms of the standards upheld by the Supreme Court of the State of Washington.

Now move if you will to an in-house lawyer who surprisingly has received far too little attention. This man's name was Roger Balla, and he practiced law in Illinois as an in-house corporate attorney for Gambro Incorporated which was a subsidiary of a German Corporation that dealt with kidney dialysis equipment. On July 19, 1985, Gambro's German company informed the American company that it was about to ship some dialysis machines from Germany. The German company noted that the particular machines could put dialysis patients at risk because they could leave, "continuous high levels of potassium, phosphate and urea/creatinine" in a patient's system. That's the first stunning declaration. Balla advised his employer, the U.S. company, that this would violate regulations of the U.S. Food and Drug Administration, not surprisingly. His company would have to report such an importation to the FDA. The

head of the company promptly told the German company that he would not accept shipment. So it seems like a fight. The in-house lawyer did the job, did exactly what he was supposed to do under professional codes of conduct. However, a week later the President of the U.S. company reversed course. He informed the German subsidiary, the German company, that he would accept the dialysis machines and sell them to a customer that he believed cared only about price rather than quality. Balla, then, who was not informed of this reversal but learned about it through other employees, was appalled. Use of the defective machines would place already vulnerable kidney patients at serious risk. He told this to the President of his company. He also told the President of his company he would do everything possible to stop the sale of these machines. So on September 4, 1985, Balla got his reward for good advice and ethical practice; he was fired.

Now comes the bizarre section of this story. The German company shipped the defective machines to the U.S. Balla reported the shipments to the FDA, which seized the shipment and declared the machines to be defective. But he was out of a job for saving lives. He had done not only the right thing but he had done the legally required thing. The ethical rules governing attorney conduct in Illinois require an attorney "to disclose information about a client to the extent it appears necessary to prevent the client from committing an act that would result in death or serious bodily harm to another person." On March 1986, Balla sued Gambro in Illinois state court for retaliatory discharge. This case was litigated all the way to the Supreme Court of Illinois which rendered its decision on December 19, 1991. Writing for the majority, Justice William Clark agreed with Balla that the evidence indicated that Gambro fired Balla in retaliation for his activities and that this discharge conflicted with "clearly mandated public policy." But the Supreme Court of Illinois ruled against Balla. Here is their rationale. If a lawyer like Balla "had no choice" but to expose Gambro's wrongdoing, then Illinois Courts had no need to protect lawyers against retaliatory discharge. Lawyers could be counted on to do the right thing, even if it meant losing their jobs. And lawyers had to accept such risks as a necessary part of pursuing their noble profession. That was criticized by both Steve Gillers and a dissenting Justice Charles Freeman, who said that "the existence of a clear ethical rule is enough to ensure that lawyers will obey it, simply . . . ignores reality." And he went on to elaborate his dissent. Balla's colleagues, the American Corporation Counsel Association, filed a legal brief in behalf of Gambro, opposing Balla's argument. So his own in-house colleagues basically said that the importance of confidenti-

ality between in-house counsel and his or her employer supersedes any other countervailing values.

Now we turn to the S&L, and this is another very fascinating gap that needs to be considered. Many of you know that some of the biggest law firms in the country were charged with misconduct in the way they represented the Savings and Loans in the late 80s and early 90s. To summarize, Jones, Day paid \$51 million to the RTC in Washington in connection with the Lincoln Savings and Loan case. One of their partners was barred from holding any position in the banking industry and was suspended from practice before the OTS. Paul, Weiss, Rifkin paid \$45 million to the RTC for similar alleged misconduct. Kaye, Scholer paid \$41 million because of the Lincoln Savings case and, in addition, partners Fishbein and Katzman were prohibited from representing federally-insured financial institutions in the future. Kirkpatrick and Lockhart, a Pittsburgh firm, paid \$9 million. Sidley and Austin paid \$7.5 million. And you know what happened? There was no reprimand or action by the state grievance committees. Some of these lawyers were exonerated by panels appointed, composed of their peers. All of the law firms denied wrongdoing. This is really interesting. You pay \$41 million, and you deny wrongdoing. Well, they paid the limit of their malpractice insurance policy.

This is obviously a richly empirical episode in the history of the American legal profession. What do we have to learn from it? We have the assertions by the OTC. We have the bar exonerating or not reprimanding. We don't have any actions by the state grievance panels, and we have complete denial of wrongdoing. That is an incomplete chapter in American corporate law firm history. I submit it is incomplete because the ethics standards have not congealed into a proper focus with a proper enforcement mechanism appropriate to the conduct of these law firms. And the alleged misconduct was very often the tension between attorney and lawyer obligations. How far does the zealous representation go? How far does the restraint by the lawyer role go?

In many ways the issue of delay itself, systemic delay of judicial proceedings, becomes an ethical question. Remember Bruce Bromley who a few decades ago was considered the epitome of the successful, New York corporate lawyer. He said to an audience of Stanford law students when he was a top partner at Cravath Swain — this was about 50 years ago, "I was born, I think, to be a protractor. I could take the simplest antitrust case and protract the defense almost to infinity. One case lasted 14 years. . . . Despite 50,000 pages of testimony, there really wasn't any dispute about the facts. . . . We won that case, and as you

know, my firm's meter was running all the time — every month for 14 years.” It's always good to have lawyers speak to law students because it is one of the areas in which they cannot restrain themselves.

At what point does systemic delay like this become a serious violation of professional codes of conduct? The tobacco company lawyers have broken new ground in unethical conduct. One idea was forming a research institute funded by several tobacco companies to conduct studies. If studies came out wrong for the tobacco company, they were shielded by the lawyer/client privilege because it was a project of the corporate law firms representing the tobacco companies. One lawyer for Arnold Porter is quoted as saying in the documents that have been subsequently disclosed, “If the returns, namely the research returns, are unfavorable, they can be destroyed and there would be no record.” Lawyer/client privilege!

The collusion between class action attorneys is increasingly troublesome. We call these “voucher settlements.” The consumers get vouchers to buy the next GM truck or the next service, and the defense lawyers negotiate lucrative cash fees for the plaintiff lawyers on the side. The public citizen litigation group has intervened 32 times in the last five years against these settlements. They are endangering the very construct of the class action by terms of increasing legislative attention, not really to these abuses but to the success of some of these class actions such as asbestos, Dalkon Shield, etc. But the pretext is, of course, that the clients in these voucher settlements get virtually nothing except that they help promote the product. Imagine getting a \$1,000 voucher to buy your next GM Pickup. That's a marketing device, and the plaintiff lawyers get the fees.

I think it should be unethical behavior for a plaintiff lawyer to negotiate his or her fee on the side with defense counsel, apart from the settlement. I think the fee should come from the settlement. I think that's a self-disciplining factor. Years ago we asked the various custodians of the canons of ethics in the various states to adopt this canon, and not one was willing to adopt it. Also, I might add, we asked them to make an unethical practice, the conditioning of a settlement that requires the plaintiff lawyer to accept a gag order, and to, in effect, keep quiet about the product defect, not to talk about it publicly, and to transfer discovery documents over to the defense counsel. The attorney is torn and should never be put in that position. The attorney has an obligation to the injured motorist, for example, in a Corvair carbon monoxide leakage case, which is an actual case. In that case, the attorney took that route. He said, “I've got to get money for my client who is brain damaged

because of carbon monoxide leakage. I will sign a gag order and sign the documents.” The reason I know about this is because he was subsequently subpoenaed by a congressional committee, and he was able to talk about it. Yet didn’t he have a duty to alert the public about a design defect in Corvair station wagons, etc? Didn’t he have a duty to do that as a lawyer? No attorney should ever be put in that kind of position where he has to stomp on the role of a lawyer in order to pursue his role as an attorney on a matter dealing with life and death and a huge number of unsuspecting motorists and other passengers, I might add.

Let me just end on this note, and I thank you for your patience. What responsibility does a corporate law firm have for its individual corporate attorney misbehavior? These law firms are often, as you know, corporations now. They are not just the old traditional partnership. We discussed this in our book, and we couldn’t get many people to comment on it. But the question is whether a law firm is under a duty of care to supervise its partners and associates? Should it have an ethics overseer in place responsible for the firm’s procedures and practices and able to inform its partners and associates of proper practice and proper sanctions, if they are not met? Right now the corporate firm itself is often free from disciplinary sanctions where an individual lawyer in the firm acted wrongly. On the other hand, if management was lax, and if the creed was, “Please the client, whatever the cost,” if law firm partners and associates were insufficiently educated on ethical issues, then could the firm be properly punished or its principles disciplined for failure to properly supervise? Now that is sometimes true for corporations. Aircraft companies, airlines, drug companies, and meat companies have received a sanction on the corporation for lack of managerial supervision, etc. The question is how fast this is going to apply to these law firms. Well, in May 1996, as I am sure you know, New York became the first state to “authorize professional discipline against entire firms for failure to adequately supervise their attorneys.”

Let me just add a personal note here. In the last four years, three books have come out which are critical of corporate lawyers. One was by Sol Linowitz who was former general counsel of Xerox, President of Xerox, U.S. Ambassador to South America for President Carter, etc. It was a very sharp criticism of the legal profession, and he included corporate lawyers, in particular. The title is *THE BETRAYED PROFESSION*. Then MaryAnn Glendon, Professor of Law at Harvard, came out with a book called, *A NATION UNDER LAWYERS*. Then we came out, Wesley Smith and I, with a book, *NO CONTEST — CORPORATE LAWYERS AND THE PERVERSION OF JUSTICE IN AMERICA*. These three books almost dis-

appeared without a trace. That is, within the profession they were largely ignored. Our profession now has 850,000 members. It has never had more power, and it has never made more money. So they were not ignored because lawyers were desperately trying to get enough retainers to pay their overhead. I wrote to Professor Glendon and Mr. Linowitz, and I said, "What is going on here?" Well, he was invited to address a few Bar Associations and she was likewise. Some of the most fundamental questions of the future of our profession become more and more entwined with global corporations, more and more entwined with the architecture for potentially devastating technologies, and more and more entwined with transnational jurisdictional evasions. There is no internal festering debate of any quantitative or qualitative significance with due recognition for a few exceptions. There is no Henry Stimpson. There is no Louis Brandeis. There is no Randolph Paul, the great tax lawyer who said that a tax lawyer was also a citizen and could not discharge responsibilities by simply representing his corporate clients. He had to represent the integrity of the tax laws as a public citizen.

Where are the Randolph Pauls? Where are the Donald Turners, Professor of Law at Harvard in antitrust and then Head of the Antitrust Division at the Justice Department under Lyndon Johnson, who told a group of lawyers that it was not only appropriate but important for lawyers to disagree with their clients outside their retainer in public arenas on these issues? Where are they today? I think our profession is moving towards aliteracy, that is, it knows how to read but it often doesn't. I think it's moving toward a deintellectualization of its substance and an increasing emphasis of its role as a highly lucrative trade rather than a profession. If there is one distinction between a profession and a trade it is this: A profession must be independent and learned and mindful of preventing the very problems that it reaps profit from representing. Otherwise, it's just a trade. Doctors should have prevention as their highest calling even though they earn their living from treating or diagnosing disease. And our profession has seriously compromised its historical mission and is on the precipice of losing its independence entirely to its corporate clients who have become much more aggressive, much more demanding, and much more adept at playing one law firm against another and bringing both of them to their very lucrative knees.

Thank you very much.

