

Harvesting personal information

There's always a good excuse to do the wrong thing

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A few weeks ago, I had occasion to have lunch with a friend who is, like me, a partner in the Washington office of a national law firm. In the course of our lunch, with apparent dismay, he described a recent effort by his firm to harvest personal information from its personnel.

He indicated that his firm's attorneys and employees had received an official firm request that they submit certain personal information to the firm's administration. The personal information requested included specifics regarding gender, sexual orientation, disabilities, race and ethnicity. In other words, his firm was seeking to assemble some of the most personal information about its employees, including their sexual activity, the racial and ethnic makeup of their parents and other ancestors, and their disabilities. My friend was clearly distressed by the

request and told me that, as a result, he expressed his objection to his firm's managing partner. He related to me that the managing partner responded by saying that he had to obtain this information because many clients and potential clients are requiring such information as a condition of handing out legal work. The managing partner asserted that much work would be taken away if the firm did not convince certain clients that the firm met whatever gender, sexual orientation, racial and disabilities quotas they impose.

Since, as the managing partner put it, he has a responsibility to the firm to maximize revenue, he concluded by saying that he did not have a choice, that he was merely having the firm do what every large law firm was doing.

For good measure, the managing partner noted that the submission of information was purely "voluntary" and, therefore, could not be construed as violating the rights of the firm's personnel.

My friend went on to explain to me that he, in turn, told his managing partner that he believes that everyone has a choice and that all people, and especially lawyers, have a duty to behave justly, and that economics should not be the predominant consideration.

He told me that he also quoted the famous biblical verse that states, “Justice, justice shall you pursue,” a verse that many lawyers used to post in their offices.

My friend noted that scholars have interpreted the repetition of the word “justice” as serving to emphasize that we are commanded to act justly, both when it is to our advantage and when it is to our detriment.

In the course of our discussion, because we are both of a certain age, we recalled that assembling private information for nefarious purposes was not uncommon in our country as recently as the 1960s. People who were characterized as being of African descent were systematically discriminated against, as were those of the “Hebrew race.” When individuals applied for benefits or other rights, it was not uncommon to ask them about their racial makeup and to use that information, often subtly, for denial and other nefarious purposes. This behavior is to our nation’s eternal shame.

With clear anguish, my friend told me that despite his objection, his firm had determined to proceed with the harvesting of personal information and intended to supply that information to clients and prospective clients. Interestingly, he indicated that many lawyers at his firm had made it clear to him privately that they agreed with his perspective but that they were reluctant, even fearful, to do anything about it.

My friend and I recognized that, as distressing as this harvesting of information may be, it does not appear to violate any laws or regulations. The submission of personal information purports to be voluntary. It is allegedly being done solely in order to evaluate the diversity of a firm and not to “discriminate.” And purportedly, no names will be attached to the information obtained. Seemingly no specific laws are being breached. But, of course, the objection that my friend was voicing was not based on legal considerations but rather on a moral one.

We both concluded that, sadly, there is always a good excuse to do the wrong thing. Collecting private information, invading our privacy and dividing us into ever smaller irrelevant categories cannot be a moral act. Just as it was wrong to do that in the past, it is wrong now, even if it is being carried on today in the name of the so-called virtues of diversity, equity and inclusion.

Dismayed by my friend’s tale, I posited that I did not believe that if his firm stopped this harvesting of personal information, the firm would actually lose clients. I asserted that, in fact, I believe that if his colleagues would stand up for their moral principles and publicize their principled stance, their clients would respect them. It is even possible that new clients might engage them by reason of their courage.

Shaking his head, my friend responded that there simply were not enough people in his firm prepared to confront this issue. He thought that a kind of unspoken fear was prevalent and that few would be willing to jeopardize their careers by standing up. Such is the fear of

“cancellation” these days. Nonetheless, he expressed the hope that other major law firms might have the courage to reject the collection of personal data.

I can only hope that this will be the case. I pray that every lawyer and every law firm will act justly and reject this kind of harvesting of private information — even if it should be to their detriment. However, as I look around at my brethren in the legal profession today, I fear that I may be wrong — indeed, very wrong.

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